

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1069 to 1077 of 2011

C.M.A.No.1069 of 2011:

Royal Sundaram Alliance Insurance
Company Ltd.,
46, Whites Road, Chennai-600 014 ..Appellant/2nd respondent
(in all CMAs.)

Vs.

1.V.Nataraja Perumal
2.Minor N.Narmada Devi
3.Minor N.Jeeva Rohini
(minors 2 and 3 rep. by Next
Friend Nataraja Perumal
1st respondent) ..Respondents 1 to 3/Petitioners

4.Nawab Jan. K.
5.S.E.T.C.
Rep. by its Managing Director (in CMA.1069/11)
Pallavan House, Chennai-02 ..Respondents 4 and 5/
Respondents 1 and 3

(Respondents 4&5 exparte before
lower court Hence notice may be dispensed
with for R4)

C.M.A.No.1070 of 2011:

1. Minor N. Naramada Devi ..1st Respondent/Petitioner

2. Nawab Jan K.
3. S.E.T.C.
rep. by its Managing Director,
Pallvan House, Chennai
(RR2 & 3 exparte before Lower Court
Notice may be dispensed with for R2)
..Respondents 2 &3/Respondents 1&3

C.M.A.No.1071 of 2011:

1. Minor Jeeva Roheni ..Respondent-1/Petitioner
2. Nawab Jan
3. S.E.T.C.
rep. by its Managing Director,
Pallavan House, Chennai
(RR 2&3 exparte before Lower Court
Notice maybe dispensed with for R2)
..Respondents 2&3/Respondents 1&3

C.M.A.No.1072 of 2011:

1. K. Rames Kumar ..Respondent-1/Petitioner
2. Nawab Jan K.
3. S.E.T.C.
rep. by its Managing Director,
Pallavan House, Chennai

(RR 2 to 4 exparte before the Lower
court notice may be dispensed with
for RR2 &3) ..Respondents 2to4/ Respondents 1,3&4

C.M.A.No.1073 of 2011:

1. K. Ramesh Kumar ..Respondents 1 to 3/Petitioners
2. Minor Hari Prasad
3. Minor R. Mohana Priya
4. Nawab Jan K.
5. S.E.T.C. rep. by its
Mangaing Director, Pallavan House,
Chennai-2.
(RR4 &5 exparte before Lower court,
Notice may be dispensed with for R4)
..Respondents 4&5/Respondent 1 & 3

C.M.A.No.1074 of 2011:

1. K. Ramesh Kumar ..1st Respondent/Petitioner
2. Nawab Jan K.
3. S.E.T.C. ..Respondents 2&3/Respondents 1&3

rep. by its Managing Director,
Pallavan House, Chennai-2
(RR 2&3 exparte before Lower court
Notice may be dispensed with for R2)

C.M.A.No.1075 of 2011:

1. Minor R. Hari Prasad ..Respondent-1/Petitioner
2. Nawab Jan K.
3. S.E.T.C.
rep. by its Managing Director,
Pallavan House, Chennai-2. ..Respondents 2&3/Respondents 1&3

(RR 2&3 exparte before lower court
Notice may be dispensed with for
R2)

C.M.A.No.1076 of 2011:

1. Minor R. Mohana Priya ..Respondent-1/Petitioner
2. Nawab Jan K.
3. S.E.T.C.
rep. by its Managing Director,
Pallavan House, Chennai ..Respondents 2&3/Respondents 1&3

(RR 2&3 exparte before lower court
notice maybe dispensed with for R2)

C.M.A.No.1077 of 2011:

1. Gopinath ..Respondent-1/Petitioner
2. Nawab Jan K.
3. S.E.T.C.
rep. by its Managing Director,
Pallavan House, Chennai-2 ..Respondents 2&3/Respondents 1&3

(RR 2&3 exparte before Lower Court.
notice may be dispensed with for R2)

Prayer in C.M.A.No.1069 of 2011 to 1077/11

Civil Miscellaneous Appeal filed against the Judgment and Decree
made in M.C.O.P.No.1219 1231, 1243, 2834, 2835, 2851, 2852,
2857/06 & 130/07 of 2006 dated 04.09.2010, on the file of Motor
Accidents claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan
For Respondents/claimants : Ms.R.Manoranjitham
For (R1 to R3)

