

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-11-2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2282 of 2015
and 1501 of 2015

CMA No.2282 of 2015

1.S.Saroja
2.S.Amsavalli
3.Minor S.Anchulatcham
(Minor rep.by mother first appellant)

... Appellants/Claimants

Vs

1.M.Dhayalan
2.Reliance General Insurance Co. Ltd.,
Rais Tower Plot No.2504, 2nd Floor,
2nd Avenue, Anna Nagar, Chennai - 40.

3.I.Suganthi ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 15.07.2014 made in M.C.O.P.No.143 of 2013 on the file of the Special District Judge to deal with MCOP cases, Villupuram.

For Appellants : Mr.B.Gopalakrishnan
For R-2 : Mr.S.Arunkumar
For R-1 : No appearance
For R3 : Mr.D.s.Thirumavalavan

CMA No.1501 of 2015

I.Suganthi ... Appellant/3rd Respondent

Vs

1.S.Saroja
2.S.Amsavalli

3.Minor S.Anchulatcham
(Minor rep.by her mother /1st respondent)

4.M.Dhayalan
5.Reliance General Insurance Co. Ltd.,
Rais Tower, Plot No.2504, 2nd Floor,
2nd Avenue, Anna Nagar,
Chennai - 40.

... R1 to 3/Claimants
... R4/1st Respondent

... R5/2nd Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 15.07.2014 made in M.C.O.P.No.143 of 2013 on the file of the Special District Judge to deal with MCOP cases, Villupuram.

For Appellant : Mr.D.S.Thirumavalavan
For R-5 : Mr.S.Arunkumar
For R4 : No appearance
For RR1 to 3 : Mr.B.Gopalakrishnan

COMMON JUDGMENT

The parties are referred to as per their rank in the claim petition. Both the appeals arise out of the common award dated 15.07.2014 made in M.C.O.P.No.143 of 2013 and hence they are disposed of by this common judgment.

2. The appellants in CMA No.2282 of 2015 are the claimants in MCOP No.143 of 2013. The appellant in CMA No.1501 of 2015 is the third respondent in the above said MCOP.

3. The claimants have filed the above said claim petition claiming a sum of Rs.12,00,000/- as compensation for the death of one Iyyanar who died in the accident that took place on 03.04.2011. According to the claimants, the deceased Iyyanar and others travelled in the van belonging to the first respondent as load men. The said vehicle was insured with the second respondent and hence both the respondents 1 & 2 are liable to pay the compensation. The second respondent filed counter statement and denied their liability to pay the compensation on the ground that the deceased and others travelled in the van as paid passengers and not as load men. The first respondent remained exparte before the Tribunal and evidence were let in by the parties.

4. The Tribunal, considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the driver of the van

belonging to the first respondent and held that appellants failed to prove that the deceased and others were engaged for loading and unloading the goods vehicle in question, exonerating the second respondent/insurance company and directed the first respondent, the owner of the vehicle to pay a sum of Rs.4,94,000/- as compensation to the appellants.

5. Against the said award, claimants filed CMA No.2282 of 2015 challenging the portion of the award exonerating the second respondent/insurance company from its liability to pay the compensation and also for enhancement of compensation.

6. The third respondent filed CMA No.1051 of 2015 challenging the portion of the award of the Tribunal holding that the third respondent is not entitled for any compensation.

7. The learned counsel for the claimants and third respondent separately contended that the deceased and others travelled in the van belonging to the first respondent as load men. Even if there is any violation of policy condition, the Tribunal ought to have ordered pay and recovery. The Tribunal erred in exonerating the second respondent/insurance company and directing the first respondent/owner of the vehicle alone to pay the compensation. The Tribunal erred in fixing the notional income of the deceased at Rs.4,500/- per month whereas the claimants have claimed a sum of Rs.6,000/- per month. It is further submitted that the claimants are three in numbers and that the Tribunal erred in deducting 50% instead of deducting 1/4th towards personal expenses.

8. The learned counsel appearing for the third respondent, in addition to the above contention submitted that due to poverty, the third respondent could not contest the claim petition. The Tribunal erred in not granting any compensation to the third respondent, from and out of the amounts granted as compensation.

9. Though notice was served on the first respondent, owner of the vehicle and his name is printed in the cause list in both the appeals, there is no representation for him either in person or through counsel.

