

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE Mr.JUSTICE R. SUBRAMANIAN

C.M.A. 1648,1649 & 1650 of 2017
in C.M.P No.8756, 8754 & 8755 of 2017

CMA.NO.1648/2017:

M/s. Bajaj Allianz General Insurance Co Ltd,
Door No.11(Office No, 6 -A), Peoples Park,
3rd Floor, Government Arts College Road,
Coimbatore-641 018.

.. Appellant in all the Appeals/3rd respondent in all MCOPs

Vs

1. Suganya
2. Sarathy (Minor)
3. Yashini (Minor (Respondents 2 & 3 Minors rep.by Mother & Near
4. Myli Friend 1st respondent)
5. Kumar ... Respondents 1 to 5/Petitioners in
6. S. Venkatasubramani MCOP.NO.296/15.
7. M/s. Ramani Cars Pvt Ltd.,
No.54/1, Mettupalayam Road,Kavundam Palayam,
Kavundam Palayam Colony,
Coimbatore - 641 043.
8. K.Jegan
9. The Oriental Insurance Company Ltd,
Parimalam Complex,
2nd floor, No.11,
E.V.N. Road, Erode - 638 011.

[8th respondent exparte in the Lower Court]

.... Respondents 6 to 9 in CMA 1648/17/Respondents in
MCOP.NO.296/15

CMA.NO.1649/2017:

1. Rani
2. Suresh ... Respondents 1 & 2/Petitioners in
3. S. Venkatasubramani MCOP.NO.295/15

4. M/s. Ramani Cars Pvt Ltd.,
No.54/1, Mettupalayam Road,Kavundam Palayam,
Kavundam Palayam Colony,
Coimbatore - 641 043.
5. K. Jegan
6. The Oriental Insurance Company Ltd,
Parimalam Complex,
2nd floor, No.11,
E.V.N. Road, Erode - 638 011.

.... Respondents 3 to 6 in CMA 1649/17/Respondent in MCOP

[5th respondent exparte in the Lower Court]

CMA.1650/17:

1. R. Vimal Raj
... 1st Respondent/Petitioner in MCOP.297/15
2. S. Venkatasubramani
3. M/s. Ramani Cars Pvt Ltd.,
No.54/1, Mettupalayam Road,Kavundam Palayam,
Kavundam Palayam Colony,
Coimbatore - 641 043.
4. K. Jegan
5. The Oriental Insurance Company Ltd,
Parimalam Complex,
2nd floor, No.11,
E.V.N. Road, Erode - 638 011.

.... Respondents to 2 to 5 in CMA 1650/17/Respondents in MCOP

[4th respondent exparte in the Lower Court]

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, Civil Miscellaneous Appeals against the Judgment and Decree in MCOP Nos. 296, 295, & 297 of 2015 respectively, dated 28.04.2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellant : Mr.N. Vijayaragavan
in all the appeals for M/s.M.B.Gopalan Associates

For Respondents : Mr. M. Lokesh
(in CMA.No. 1648/17) for Mr. M.A.P. Thangavel for RR 1 to 5

Mrs. G.Sukumari
for Mr.R.Sivakumar for R9

R8 -Exparte R7-sd, R6 Not Known 21.08.17

For Respondents : Mr. M. Lokesh
(in CMA.No. 1649/17) for Mr. M.A.P. Thangavel for R 1 & 2

Mrs. G.Sukumari
for Mr.R.Sivakumar for R6

R5 - Exparte R3 Not Known, R4-sd

For Respondents : Mr. M. Lokesh
(in CMA.No.1650/17) for Mr. M.A.P. Thangavel for R 1

Mrs. G.Sukumari
for Mr.R.Sivakumar for R5

R4 - Exparte R2 Not Known Rd sd

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

All the three appeals are preferred by the Insurance Company challenging the common Award of the Motor Accident Claimants Tribunal (Special District Court, Erode) dated 28.04.2016 made in MCOP Nos. 295,296 & 297 of 2015.

2. While MCOP No.295 of 2015 was filed by the parents of the deceased Udhaya Suriyan, who was a 17 year old student of Engineering, MCOP No.296 of 2015 was filed by the wife, 2 daughters and the parents of one deceased Loganathan who was working as a Supervisor in Jai Bharath Printings works, Erode, claiming a sum of Rs.15 Lakhs as compensation for his death. MCOP No.297 of 2015 was filed by R. Vimal Raj who was working as a driver, aged about 23 years, claiming a compensation of Rs.10,00,000/-, for the injuries caused to him in the accident.

3. According to the claimants, in all these appeals, the deceased Loganathan was traveling in motor bike bearing Registration No. TN 28 AD 2124, alone with 2 other persons namely Udhaya Suriyan and Vimal Raj, and he was riding the bike at a moderate speed and observing the traffic rules. At that time, the car belonging to Mr.S.Venkatasubramani was driven by him in a rash negligent manner and hit against the Motor Cycle. As a result of the accident, the Loganathan and Udhaya Suriyan died and the Vimal Raj suffered multiple grievous injuries. It is the claim of the claimants that the deceased Udhaya Suriyan was age about 17 years and he was studying Diploma in Civil Engineering, he was also working as part time Accountant in Erode, and was earning a sum of Rs.20,000/- per month. Claiming that he is the sole breadwinner of the family, they had sought for a compensation of Rs.15,00,000/- for the death of their son

Udhaya Suriyan.