COMMON JUDGMENT

The above Civil Miscellaneous Appeals are filed against the Judgment and Decree made in M.C.O.P.Nos.1219/2006, 1231/2006, 1234/2006, 2834/2006, 2835/2006, 2851/2006, 2852/2006, 2857/2006 and 130 of 2007 dated 04.09.2010, on the file of Motor Accidents claims Tribunal, Chief Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal. The case of the Petitioners is that on 06.03.2005 while the victim in M.C.O.P.Nos.1219/2006, 1231/2006, 1234/2006, 2834/2006, 2835/2006, 2851/2006, 2852/2006, 2857/2006 and 130 of 2007, who are the injured petitioners along with the deceased whose dependants have filed Petitions in M.C.O.P.Nos.1219/2006, 2834/2006, 2835/2006, were travelling as passengers in the 3rd respondent S.E.T.C.Transport Corporation Bus, bearing Reg.No.TN-01-N-6722 and as they were going near Valasupatti Yanaical in Madurai Main Road, the lorry bearing Reg.No.TN-29-W-1411 belonging to the 1st respondent insured with the 2nd respondent came in the opposite direction at high speed, driven in a rash and negligent manner, dashed against the bus, resulting in causing grievous injuries to the Petitioners viz., N.Narmatha Devi (Minor) Petitioner, represented by her father in MCOP.No.1231/2006; N.Jeeva Roheni (minor) Petitioner rep by her father in M.C.O.P.No.1234/2006; K.Ramesh Kumar, petitioner in M.C.O.P.No.2851 of 2006; S.Hari Prasad, Petitioner in M.C.O.P.No.2852 of 2006; R.Mohana Priya, Petitioner in M.C.O.P.No.2857 of 2006; Gopinath, Petitioner in M.C.O.P.No.130 of 2007 and also causing death of N.Murugeswari, K.Kannammal and R.Jaya Maharani, whose dependants are the Petitioners in M.C.O.P.Nos.1219 of 2006, 2834 of 2006 and 2835 of 2006 respectively. The Petitioners stated that the negligence and reckless driving by the 1st respondent lorry driver is the cause for the accident. The Petitioners stated that the 1st and 2nd respondents who are the owner and insurer of the offending vehicle, the lorry bearing Reg.No.TN-25-W-1141 are liable to pay compensation.

3.1. The Petitioners in M.C.O.P.No.1219 of 2006 contends that the deceased Murugeswari was the wife of the 1st petitioner and mother of the other petitioners. The deceased Murugeswari was aged 34 years and by working as Tailor, earned Rs.4000/- per month. Hence, the death of Murugeswari has caused loss of income to the family. Hence, the Petitioners seek compensation of Rs.6,50,000/- as compensation for the death of the deceased Murugeswari.

3.2. The Petitioners in M.C.O.P.No.2834 of 2006 contend that the deceased Kannammal was aged 54 years and she was employed and earning Rs.20,000/- per month. The Petitioner who is the son of the deceased Kannammal seeks Rs.4,00,000/- as compensation from respondents 1 and 2.

3.3. In M.C.O.P.No.2835 of 2006, the Petitioners who are the husband and children of the deceased Jaya Maharani contend that the deceased was 24 years, self employed and was earning Rs.300/- per day. The Petitioners seek sum of Rs.7,50,000/- as compensation for the death of Jaya Maharani.

3.4. The Petitioner in M.C.O.P.No.1231 of 2006, viz., the injured minor girl was aged 8 years and she was studying 2nd standard in a Private School in Chennai. In the accident, she suffered multiple grievous injuries and she was treated as inpatient in the private hospital, Trichy and thereafter, continued treatment in Government Stanley hospital, Chennai. For the grievous injuries suffered by the minor petitioner, they seek Rs.2,50,000/- as compensation.

3.5. The Petitioner in M.C.O.P.No.1234 of 2006, viz., N.Jeeva Rohini is a minor aged 6 years and she was studying II standard in a Private School and she suffered multiple grievous injuries all over the body and seek compensation of Rs.1,00,000/-.

3.6. The Petitioner in M.C.O.P.No.2851 of 2006 was aged 31 years and he suffered multiple grievous injuries and took treatment in a private hospital in Trichy. The petitioner is a self employed doing export of garment material and earning Rs.20,000/- per month. Due to the injury suffered by him, he is not able to attend to his work as he used to earlier. The Petitioner suffered loss of income. Hence, the Petitioner seeks Rs.10,00,000/- as compensation.

3.7. The Petitioner in M.C.O.P.No.2852 of 2006/Hari Prasad (Minor) aged 4 years and was studying UKG in a Private School and suffered multiple injuries and for the same claimed compensation of Rs.1,50,000/-.

3.8. In M.C.O.P.No.2857 of 2006, the petitioner/N.Mohana Priya (Minor) aged 2 years, rep by her father and she sustained multiple injuries and claimed compensation of Rs.2,00,000/-.

3.9. The Petitioner in M.C.O.P.No.130 of 2007 was aged 44 years and he was working as a Jewel Maker in a Private company earning Rs.7100/- plus allowances per month. He suffered with deformity and swelling in left leg, and is stated to have taken continuous treatment from 06.03.2005 till the date of the filing

of the Petition in Pallava Hospital, Chennai-83. Due to the injury suffered by the Petitioner, he could not carry on his work and suffered loss of income and seeks compensation of Rs.5,00,000/- as compensation.

