

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.1627 to 1629 of 2017
and
CMP Nos.8613 to 8615 of 2017

The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai

.. Appellant in all CMAs

versus

1. V.Sangita
2. T. Arockiasamy

.. Respondents in all CMAs

Prayer: Civil Miscellaneous Appeals filed, against the common judgment and decree in M.C.O.P.Nos.1963 to 1965 of 2008, dated 21.03.2012, on the file of the Motor Accident Claims Tribunal, [Chief Court of Small Causes], Chennai.

For Appellant in all CMAs : Mr.S.Manohar
For Respondent in all CMAs : Mr.Gangaram Prasad (for R1)

COMMON JUDGMENT

(Judgment of the Court was made by **S.MANIKUMAR ,J.**)

Being aggrieved by the finding fixing negligence and the quantum of compensation awarded, in each of the claim petitions, vide common judgment and decree in M.C.O.P.Nos.1963 to 1965 of 2008, dated 21.03.2012, on the file of the Motor Accident Claims Tribunal, [Chief Court

of Small Causes], Chennai, M/s.New India Insurance Company Limited, Chennai, has preferred the present appeals.

2. As all the three Civil Miscellaneous Appeals arise out of a common Award, they are taken up together and disposed of by this common judgment.

3. Facts as deduced from the material on record and the impugned common judgment are that on 24.06.2007 about 05.45 hours, Mrs.Sangita, the 1st respondent/claimant, in all the three appeals, her husband S.Venkatasubramaniam @ Ramesh, deceased in MCOP No.1963 of 2008 and her nine months old minor son V.Vishnu, deceased in MCOP No.1965 of 2008, were travelling in a TATA Sumo bearing Regn.No.TN-31-U-8444 along with other co-passengers, from Chennai to Coimbatore (Via) Sankagiri, on Salem to Bhavani Main Road (near Abirami Auto Agencies), Sankagiri, Salem District. While so, the driver of the TATA Sumo, drove the vehicle in a rash and negligent manner and dashed against a private bus bearing Regn.No.TN-30-G-8888, which was coming in the opposite direction on the said road and due to the impact, the TATA Sumo stopped on the southern side of the road. In the accident, the husband of the 1st respondent/claimant sustained grievous injuries and died on the spot. Son of the 1st respondent/claimant, who also sustained grievous injuries, died on the way to the hospital. 1st

respondent, sustained grievous injuries. Apart from the death of the driver of the TATA sumo, father-in-law and mother-in-law of the 1st respondent/claimant, few co-passengers also sustained grievous injuries. In this regard, a case in Crime No.505 of 2007 has been registered for offence under Sections 279, 337, 338 and 304(A) IPC against the driver of the TATA Sumo bearing Regn.No.TN-31-U-8444.

4. For the injuries sustained by the 1st respondent, she filed MCOP No.1964 of 2008, claiming compensation of Rs.7,00,000/- under various heads. For the death of her husband S.Venkatasubramanian @ Ramesh, contending that her husband was aged 38 years and as Officer (Exports) in Brakes India Limited, Chennai, earned Rs.24,000/- plus perks per month plus future increment, 1st respondent filed MCOP No.1963 of 2008, claiming compensation of Rs.50,00,000/- under various heads. For the death of nine months old minor son Vishnu, the 1st respondent has filed MCOP No.1965 of 2008, claiming compensation of Rs.6,00,000/-.

5. Before the claims tribunal, appellant-Insurance Company, has filed a counter affidavit denying the manner of accident and also stated that the accident occurred solely due to the negligence on the part of the driver of the private bus bearing Regn.No.TN-30-G-8888. Without prejudice to the above, the appellant-Insurance company has disputed the age, avocation

and income of the deceased, and the quantum of compensation claimed under various heads, in each of the claim petitions.

6. Since all the claim petitions arose out of the same accident, in which members of one family died and sustained injuries, both grievous and simple in nature, they were taken up together by recording evidence and a common Award was passed.

7. Before the tribunal, the claimant/injured in MCOP No.1964 of 2008 as well as the sole legal representative of the deceased in MCOP Nos.1963 & 1965 of 2008, examined herself as P.W.1 besides examining PW2, Doctor, who examined PW1. PW3, Personal Manager, Brakes India Limited, Chennai has been examined to prove avocation of the deceased husband and income. Exhibits viz., P1 to P23, were marked. Insurance company neither filed any document nor examined any witness.

8. On evaluation of pleadings and evidence, the Claims Tribunal, held that the accident occurred only due to rash and negligent act of the driver of the TATA Sumo bearing Regn.No.TN-31-U-8444 and awarded compensation, fastening liability to pay compensation on the insured as well as the insurer of the vehicle, viz., New India Assurance Company Limited, the appellant herein. The compensation awarded in each of the claim

petitions, is as follows:

CMA No.1627 of 2017 [MCOP No.1963 of 2008]

Loss of contribution to the family	: Rs.41,57,460/-
Loss of consortium	: Rs. 20,000/-
Loss of expectation of life	: Rs. 10,000/-
Funeral expenses	: Rs. 10,000/-
Total	: <u>Rs.41,97,460/-</u>

CMA No.1628 of 2017 [MCOP No.1964 of 2008]

Loss of future earning power	: Rs. 91,800/-
For removal of spleen	: Rs.2,00,000/-
Pain and suffering	: Rs. 10,000/-
Extra nourishment	: Rs. 2,000/-
Transport to hospital	: Rs. 5,000/-
Total	: <u>Rs.3,08,800/-</u>

CMA No.1629 of 2017 [MCOP No.1965 of 2008]

For the death of minor : Rs.2,50,000/-

9. As stated supra, in all the appeals, finding fixing negligence and the quantum of compensation, are challenged before this Court.