4. In MCOP No. 296 of 2015, the wife, 2 minor children and the parents of one Loganathan had claimed a compensation of Rs.15 Lakhs for the death of the said Loganathan. The claimants would submit that the said Loganathan was working as a Supervisor in Jai Bharath Printings works, Erode and his monthly salary was Rs.20,000/- . The wife and the children had lost the sole breadwinner of their family and the parents, namely, claimants 4 & 5 have also suffered to pecuniary loss due to the death of their son.

5. In MCOP No.297 of 2015, the claimant would contend that he is working as a driver and due to the injury suffered by him in the accident, he could not continue the work in the normal course and he has undergone several major surgeries due to the accident. He is unable to do his work as a driver as before and he had spent huge amount for medical expenses.

6. All these claims have been resisted by the Insurance Company contending that the car bearing Registration No. TN-38-BX TC - 0048 was not involved in the accident and the accident did not happen due to the rash and negligent driving of the car. The age Educational Qualifications and income of the deceased persons were also disputed. The manner in which the accident happened, was also denied by the Appellant/Insurance Company. It is also contendend that the deceased persons and the claimant in MCOP No. 297/2015 where traveling in a Motor Bike which is permitted to carry only 2 persons. According to the Insurance Company it is this violation that caused the accident.

7. Since, all the claims arise out of single accident, the claim petitions were taken up together and were disposed of by a common award dated 28.04.2016, wherein the Tribunal had granted a sum of Rs. 10,17,000/- for the death of the Udhaya Suriyan in MCOP No.295 of 2015, Rs.17,29,392/- for the death of the Loganathan in MCOP NO.296 of 2015 and Rs.2,67,557/- for the injury suffered by R.Vimal Raj in MCOP NO.297 of 2015.

8. Aggrieved by the said awards, the Insurance Company has come forward with these appeals.

9. We have heard Mr. N. Vijayaragavan, the learned counsel for the appellant /Insurance company, MR. M. Lokesh, learned counsel for the claimants, Mrs. G.Sukumari, learned counsel for the Oriental Insurance Company. Mr.S.Venkataramani and M/s.Ramani Cars Private Limited did not appear either in person or through the counsels.

10. Mr.N.Vijayaragavan, learned counsel for the appellant would vehemently contend that the deceased as well as the

injured were traveling in one motor cycle which is meant only for 2 persons and it is this violation which had led to the accident. The Insurance company had examined one Dhanasekar who is the Sales Executive in the office of the second respondent, namely M/s. Ramani Cars Private Limited, claiming that he was a passenger in the car to prove that the victims as well as the injured were traveling together in the Motor cycle. The said evidence was rejected by the Tribunal on the ground that there is nothing to show RW -1 Dhanasekar, travelled in the car on the fateful day. After rejecting the evidence of RW-1, the Tribunal also drew adverse inference against the Insurance Company for not examining the driver of the car. On the aforesaid findings the Tribunal held that the accident took place only due to the negligence of the driver of the car and we do not find any material to upset the above finding.

11. As regards quantum the Tribunal had awarded Rs. 10,17,000/- for the death of the Udhaya Suriyan in MCOP No. 295 of 2017. It is stated that the said Udhaya Suriyan was the student of Diploma in Civil Engineering at the time of his death. The Tribunal has fixed his income notionally at Rs.6000/- per month and after adding 50% for future prospects, the Tribunal has arrived the total amount of Rs.9,000/- as his monthly income. After deducting 50% towards personal expenses, the Tribunal has arrived at Rs.4,500/- per month as pecuniary loss, adopting the multiplier of 18, the Tribunal worked out pecuniary loss at Rs.9,72,000/-, it awarded a sum of Rs.25,000/- for funeral expenses, Rs.10,000/- for transport charges, Rs.10,000/- for the loss of love and affection. The Tribunal has thus arrived at the total compensation of Rs.10,17,000/-.

12. In MCOP No.296 of 2015, it is claimed and the deceased Loganathan was working as a Supervisor and earning about Rs.20,000/- per month. The Tribunal however, fixed monthly income at Rs.6,500/- per month, added 50% towards as future prospects and arrived at Rs.9,750/- as total income per moth. In view of the large number of depends, the Tribunal deducted 25% towards his personal expenses and adopting a multiplier of 18, arrived at the pecuniary loss at Rs.15,79,392/-. The Tribunal also granted a sum of Rs.75,000/- to the first respondent/wife of the deceased for loss of consortium, Rs. 25,000/- for funeral expenses, Rs.10,000/- for transportation, Rs.40,000/- for loss of love and affection and awarded a total sum of Rs.17,29,392/- as compensation.

