



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2017

Pronounced on: 21.11.2017

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CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)Nos.639, 1834 and 1835 of 2013`
and C.M.P. (MD)Nos.9799 of 2016 and 899 of 2017
and M.P. (MD)Nos.1,1 of 2014 and 3,3 of 2013

In C.M.A(MD)No.639 of 2013:

V.P.Sakthivel

... Appellant/Petitioner

Vs.

1.Vincent Raj

2.The National Insurance Company Limited,
Represented by its,
Divisional Manager,
3, North Veli Street,
Madurai.

3.Muniyandi

4.New India Insurance Company Limited,
Represented by its,
Divisional Manager,
248-B, Kamarajar Salai,
Madurai.

(R1 and R4 set exparte before Tribunal. Hence,
notice may be dispense with).

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award passed in M.C.O.P.No.900 of 2007 dated 27.07.2012 on the file of the Motor Accident Claims Tribunal cum IV Additional Subordinate Judge, Madurai.

For Appellant	: Mr.R.Ponkarthikeyan
For R-1 and R-4	: Exparte
For R-2	: M/s.K.R.Shivasankari for Mr.S.Srinivasa Ragavan
	: No Appearance



In C.M.A(MD)No.1834 of 2013:

The National Insurance Company Limited,
Represented by its,
Divisional Manager,
No.3, North Veli Street,
Madurai.

... Appellant/Respondent-2

Vs.

1.D.Mareeswaran
2.Vincent Raj
3.Muniyandi

... Respondent / Petitioner

4.New India Insurance Company Limited,
Represented by its,
Divisional Manager,
No.248-B, Kamarajar Salai,
Madurai.

...Respondents/Respondents 1,3 & 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 27.07.2012 made in M.C.O.P.No.788 of 2007 on the file of the Motor Accident Claims Tribunal cum IV Additional Subordinate Judge, Madurai.

For Appellant	: M/s.K.R.Shivasankari for Mr.S.Srinivasa Ragavan
For R-1 & R3	: No Appearance
For R-2	: Mr.C.Godwin
For R-4	: Mr.A.Uthaman

In C.M.A(MD)No.1835 of 2013:

The National Insurance Company Limited,
Represented by its,
Divisional Manager,
No.3, North Veli Street,
Madurai.

... Appellant/Respondent-2

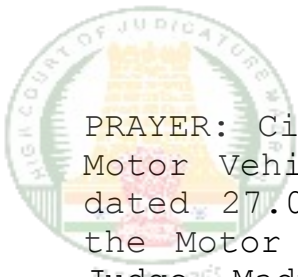
Vs.

1.V.P.Sakthivel
2.Vincent Raj
3.Muniyandi

... 1st Respondent / Petitioner

4.New India Insurance Company Limited,
Represented by its,
Divisional Manager,
No.248-B, Kamarajar Salai,
Madurai.

... 2nd to 4th Respondents/Respondents 1,3 & 4



PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 27.07.2012 made in M.C.O.P.No.900 of 2007 on the file of the Motor Accident Claims Tribunal cum IV Additional Subordinate Judge, Madurai.

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For Appellant	: M/s.K.R.Shivasankari for Mr.S.Srinivasa Ragavan
For R-1	: Ponkarthikeyan
For R-2	: Mr.C.Godwin
For R-3	: No Appearance
For R-4	: Mr.A.Uthaman

COMMON JUDGMENT

The Civil Miscellaneous Appeals have been directed against the fair and decreetal order dated 27.07.2012 made in M.C.O.P.Nos.900 and 788 of 2007 on the file of the Motor Accident Claims Tribunal cum IV Additional Subordinate Judge, Madurai.

2. Since the facts involved in all these civil miscellaneous appeals are one and the same and the Court below also decided the issue by way of a common judgement, these matters are taken up together and decided by this common judgment.

3. All the three Civil Miscellaneous Appeals had arisen out of the same accident. Out of the five claimants, now, V.P.Sakthivel alone is before this Court for enhancing the award passed by the tribunal and he has preferred C.M.A.(MD).No.639 of 2013 and the other two appeals, namely, C.M.A(MD).Nos.1834 and 1835 of 2013 are preferred by the insurance company, who is the second respondent before the Court below, questioning their liability and compensation to be payable to the claimants.