10. Heard the learned counsel appearing for both parties and perused the materials on record.

11. When the matter came up for hearing, Mr.S.Manohar, learned counsel for the appellant Insurance Company submitted that finding of negligence fixed on the driver of TATA Sumo bearing Regn.No.TN-31-U-8444, has been confirmed by a Hon'ble Division Bench of this Court vide common judgment made in CMA Nos.2373 to 2377 and 2379 of 2013 dated

28.11.2013, preferred by the legal representatives / injured, other co-passengers of TATA Sumo vehicle. Hence, there is no need to advert to the challenge on the aspect of negligence.

12. With regard to the challenge to the quantum of compensation awarded in each of the claim petitions, perusal of the common award shows that for the death of one S.Veknatasubramanian @ Ramesh, the sole legal representative/wife has filed MCOP No.1963 of 2008. Claims tribunal on the basis of oral and documentary evidence, in particular evidence of PW3, the Personal Manager, Brakes India Limited, Chennai and documents viz., Ex.P21-appointment order and confirmation order, Ex.P22-Service extract of the deceased, Ex.P23-Pay slip for the month of May 2007, wherein the gross salary of the deceased has been mentioned as Rs.33,313/-, arrived at a conclusion that the deceased was a permanent employee of Brakes India Limited and as Assistant Officer (Exports), earned Rs.33,313/- per month. Following the judgments of Hon'ble Supreme Court and High Courts, deducted 20% towards Income Tax. Further, fixing the age of the deceased as 40 years and following the decision of the Hon'ble Supreme Court in *Sarla Verma and Others Vs. Delhi Transport Corporation*, reported in 2009 ACJ 1298, the tribunal added 30% of the income towards future prospects and deducted 1/3rd towards personal and living expenses of the deceased. By applying '15' multiplier, the tribunal arrived at the loss of contribution to

the family as Rs.41,57,460/-, which cannot be found fault with. The award of Rs.40,000/- under other heads viz., loss of consortium, loss of expectation of life and funeral expenses, is very less.

13. In MCOP No.1964 of 2008, the 1st respondent filed a claim petition, for the grievous injuries suffered by her. On analysis of the medical reports and evidence of PW2, the Doctor who examined the injured, the Claims tribunal held that due to the grievous injury in stomach, spleen was removed, liver was sutured and that she had taken conservative treatment for fractured bones at Lotus Hospital, Erode from 24.06.2007 to 30.06.2007 and at Sundaram Medical Foundation, Anna Nagar, Chennai from 30.06.2007 to 16.07.2007. Following the judgment of Madhya Pradesh High Court in *Shailja Timoti Vs. Sabhan Khan*, reported in 2008 ACJ 2221, awarded a sum of Rs.2,00,000/- for removal of spleen. Injured being a housewife, the tribunal has computed the loss of future earning at Rs.91,800/- by fixing the monthly income as Rs.3,000/- and adopting multiplier method. As the injured herself has admitted that the medical expenses were reimbursed by the employer of her husband, the tribunal has rightly denied the claim towards medical expenses. Award of Rs.2,000/- towards extra nourishment and Rs.10,000/- towards pain and suffering, appears to be disproportionate to the surgeries and treatment underwent by the injured. Tribunal has awarded only Rs.5,000/- for transportation.

The overall compensation Rs.3,08,800/- awarded to the injured/claimant, who has suffered the grievous injuries, in our opinion, cannot be said to be on the higher side.

14. Finally, compensation of Rs.2,50,000/- awarded to the mother of the deceased, nine month old boy in MCOP No.1965 of 2008 also cannot said to be exorbitant for the reason that the Hon'ble Supreme Court has awarded Rs.2,00,000/- for the death of the children between age group of 5 and 10 in *Lata Wadhwa Vs. State of Bihar*, reported in 2001 ACJ 1735. Further, in *National Insurance Company Limited Vs. Kusuma & Another*, reported in 2011 ACJ 2432, the Hon'ble Supreme Court has upheld the award of Rs.1,80,000/- for the death of the baby inside uterus.

15. In view of the above discussion, we are of the view that the common award and decree made M.C.O.P.Nos.1963 to 1965 of 2008, dated 21.03.2012, on the file of the Motor Accident Claims Tribunal, [Chief Court of Small Causes], Chennai, need not be interfered with. Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected Civil Miscellaneous Petitions, are closed.

16. The appellant-Insurance Company is directed to deposit the entire award amount with accrued interest and costs to the credit of

M.C.O.P.Nos.1963 to 1965 of 2008 on the file of the Motor Accident Claims Tribunal, [Chief Court of Small Causes], Chennai, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier.

17. On such deposit, the 1st respondent/claimant in all the appeals, is permitted to withdraw the same with interest and costs, by making necessary applications.

(S.M.K., J) (M.G.R., J.)
05.06.2017

Index: Yes/No.
Internet: Yes/No.
ars

To

1. The Motor Accident Claims Tribunal,
[Chief Court of Small Causes], Chennai.
2. The Section Officer,
VR Section, High Court, Madras

S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

ars

C.M.A.Nos.1627 to 1629 of 2017
and CMP Nos.8613 to 8615 of 2017

05.06.2017