13. In MCOP No.297 of 2015, the Tribunal arrived at a total compensation of Rs.2,67,557/-. The injuries suffered by the first respondent affected the flexion movements of right hip and injuries in Spinal cord and the disability was 27%. The Tribunal fixed as income Rs.6,500/- awarded loss of income for 3 months

at Rs.19,500/-. Medical expenses of Rs.1,61,557/- was awarded on the basis of the Medical bills. The Tribunal awarded Rs.10,000/- for transportation, Rs.10,000 for extra nourishment, Rs.25,000/- for pain and suffering Rs.42,000/- for disability and in all, awarded a sum of Rs.2,67,557/-.

14. Mr. N. Vijayaragavan, learned counsel appearing for the appellant/Insurance Company would contend that, so far as the quantum of compensation is concerned in C.M.A.Nos.1648 & 1649 of 2018, The Tribunal erred in adding 50% future prospects and fixing the monthly income at Rs.4,500/- and Rs.9,750/- respectively. So far as the case of injury in MCOP No.297 of 2015 (C.M.A.No.1650 of 2018), Mr. N. Vijayaragavan, submits that the considering the nature of injuries, the loss of income could not have been for 3 months.

15. Per contra, Mr.M.Lokesh, learned counsel appearing for the claimants would contend that even the income fixed by the Tribunal is on the lower side, as the accident had taken place in the year 2015, and that no interference is required on the quantum of compensation that has awarded by the Tribunal.

16. We have considered the submissions of the learned counsel on either side.

17. The Tribunal has taken the income of the deceased persons as Rs.4,500/- and Rs.9,750/- and in so far as the injured, monthly income is taken at Rs.6,500/-. The Tribunal has added 50% towards future prospects in respect of the deceased persons. On a over all assessment, we find that the compensation awarded by the Tribunal is reasonable and Mr.N.Vijayaragavan is unable to point out that the compensation could be reduced under any of the heads. We are therefore of the opinion that the Awards of the Tribunal should be sustained. For the foregoing reasons, the appeals are dismissed without costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

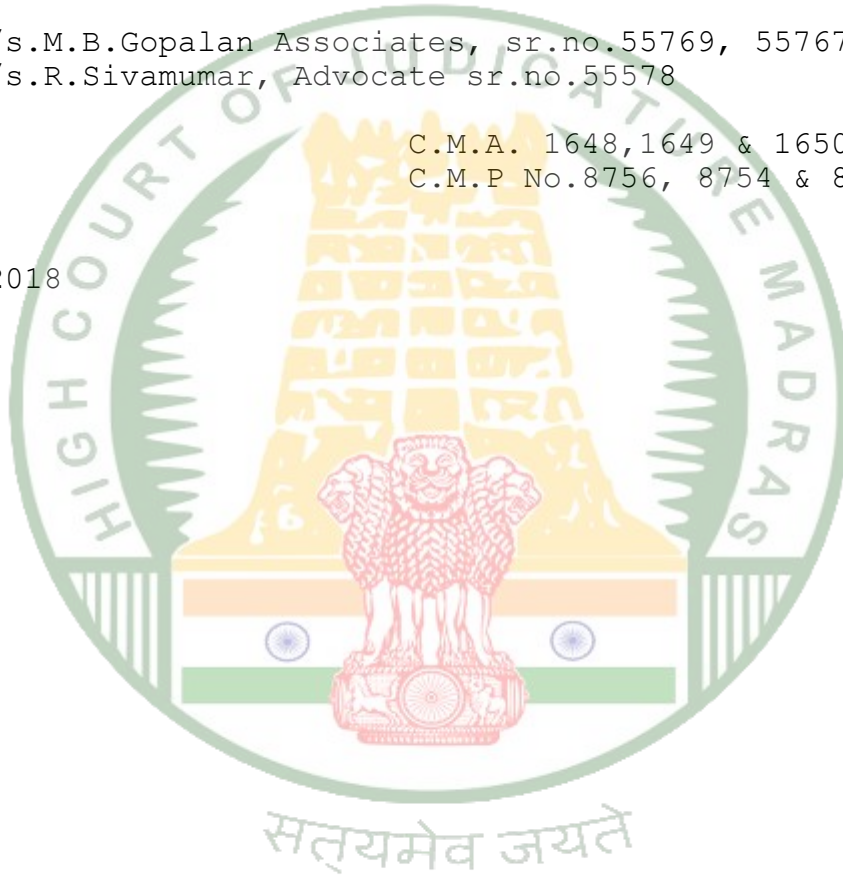
1.Motor Accidents Claims Tribunal,
Special District Court,
Erode.

2.The Section Officer,
VR Section,
High Court, Madras(2 copies)

+3cc to M/s.M.B.Gopalan Associates, sr.no.55769, 55767 & 55768
+1cc to M/s.R.Sivamumar, Advocate sr.no.55578

C.M.A. 1648,1649 & 1650 of 2017 in
C.M.P No.8756, 8754 & 8752 of 2017

skv(co)
nr 24/09/2018



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