4. The fateful accident took place on 31.01.2006 at 5.30 a.m., at Kanadukathan to Karaikudi bye pass road, near V.Surakudi Village. While the claimants were travelling as occupants in a Qualis car bearing Registration No.TN-74-W-2197, the driver of the lorry bearing Registration No.TN-55-1077 loaded with iron rods without any danger signal or light and going ahead of the car and when the car driver was overtaking the lorry, the car dashed against the lorry at the right of the backside of the lorry. Due to which, the iron rods pierced into the car, where the claimants were travelling. Due to this impact, the claimants sustained grievous injuries and one of them died on the spot. Immediately, the claimants were taken to the hospital for treatment.

5. The claimants filed applications in M.C.O.P.Nos.788 and 900 of 2017 on the file of the Motor Accident Claims Tribunal cum IV Additional Subordinate Judge, Madurai, seeking compensation.



6. Before the Tribunal, the appellants/claimants/Insurance Company examined six witnesses as P.Ws.1 to 6 and marked thirty one documents as Exs.P.1 to 31. On the side of the respondents, they did not let in any oral and documentary evidence.

7. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of Qualis car and therefore, directed the second respondent/Insurance Company to pay a sum of Rs.1,63,830/- and Rs.3,83,607/- respectively to the claimants.

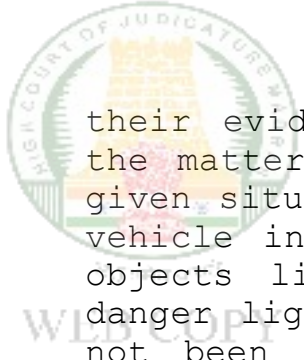
8. As earlier stated, questioning the liability and quantum of compensation, the insurance company has preferred C.M.A.(MD). Nos.1834 and 1835 of 2013. Similarly, for enhancement compensation, one of the claimants, namely, Sakthivel, has preferred C.M.A.(MD).No.639 of 2013 (M.C.O.P.No.900 of 2007). Submissions of the counsel made in C.M.A.(MD).Nos.1834 and 1835 of 2015:-

9. The learned counsel appearing for the appellant/insurance in C.M.A.(MD).Nos.1834 and 1835 of 2017 would submit that the lorry of the driver carried the iron rod, which was projecting outside the lorry and therefore, the lorry also contributed to the accident in question. Further, there was no indicator, due to which, the driver of the car could not see the iron rod and consequently, the accident occurred. To sum up, there is composite negligence on the drivers of both the vehicles and therefore, prays for appropriate orders.

10. Per contra, the learned counsel appearing for the fourth respondent would submit that the evidence on record clearly shows that only because of the rash and negligent driving of the car, the accident had taken place and it was not because of the lorry driver. Therefore, he prays that the order of the tribunal need not be interfered with.

11. This Court heard the submissions made on all sides and perused the materials available on record. In the light of the afore-said submission, it would be appropriate for this Court to deal with C.M.A.(MD).Nos.1834 and 1835 of 2013 to decide as to whether the judgment of the Court below is proper in fixing the liability on them?

12. In this connection, it is useful to refer the findings of the Court below wherein the learned Judge while recording the finding that though the lorry was proceeding in a zigzag manner with iron rod load in a zigzag manner with projecting iron rods, there was no any danger or warning signal or light on the iron load. It is also admitted by P.W.1 and P.W.4 in



their evidence also. Despite the overwhelming factual aspect of the matter, the learned Judge recorded in his finding that in a given situation, the driver of qualis car should have driven the vehicle in a controllable speed. A driver who loads with heavy objects like iron rod road should be more careful by putting danger light and warning signal to the fellow drivers, which has not been done by the driver of the lorry. When the objects projecting outside of the lorry of the third respondent, it is prohibited by Rule-174 of the Tamil Nadu Motor Vehicle Rules. In the case on hand, the iron rods were admittedly loaded outside the lorry. Therefore, I am of the view the driver of the lorry is also responsible for the accident.

13. That apart, in this case, there is clinching evidence that the driver of the car attempted to overtake the lorry in a hurried manner by which, the iron rods pierced into the car and in that process, one Nigmat Shajahan died on the spot. Therefore, this is the fittest case where the principles of composite negligence can be applied. In the case on hand, the drivers of the lorry and the car are liable for the accident. Needless to say that composite negligence means where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong- doer separately. The said principle is echoed in the case of Khenyei Vs. New India Assurance Company Ltd. & Ors., Civil Appeal No.4244 Of 2015 arising out of SLP (C) No.14015/2010. Therefore, I conclude that the both the insurance company are liable to pay compensation to the claimants.

14. In the light of the afore-said finding, C.M.A.(MD). Nos.1834 and 1835 of 2013 are disposed of to the extent indicated above.

