

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.03.2018

Delivered on : 02.04.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.2500 of 2015
and M.P.No.1 of 2015

AND

C.M.A.No.2694 of 2015
and M.P.No.1 of 2015

C.M.A.No.2500 of 2015

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
Rep. by its Branch Manager,
Branch Office,
Mangalam Building, Four Roads,
Omalar Main Road, Salem 636 096. Appellant/
2nd Respondent in tribunal below.

Vs.

1.Suganthi
2.Minor S.Karthik
3.Minor S.Anusri
Minors rep. by next friend mother Suganthi
4.A.Bhadra Reddy
5.P.Suseela Ponnusamy
6.M/s.United India Insurance Co. Ltd.,
Rep. by its Branch Manager, Branch Office,
No.14/1-77B, Salem Main Road,
Puduchampalli, Mettur Dam 636 403.
Salem District. .. Respondents/Petitioners 1 to 3 and
Respondents 1,3,4 in Tribunal Below.

C.M.A.No.2694 of 2015

The Branch Manager,
M/s.United India Insurance Co. Ltd.,
Branch Office,
No.14/1-77B, Salem Main Road,
Puduchampalli, Mettur Dam 636 403.
Salem District.

.. Appellant/4th respondent in
Tribunal Below.

Vs.

1.Suganthi
2.Minor S.Karthik
3.Minor S.Anu Sri
Minors rep. by next friend mother Suganthi
4.Bhadra Reddy
5.The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Branch Office, Mangalam Buildings,
Fuor Roads, Omalur Main Road,
Salem 636 096.

6.P.Susheela Ponnusamy .. Respondents/Petitioners 1 to 3 and
Respondents 1,2,3 in Tribunal Below.

Common Prayer : Civil Miscellaneous Appeals preferred under
Section 173 of the Motor Vehicles Act, 1988, against the
judgment and decree dated 25.02.2015 made in M.C.O.P.No.118 of
2013 on the file of the Motor Accidents Claims Tribunal [Special
District Court for Motor Accident Claims Cases] at Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy
in CMA.2500/15

For Appellant : Mr.T.Ravichandran
in CMA.2694/15

For Respondents : Mr.V.Vijayakumar for R1 to R3
in CMA.2500/15 : Mr.T.Ravichandran for R6

For Respondents : Mr.V.Vijayakumar for R1 to R3
in CMA.2694/15 : Mr.M.Krishnamoorthy for R5

No Appearance : R4 & R5 in CMA 2500/2015 AND
R4 & R6 IN CMA 2694/2015

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

These Civil Miscellaneous Appeals are directed against the award dated 25.02.2015, passed in M.C.O.P.No.118 of 2013, by the Motor Accidents Claims Tribunal/Special District Court for motor accidents claims cases, Krishnagiri.

2.The respondents 1 to 3 herein, as petitioners, have filed M.C.O.P.No.118 of 2013 on the file of the Motor Accidents Claims Tribunal, praying to pass an award of Rs.10,00,000/- due to motor accident happened on 30.08.2011.

3.The material averments made in the petition are that the first petitioner is the wife of one Shankar. The remaining petitioners are their children. The said Shankar has served as a driver. On 30.08.2011, during night hours, he has driven a bus bearing registration number TN52-Z-5478 from Dharmapuri to Chennai. The said bus belongs to the third respondent. He has driven the bus cautiously on the extreme left side of the road. At about 3.00 a.m. on 31.08.2011, near Bungalow Medu, the bus has hit a parked lorry bearing registration number TN-70-7004 and the same belongs to the first respondent and insured with the second respondent. Due to accident, a case has been registered in Crime No.410 of 2011 under Sections 279, 337, 338 and 304[A] of Indian Penal Code. At the time of accident, the said Shankar has attained only 35 years of age. Due to accident, he passed away. He has drawn monthly salary of Rs.25,000/-. The bus which involved in the accident has been insured with the fourth respondent. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

4.In the counter filed on the side of the second respondent, it is averred to the effect that on 30.08.2011, the deceased Shankar served as driver in Mettur Super Service bus bearing registration number TN52-Z-5478 and the same belongs to the third respondent and insured with the fourth respondent. It is false to aver that he has driven the bus in extreme left side of the road. That on 31.08.2011 at about 3.00 a.m., near Bungalow Medu, the lorry bearing registration number TN-70-7004 belongs to the first respondent insured with the second respondent has been parked on the right side of the road. The driver of the lorry has diligently parked the same with parking light. The deceased has driven the bus in a rash and negligent manner and dashed against the lorry. The deceased himself has invited the accident and there is no merit in the appeal and the same deserves to be dismissed.