10. The learned counsel appearing for the second respondent / insurance company contended that the deceased and others travelled in the van as unauthorised passengers. As per policy condition, the passengers travelling in goods vehicles are not entitled to claim any compensation. The Tribunal, considering the fact that the claimants have not proved that the deceased travelled in the van as load man, rightly exonerated the second respondent/insurance company from its liability and

directed the first respondent/owner of the vehicle to pay the compensation to the claimants. For unauthorised passengers, the insurance company is not liable to pay any compensation and prayed for dismissal of both the appeals.

11. Heard the learned counsel appearing for the parties and perused the materials available on record.

12. From the materials available on record, it is seen that the Tribunal has considered all the materials on record and has come to the conclusion that the claimants have failed to prove that the deceased and others travelled in the van as load men, at the time of accident. The claimants have not let in any acceptable evidence to prove their contention that the deceased and others travelled as load men. There is nothing on record to show that the deceased and others were load men and they travelled in the vehicle in that capacity. It is now well settled that unauthorised passengers travelling in the goods vehicle are not entitled to claim any compensation from the insurance company and the insurance company is not liable to pay compensation. In view of the above, there is no perversity in the finding of the Tribunal exonerating the second respondent/insurance company and fastening the liability only on the first respondent/owner of the vehicle.

13. As far as quantum of compensation is concerned, the appellants have not substantiated their contention that the deceased was earning a sum of Rs.6,000/- per month as load man. The Tribunal, in the absence of evidence, has fixed the notional income of the deceased at Rs.4,500/- per month which is proper. The deceased was aged 26 years at the time of accident. Hence, 40% has to be awarded towards future prospects. The Tribunal erred in deducting 50% towards personal expenses whereas only 1/3rd has to be deducted as there are three claimants. Thus, the amount awarded by the Tribunal under the head loss of dependency is modified as follows -

$$\begin{aligned} & \text{Rs.4,500} + (40\% \times 4500) \times 12 \times 17 \times 2/3 \\ & \text{Rs.4,500} + \text{Rs.1,800} = \text{Rs.6,300} \times 12 \times 17 \times 2/3 \\ & = \text{Rs.8,56,800/-} \end{aligned}$$

In all other aspects, the award of the Tribunal is confirmed. Thus, the compensation awarded by the tribunal is modified as follows -

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted

1.	Loss of dependency	4,59,000/-	8,56,800/-	enhanced
2.	Loss of love & affection @ Rs.10,000/- each to three claimants	30,000/-	30,000/-	confirmed
3.	Funeral expenses	5,000/-	5,000/-	confirmed
	Total	Rs.4,94,000/-	Rs.8,91,800/-	By enhancing a sum of Rs.3,97,800/-

14. As far as CMA No.1501 of 2015 is concerned, the appellant is third respondent in MCOP No.143 of 2013 and she remained exparte without claiming any compensation. The claimants have stated that the third respondent/appellant in CMA No.1501 of 2015 has re-married and is having two children through the said marriage and she is not dependent on the deceased Iyyanar. The third respondent has not let in any evidence to disprove the said contention.

15. In the result,

(i) CMA No.1501 of 2015 is dismissed confirming the award of the Tribunal.

(ii) CMA No.2282 of 2015 is partly allowed enhancing the award of the Tribunal from Rs.4,94,000/- to Rs.8,91,800/- along with interest at the rate of 7.5% per annum from the date of petition till date of realisation alongwith costs.

(iii) The first respondent is directed to deposit the modified award amount, less the amount already deposited, if any, along with accrued interest and costs to the credit of M.C.O.P.No.143 of 2013, Special District Judge to deal with MCOP cases, Villupuram, within a period of eight weeks from the date of receipt of copy of this judgment;

(iv) The appellants/claimants in CMA No.2282 of 2015 are directed to pay the additional Court Fees, if any, within a period of two weeks from the date of receipt of a copy of this judgment;

(v) On such deposit being made, the appellants/claimants in CMA No.2282 of 2015 are permitted to withdraw the award amount, on the basis of apportionment fixed by the Tribunal, less the amount already withdrawn, if any, with proportionate interest and costs by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rgr

To

- 1.The Special District Judge to deal with MCOP cases,
Villupuram.
- 2.The Record Keeper,
V.R.Section,
High Court,
Madras.

+1cc to Mr.S.Arunkumar, Advocate sr.79116

C.M.A.Nos.2282 of 2015
and 1501 of 2015

nr 30/05/2019

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