4. On the other hand, opposing the claim of the Petitioners, the 2nd respondent/Insurance Company contends that the age, avocation and monthly income of the injured petitioners and deceased as alleged in various petitions is totally false. The place, date and time of the accident is specifically denied. The claim of the Petitioners is highly excessive and they are not entitled for compensation as claimed by them. The manner of accident as alleged by the Petitioners is not correct. The accident took place only due to negligence of the driver of the 3rd respondent SETC Corporation bus bearing Reg.No.TN-01-N-6722. The Lorry owned by the 1st respondent bearing Reg.No.TN-25-W-1411 was proceeding in the extreme left side of the road and the 3rd respondent Corporation bus alone came in the wrong side of the road and dashed against the 1st respondent lorry resulting in the accident. The claim of the Petitioners that the 1st respondent lorry driver was negligent and caused the accident is totally false. The Petitioners should prove that the 1st respondent lorry driver possessed valid driving licence at the time of the accident and the said lorry was insured with the 2nd respondent insurance company on the date of the accident. The claim of the Petitioners under different heads is unrealistic and excessive. Hence, the 2nd respondent-Insurance company seeks dismissal of all the petitions.

5. Before the Tribunal, the 1st respondent-owner of the Offending Vehicle, remained exparte. The Petitioners examined P.W.1 to P.W.5 and produced documents Ex.P.1 to Ex.P.54 to prove their claim. On the side of the 2nd respondent, R.W.1 to R.W.3 were examined and Ex.R.1 was produced to rebut the claim of the Petitioners. The Tribunal, after considering the evidence both oral and documentary available on record, found that the negligence on the part of the 1st respondent owned lorry driver alone was the cause for the accident and held that the 2nd respondent is liable to pay compensation as insurer of the 1st respondent's vehicle to the petitioners as detailed in the impugned order. Aggrieved over the said finding of the Tribunal, the 2nd respondent / Insurance Company has come forward with the present appeal.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the 2nd respondent/Insurance Company/Appellant contends that the Tribunal failed to appreciate the evidence produced by the 2nd respondent/Insurance

company and wrongly concluded that negligence of the driver of the 1st respondent lorry alone caused the accident. The evidence of the driver of the 1st respondent lorry, the surveyor and the official of the 1st respondent company was ignored and the Tribunal arrived at the conclusion on the basis of FIR and charge sheet filed by the Police against the lorry driver. The Tribunal also failed to consider the spot photograph produced by the 2nd respondent's surveyor to prove the nature of accident. The 3rd respondent Transport Corporation did not even come forward to contest their case and as such, the finding of the Tribunal that the 1st respondent Lorry driver alone was responsible for the accident is not proper. Hence, the 2nd respondent/Insurance Company/appellant seeks to allow the appeals and set aside the award passed by the tribunal.

8. Per contra, the learned counsel for the Petitioners/Claimants contended that the available evidence on record was properly considered by the tribunal, which and fixed the negligence on the 1st respondent lorry driver for causing the accident. The eyewitness account of the accident as stated by P.W.2 and P.W.3 and on the basis of Ex.P.23-FIR, the Tribunal correctly held that the negligence on the part of the lorry driver alone caused the accident.

9. The learned counsel for the Petitioners/claimants contended that even though no cross appeal was filed by them before this Court, since in M.C.O.P.Nos.1219/2006, 2834/2006 and 2835/2006, the Tribunal erred in awarding a very nominal amount as compensation and also failed to consider the future prospects of the deceased, sought for enhancement of the award amount. The Petitioner also contended that no ground is made out by the appellant/insurance company, to interfere with the finding of the Tribunal as to negligence of the 1st respondent lorry driver causing the accident. The learned counsel for Petitioner further seeks to dismiss the appeals by contending that the appeals lack merit. However, the learned counsel for the claimants/Petitioners seeks enhancement of the award passed in M.C.O.P.Nos.1219/2006, 2834/2006 and 2835/2006 for the deceased persons, even though, the appeal was filed by the 2nd Respondent/Insurance Company only.

10. The eyewitness to the accident, who deposed as P.W.2 and P.W.3 who are the petitioners in M.C.O.P.No.2834 of 2006 and M.C.O.P.No.130 of 2007 have spoken about the manner in which the accident occurred. The Police have registered Ex.P.23 FIR against the 1st respondent Lorry driver only. To contradict the same, the 2nd respondent examined the driver of the 1st respondent lorry as R.W.2 and also produced the spot survey report given by R.W.3 Gunasekaran as Ex.R.1. Admittedly, R.W.3 is not eyewitness to the occurrence. It is pointed out that

criminal case is registered against the driver of the 1st respondent lorry and the same is pending. As such, the driver of the Lorry has deposed alleging negligence on the part of the Transport Corporation bus driver so as to escape from the consequence of criminal case registered against him. It is further pointed out that the Transport Corporation was not added as a party, but subsequently, arrayed as party and that itself will go to show that the negligence was on the part of the 1st respondent lorry driver only, which caused the accident.