5.In the counter filed on the side of the fourth respondent, it is averred to the effect that only due to fault on the part of the driver of the lorry bearing registration number TN-70-7004, the entire accident has happened and therefore, the fourth respondent is not liable to pay compensation and therefore, the present petition deserves to be dismissed.

6.On the basis of the available evidence on record, the Motor Accidents Claims Tribunal has awarded a sum of Rs.22,20,000/-, by way of compensation. Further, it is directed that all the respondents are jointly and severally liable to pay the entire compensation. Against the quantum and also liability fixed by the Motor Accidents Claims Tribunal, the second respondent, as appellant, has filed C.M.A.No.2500 of 2015 and the fourth respondent has filed C.M.A.No.2694 of 2015 on the file of this Court.

7.Since common questions of law and facts are involved in both the Civil Miscellaneous Appeals, common judgment is pronounced.

8.The learned counsel appearing for the appellants/respondents 2 and 4 have uniformly contended to the effect that the Motor Accidents Claims Tribunal has fixed monthly income of the deceased at Rs.9,000/- and erroneously awarded 50% towards Future Prospects and further, the Motor Accidents Claims Tribunal has erroneously awarded huge amounts towards Consortium, Funeral Expenses and also towards Love and Affection and therefore, the quantum of compensation fixed by the Motor Accidents Claims Tribunal is liable to be modified.

9.The learned counsel appearing for the respondents 1 to 3/ petitioners has also equally contended to the effect that the deceased has drawn a monthly salary of Rs.25,000/-, but the Motor Accidents Claims Tribunal has erroneously fixed Rs.9,000/- per month and further, the Motor Accidents Claims Tribunal has rightly awarded the amounts towards Consortium, Funeral Expenses and Love and Affection. Under the said circumstances, the contention put forth on the side of the appellants cannot be accepted. As pointed out on the side of the appellants, the Motor Accidents Claims Tribunal has fixed 50% towards Future Prospects.

10.The learned counsel appearing for the appellants has drawn the attention of the Court to the decision rendered by the Constitutional Bench of the Hon'ble Supreme Court reported in

2017 (2) TN MAC 609 (SC)-National Insurance Co.Ltd., vs. Pranay Sethi and Others, wherein, the Hon'ble Apex Court has held to the effect that if a person died below 40 years of age, only 40% should be given towards Future Prospects, by way of following the dictum given and also by way of adopting 15 multiplier, total amount comes to Rs.15,12,000/-.

11.Now, we have to decide the quantum of amounts given by the Motor Accidents Claims Tribunal towards Consortium, Funeral Expenses and Love and Affection.

12.The learned counsel appearing for the appellants has meticulously drawn the attention of the Court to paragraph 54 of the decision rendered by the Constitutional Bench of the Hon'ble Supreme Court, wherein, it is clearly mentioned that the head relating to Loss of Care and Guidance for minor children does not exist.

13.In fact, the Hon'ble Supreme Court has analysed the earlier decisions and ultimately found that no amount could be given towards Loss of Care and Guidance for minor children.

14.At this juncture, a faint attempt has been made on the side of the respondents 1 to 3/petitioners by way of relying upon the decision reported in (1992) 2 MLJ 309-Philip Jeyasingh vs. The Joint Registrar, wherein, it has been held to the effect that the Court has to analyse a decision as per incuriam or obiter dicta.

15.In the instant case, such a question does not arise. It has already been pointed out that the Constitutional Bench of the Hon'ble Supreme Court has categorically held to the effect that no amount could be given towards Loss of Care and Guidance for minor children. Under the said circumstances, no amount could be given under the head Love and Affection.