15. Submissions made in C.M.A.(MD).No.639 of 2013:-

15.1. Coming to C.M.A.(MD).No.639 of 2013, the learned counsel appearing for the appellant would submit that the claimant sustained fracture on his head and the face completely crushed and there was multiple injuries all over the body. He had taken treatment at various hospitals from 31.01.2006 to 24.04.2006 and taken treatment for more than 75 days as inpatient. He would also submit that under the heads of loss of consortium, loss of love and affection, the amounts awarded by the Tribunal are on the lower side and therefore, the compensation awarded by the Tribunal is to be enhanced.



15.2. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference.

16. Heard the learned counsel appearing for the appellant as well as learned counsel appearing for the respondents and perused the materials available on record.

17. According to the evidence given by the doctor, it is clear that the injured claimant has sustained partial permanent disability to the extent of 53% disability. In this connection, P.W.6 has been examined on the petitioner side and he stated in his deposition that there was a depressed fracture on the forehead of the petitioner, fractures on the mandible region, both orbit region and nasal bone got fractured. After treatment, now the petitioner is having fits on his limbs, loss of energy, deficit in speech and walk, difficulty in chewing food and loss of smelling sense and loss of taste. From the above, it is clear that he sustained severe injuries all over his body. So, he has become life long dependant towards his family and the sorrow is more than losing a beloved one in the family. Therefore, as rightly pointed out by the appellant, this is the fittest case where multiplier method can be applied. In the case on hand, the appellant is 30 years old and 17 will be multiplier for him. Therefore, the compensation payable loss of income is $\text{Rs.}4,500 \times 12 \times 17 \times 53 / 100 = \text{Rs.}4,86,540/-$ and towards medical bills $\text{Rs.}2,20,607/-$ is granted and towards pain and sufferings, a sum of $\text{Rs.}1,00,000/-$ is granted. Totally, the claimant is entitled to a sum of $\text{Rs.}8,07,147/-$. Since it is an injury case, there is no deduction under the head of personal expenses. Furthermore, since the claimant itself has restricted his claim before this Court, a sum of $\text{Rs.}8,00,000/-$ as claimed by him is reasonable and considerable and accordingly, $\text{Rs.}8,00,000/-$ is granted as compensation to the claimant. Since the amount now arrived at by this Court is more than the amount arrived at by the tribunal, this Court is of the considered view that the other heads of compensation awarded by the tribunal need not be gone into.

18. As earlier discussed, since both the drivers are negligent in driving the vehicles in question, the amount of $\text{Rs.}8,00,000/-$ now awarded by this Court shall be paid by the National Insurance Company Limited, Madurai as well as New India Insurance Company Limited, Madurai, jointly and severally are liable to pay compensation.

19. In the light of the observations and discussions, the Civil Miscellaneous Appeal No.639 of 2013 filed by the claimant is allowed granting enhanced compensation amount of $\text{Rs.}8,00,000/-$ (Rupees Eight Lakhs Only). The enhanced award amount shall be paid along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;



20. Both the Insurance Companies are directed to deposit the award amount equally, namely, Rs.8,00,000/- (Rupees Eight Lakhs only) along with accrued interest and costs, less the amount already deposited, if any, to the credit of in M.C.O.P.No.900 of 2007 dated 27.07.2012 on the file of the Motor Accident Claims Tribunal cum 4th Additional Sub-Judge Madurai, within a period of four weeks from the date of receipt of a copy of this judgment.

21. On compliance of payment of additional Court Fees, if any, by the injured claimant, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellant-claimant, through RTGS/NEFT system, after getting his Account Details, within a period of two weeks, thereafter; and in the facts and circumstances of the case, there shall be no order as to costs.

22. At the risk of repetition, C.M.A.(MD).Nos.1834 and 1835 of 2013 stand dismissed and C.M.A.(MD).No.639 of 2013 stand allowed. Consequently, all the connected miscellaneous petitions stand closed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
cum IV Additional Subordinate Judge, Madurai.

+3cc to M/S.R.Ponkarthikeyan, Advocate SR.No. 88251, 88252, 71877
+1cc to M/S.S.Srinivasa Ragavan, Advocate SR.No. 89039
+1cc to M/S.A.Uthaman, Advocate SR.No. 88258
+1cc to M/S.C.Godwin, Advocate SR.No. 88563

order made in
C.M.A(MD)Nos.639, 1834 and 1835 of 2013
and C.M.P.(MD)Nos.9799 of 2016 and 899 of 2017
and M.P.(MD)Nos.1,1 of 2014 and 3,3 of 2013
21.11.2017

SSM

JM/JC/SAR 1/07.12.2017/7P/8C