11. Admittedly the driver of the lorry has not lodged any complaint to the Police. If the claim of the 2nd respondent/Insurance Company is true, naturally, the driver of the Lorry would have lodged the complaint, but Ex.P.23 FIR is lodged by P.W.2 Rameshkumar, the Petitioner in M.C.O.P.No.2851 of 2006. The contents of the FIR makes it very clear that the negligence of the Lorry driver alone caused the accident.

12. The Tribunal considered the oral evidence of R.W.1 and R.W.2 who are not eyewitness and pointed out that there is variation and difference in the photograph filed by the respondent side and as such refused to accept the oral and documentary evidence produced by the 2nd respondent.

13. On the other hand, the Tribunal pointed out that the oral evidence of P.W.2 and P.W.3, who are eyewitnesses to the occurrence as reliable and on the basis of Ex.P.23-FIR registered against the 1st respondent lorry driver, concluded that the negligence on the part of R.W.2, who was the driver of the 1st respondent lorry alone caused the accident.

14. Before this court, the learned counsel for the appellant/Insurance Company except for contending that the tribunal ought to have accepted the evidence let in by them and held that the 3rd respondent bus driver was responsible for the accident, failed to substantiate his claim before this court. No valid ground is made out by the 2nd respondent/Insurance company to interfere with the conclusion arrived at by the Tribunal as to the negligence of the 1st respondent Lorry driver being the cause for the accident. In such circumstances, the only contention of the respondent/Insurance Company/appellant is that the negligence aspect for the accident is wrongly fixed on the 1st respondent Lorry driver has to fail.

15. Before this court, the award passed by the tribunal in respect of quantum was not strongly opposed by the 2nd respondent/Insurance company/appellant herein. However, the learned counsel for the Petitioners/claimants in 3 fatal cases in M.C.O.P.Nos.1219 of 2006, 2834 of 2006 and 2835 of 2006

contended that the award passed by the tribunal is on the lower side and no amount was provided towards future prospects. However, the claimants/petitioners have not filed any cross appeal or any cross objection before this court. Further while considering the quantum of the award passed by the Tribunal, in respect of 3 deceased persons, as rightly pointed out by the 2nd respondent/Insurance company, the same appears to be just and proper. As such, no ground is made out to modify the quantum of award passed by the Tribunal.

16. Further, the learned counsel for the appellant/Insurance company contended that he has come forward with the appeal not only seeking to fix the liability on the 3rd respondent but also disputing the quantum of the award passed by the tribunal. As such the claim of the Petitioners/claimants that the award amount has to be enhanced cannot be entertained. In support of the same, he relied upon the Ruling of the Apex Court 2011 (2) TNMAC 313, [RANJANA PRAKASH AND OTHERS VS. DIVISIONAL MANAGER AND OTHERS] wherein, it is held as follows:-

"7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will

dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

17. In view of the above discussion, all the above Civil Miscellaneous Appeals are Dismissed. The award passed by the Motor Accidents claims Tribunal, Chief Court of Small Causes, Chennai, in M.C.O.P.Nos.1219/2006, 1231/2006, 1234/2006. 2834/2006, 2835/2006, 2851/2006, 2852/2006, 2857/2006 and 130 of 2007 dated 04.09.2010, is confirmed, with the following directions:-

(i) The appellant/Insurance Company is directed to deposit the award amount with proportionate interest and cost, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.

(ii) On such deposit, the Petitioners/Respondents 1 to 3 are permitted to withdraw the amount awarded as above, with accrued interest, less the amount if any already withdrawn, by filing proper application before the Tribunal. In respect of Minor Petitioners/R2 and R3, their share shall be deposited in Fixed Deposit in a Nationalised Bank, till they attain majority, and the interest accrued therein, shall be withdrawn by the Guardian for their maintenance. The Tribunal shall pass appropriate directions for the disbursal of the amount. Consequently, connected MPs are dismissed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Chief Court of Small Causes, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

+ 1 cc to Ms.R. Manoranjitham, Advcoate Sr.16132

+ 9 ccs to Mr.M.B. Gopalan, Advocate SR.16239

+ 1 cc to Mr.K.J. Sivakumar, Advocate Sr.15463

C.M.A.Nos.1069 to 1077 of 2011

RV(CO)

EU(10/05/2018)