

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on

03.09.2018

Delivered on

26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.2216 of 2016

and

C.M.A.No.2758 of 2015

CMA.No.2216 of 2016:

M/s. Universal Sompo General Insurance Co. Ltd.,  
201 □ 208, Crystal Plaza, Opp. Infinity Mall,  
Link Road, Andheri (W), Mumbai □ 400 058. ...Appellant

-vs-

1. S. Uma Maheswaran
2. S. Sankar ..Respondents

CMA.No.2758 of 2015:

1. S. Uma Maheswaran ...Appellant

-vs-

1. S.Sankar
2. M/s. Universal Sompo General Insurance Company Ltd.,  
No.201-208, Crystal Plaza,  
Opposite to Infinity Mall,  
Link Road, Andheri (West),  
Mumbai. ...Respondents

PRAYER IN BOTH THE CMAs: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree of the Additional District Court, Namakkal., in M.C.O.P.NO.83 of 13 dated 17.02.2015.

For Appellants : Mrs. R.Vijaya Kamala in CMA No.2216 of 2016  
Mr.Ma.P.Thangavel in CMA.No.2758 of 2015

For Respondents : Mr.Ma.P.Thangavel of R1 in CMA.No.2216 of 2016  
Mrs.R. Vijaya Kamala for R2 in CMA.No.2216 of 2016

## J U D G M E N T

R.SUBRAMANIAN,

These two appeals arise out of the award of the motor accident claims Tribunal (Additional District Court, Namakkal) dated 17.02.2015 made in M.C.O.P. No.83 of 2013. While, the appeal in C.M.A.No.2758 of 2015 filed by the injured claimant seeking enhancement of the compensation awarded, the appeal in C.M.A.No.2216 of 2016 is filed by the Insurance company challenging the quantum of compensation awarded as excessive.

2. The case of the claimant/appellant in C.M.A.No.2758 of 2015 before the Claims Tribunal was that while he was riding his motor cycle bearing registration No.TN-28-AF-0331 near old RTO Office in Namakkal to Salem main road on the left side of the road towards Namakkal town from Salem. The TATA ACE goods vehicle bearing registration No.TN-28-AK-1831 belonging to the 1st respondent in C.M.A.No.2758 of 2015 was driven by its driver in a rash and negligent manner at a high speed in the opposite direction and hit against the motor cycle. As a result of the impact, the claimant/appellant was thrown out of the motor cycle and he sustained multiple grievous injuries and compound fractures in his head, both legs, both hands, chest and some other injuries all over the body. Contending that the accident occurred only due to the rash and negligent driving of the goods carrier. The claimant sought for a compensation of Rs.40,00,000/-.

3. The claim was resisted by the Insurance company contending that the Police has closed the criminal case as mistake of fact and therefore, the driver of the goods carrier cannot be hold responsible for the accident and hence, the Insurance company is not liable to pay the compensation. It is claimed that the injured himself contributed to the accident as he drove the vehicle in a rash and negligent manner. It was also contended that the driver of the goods carrier did not have a license and therefore, the Insurance company cannot be made liable to pay the compensation.

4. The Tribunal on the consideration of the evidence on record concluded that both the drivers namely, the injured claimant as well as the driver of the goods vehicle were responsible for the accident. To arrive at the said conclusion the Tribunal relied upon the charge sheet Ex: A4 and the fact that the driver of the goods vehicle had admitted guilt and has paid fine before the Criminal Court. The Tribunal, however, took into account the fact that three persons had travelled in two wheeler had contributed to the accident. Therefore, the Tribunal apportioned the contributory negligence at 50% each on the both drivers.

5. On the quantum of compensation, the Tribunal determined the age of the claimant as 26 years based on the date of birth in his 10th standard mark list. The injured claimant had pleaded that he was employed as a Marine Engineer in Univan Ship Management Limited and was earning a sum of Rs.25,000/- per month. The Tribunal took into account the qualifications of the claimant. Though, the Tribunal found that there was no documentary evidence to show that the injured claimant was drawing a sum of Rs.25,000/- per month as salary, the Tribunal fixed his income at Rs.20,000/- based on the qualifications as well as the fact he has been working as a Marine Engineer in Mumbai. The Tribunal on the basis of the disability certificate marked as Ex.P24 and the injuries reflected in the discharge summary marked as Ex.P6 concluded that the injured claimant had suffered 65% functional disability. The Tribunal, thus, worked out the loss of future earning power at Rs.28,08,000/- ( $20,000 \times 12 \times 18 \times 65 / 100$ ). The Tribunal has also awarded a sum of Rs.5,39,138/- towards medical expenses, Rs.50,000 towards pain and suffering, Rs.10,000/- towards extra-nourishment, Rs.25,000/- towards travel expenses, Rs.20,000/- towards attender charges and Rs.50,000/- towards loss of expectation of life. In all, the Tribunal has arrived at Rs.35,02,138/-

which is rounded off to Rs.35,02,100/-. In view of the fact that the Tribunal has held that both the drivers had contributed to the accident equally, the Tribunal has awarded a 50% of Rs.35,02,100/- i.e. Rs.17,51,050/- as compensation to the injured claimant.

6. Aggrieved both the Insurance company and the claimant have come forward in the above appeals. We have heard Mrs.R.Vijaya kamala learned counsel appearing for the Insurance company the appellant in C.M.A.No.2216 of 2016 and the 2nd respondent in C.M.A.No.2758 of 2015 and Mr.Ma.P.Thangavelu learned counsel for the appellant in C.M.A.No.2758 of 2015 and 1st respondent in C.M.A.No.2216 of 2016.