16.The Motor Accidents Claims Tribunal has awarded certain amounts towards Consortium, Funeral Expenses and also towards Love and Affection.

17.The Constitutional Bench of Hon'ble Supreme Court has restricted Rs.70,000/- towards Consortium and Funeral Expenses.

18.Further, it is seen from the records that the Motor Accidents Claims Tribunal has awarded Rs.10,000/- towards Transport to Hospital.

19.Considering the quantum of amount in aggregation fixed by the Constitutional Bench of the Hon'ble Supreme Court towards Consortium and Funeral Expenses, the respondents 1 to

3/petitioners are entitled to get Rs.70,000/- along with Rs.10,000/- towards Transport to Hospital.

20.It has already been held that total loss of income is Rs.15,12,000/- and by way of adding Rs.80,000/-, it comes to Rs.15,90,000/- and the respondents 1 to 3/petitioners are entitled to get the same.

21.The learned counsel appearing for the second respondent/ appellant in C.M.A.No.2500 of 2015 has contended to the effect that due to puncture of rear tyre, the lorry which involved in the accident could not be driven to right side, under the said circumstances, it has been parked on the right side of the road. But, the deceased instead of driving the bus on the left side, faultily driven the bus on the right side and only due to his negligence, the entire accident has happened.

22.To repudiate the contentions put forth on the side of the appellant in C.M.A.No.2500 of 2015, the learned counsel appearing for the appellant in C.M.A.No.2694 of 2015 has also equally contended to the effect that as per Motor Vehicle Inspector report, it is made clear that only rear tyre of the lorry has become puncture. Under the said circumstances, the driver of the lorry could have parked the same in a right place. But, negligently, he parked the same on the right side of the road and therefore, the entire accident has happened only due to his negligence. Under the said circumstances, the fourth respondent is not liable to pay compensation to the petitioners.

23.For deciding the said aspect, the Court has to look into rough plan and also report of Motor Vehicle Inspector.

24.In the rough plan, it has been clearly stated that the entire accident has happened on the right side of the road. In fact, the deceased should have driven the bus only on the left side of the road. Likewise, the driver of the lorry should have also parked the same on the left side.

25.In the report of Motor Vehicle Inspector, it has been clearly mentioned that the inner tyre of rear side has become puncture. It is a well known fact that each rear wheel contains two tyres. If one tyre is puncture, the vehicle could be driven to certain extent. But, in the instant case, as pointed out supra, even though the lorry which involved in the accident is in position of moving, its driver has negligently parked the same on the right side of the road. Therefore, the Court can easily discern that the first mistake has been made only by the driver of the lorry.

26.It has already been pointed out that the deceased/driver of the bus should have driven the bus on the left side of the road, but negligently, he has parked the same on the right side and therefore, the second mistake has been committed by the deceased/driver of the bus. Therefore, 60% liability can be fixed upon the respondents 1 and 2 and 40% liability can be fixed upon the respondents 3 and 4.

In fine, these Civil Miscellaneous Appeals are allowed in part without costs. The award passed in M.C.O.P.No.118 of 2013 by the Motor Accidents Claims Tribunal/Special District Court for motor accidents claims cases, Krishnagiri is modified as follows :

The respondents 1 to 3 are in aggregation entitled to get a sum of Rs.15,92,000/-. The respondents 1 and 2 as arrayed in the petition are liable to pay 60% and the respondents 3 and 4 as arrayed in the petition are liable to pay remaining 40% of the total compensation of Rs.15,92,000/-. In other aspects, the award passed by the Motor Accidents Claims Tribunal is confirmed.

Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special District Court for motor accidents claims cases,
Krishnagiri.

+2cc to Mr.T.RAVICHANDRAN, Advocate, S.R.No.24245, 24246
+2cc to Mr.M.KRISHNAMOORTHY, Advocate, S.R.No.24260,
24261
+2cc to Mr.V.VIJAYAKUMAR, Advocate, S.R.No. 24468, 24466

Common Judgment in
C.M.A.Nos.2500 and 2694 of 2015

KGK (CO)
TR(16/04/2018)