7. The 2nd respondent namely, owner of the goods carrier in the both appeals, though served does not appear either in person or through counsel. Though, the learned counsel appearing for the appellant Insurance company in C.M.A.No. 2216 of 2016 would attempt to raise the question of negligence, it is found that the Insurance company has not chosen the examine driver of the goods vehicle as a witness to speak about the accident and the negligence. The Insurance company was satisfied with the examining its own executives and marked certain documents.

8. Mr.Ma.P.Thangavelu for the appellant in C.M.A.No.2758 of 2015 would contend that the Tribunal was not right in fixing the contributory negligence on the part of the claimant at 50%. Mr.Ma.P.Thangavelu would also invite our attention to the Division Bench Judgment of this court in Kattabomman Transport Corporation Limited Vs. Vellai Duraichi reported in 2004 (1) TN MAC 180 (DB) and contend that the Tribunal was not right in holding that the claimant has contributed to the accident solely on the ground at 3 persons were travelled in the motor cycle. He would also draw our attention to the Judgment of the Division Bench of this Court in United India Insurance Company Ltd., Vs. Uma reported in 2011 (1) TN MAC 136 (DB) for the same proposition. In both the cases, Division Benches of this court have concluded that the Tribunal should not mechanically fix the contributory negligence only because 3 persons travelled in the motor cycle. A violation of the policy condition will not amount the contributory negligence unless there was specific evidence in that regard.

9. We have considered the rival submissions. From the evidence on record in the case of hand, we find that the Tribunal has not fix the contributory negligence solely based on the fact that the 3 persons were travelling in the motor cycle. The Tribunal has relied upon the Judgment of the Criminal Court wherein, it has found that the fact that the 3 persons travelled in the motor cycle had contributed to the accident. The Tribunal has also taken note of First Information Report which is based on statement made by the claimant under section 161 (3) of the Cr.P.C to show that 3 persons were travelling in the motor cycle. The charge sheet has been filed only against the driver of the goods vehicle bearing registration No.TN-28-AK-1831 but the Criminal Court in his judgment marked as Ex:P5 has found that the fact that 3 persons travelled in the motor cycle had contributed to the accident. Therefore, we are of the considered opinion that the conclusion of the Tribunal is that the injured claimant also contributed to the accident does not require interference at our hands.

10. On the quantum, Mr.Ma.P.Thangavelu appearing for the appellant in C.M.A.No.2758 of 2015 would contend that considering the educational qualifications as well as the fact that the claimant was employed as a Marine Engineer, the Tribunal was not right in fixing the monthly income at Rs.20,000. He would also contend that the Tribunal should have allowed 40% towards future prospects, considering the age of the claimant. In view of the Judgment of the larger bench of the Honourable Supreme Court in National Insurance company Vs. Pranay Sethi reported in 2018 (1) LW 331.

11. Mr.Thangavelu would pointed out that the Tribunal was wrong in concluding that there is no documentary evidence filed to show the income of the claimant. He would submit that the claimant had produced the contract of employment as Ex.P20 which shows that the injured claimant was offered a salary of Rs.380 US dollars per month for the 1st year, 430 US dollars per month for the 2nd year and 480 US dollars for the 3rd year. The accident occurred on 21.10.2012 at the time of the accident as per Ex.P20 the injured claimant was entitled to a salary of Rs.27,950 per month. The veracity of the said document is not disputed. We, therefore find that the Ex.P20 can form the basis for fixation of the monthly income of the injured claimant and fix the monthly income at Rs.27,950. The injured was aged about 26 years he would be entitled to an addition of 40% towards future prospects. Thus, his monthly income should be taken as Rs.39,130/-. The total loss of earning would be  $39,130 \times 12 \times 18 = 84,52,080/-$ . Since, the percentage of disability has assessed at 65%. The total loss of earning power would be Rs.54,93,852/-. The Tribunal has awarded a sum of Rs.5,39,139/- towards medical expenses, Rs.50,000/- towards pain and suffering, Rs.10,000/- towards extra-nourishment, Rs.25,000/- towards transportation, Rs.20,000/- towards attender charges and Rs.50,000/- towards loss of consortium. We find these awards are justified. Therefore, the total compensation works out to Rs.61,87,990/- which is rounded off to Rs.61,88,000/-. Hence CMA 2216 of 2016 is dismissed and CMA 2758 of 2015 is partly allowed.

12. Since, We have confirmed the conclusion of the Tribunal with the claimant had contributed equally to the accident. He would be entitled to 50% of Rs.61,88,000/- compensation. The claimant will thus be entitled to sum of Rs.30,94,000 as compensation with interest at 7.5% per annum from the date of petition till the date of payment. The Insurance company is directed to deposit the compensation as per this judgment less amount already deposited, if any within 6 weeks from the date of receipt of the copy of the Judgment. On such a deposit, the injured claimant/appellant in C.M.A.No.2758 of 2015 will be entitled to withdraw the amount. There shall be no order to cost in these appeals.

(K.K.SASIDHARAN, J.) (R.SUBRAMANIAN, J.)

.09.2018

Index : Yes/ No

Internet : Yes/ No

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To

The motor accident claims Tribunal

(Additional District Court, Namakkal)

K.K.SASIDHARAN, J.

and

R.SUBRAMANIAN, J.

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C.M.A.No.2216 of 2016  
and  
C.M.A.No.2758 of 2015

26.09.2018