



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.Nos.2088 and 2019 of 2018
and
CMP.Nos.16208 and 15684 of 2018

M/s.Reliance General Insurance Company Limited,
No.105-106, Express Arcade, H-10,
I Floor, Netaji Subbash Place,
Pritampura, New Delhi - 110 034.

... Appellant
in both CMAs/2nd
Respondent in both MCOP

Vs

1.U.Sakunthala
2.Deepak Chawla
3.Shree Chandel Roller Flour Mills Pvt. Ltd.,
Rep. by J.S.Chandel,
Udha Village, Mivada, Shivrajpu,
Kanpur District-208 024.

4.The New India Assurance Co. Ltd.,
(Branch Office Code 402 102)
City Branch, 117/W/96, Kakadeo,
Kanpur 208 005.

... Respondents
in CMA.No.2088/2018/
Petitioner & Respondent 1,3 & 4

1.S.Udhaya Sankar
2.U.Sakunthala
3.Deepak Chawla
4.Shree Chandel Roller Flour Mills Pvt. Ltd.,
Rep. by J.S.Chandel,
Udha Village, Mivada, Shivrajpu,
Kanpur District-208 024.

5.The New India Assurance Co. Ltd.,
(Branch Office Code 402 102)
City Branch, 117/W/96, Kakadeo,
Kanpur 208 005.

... Respondents
in CMA No.2019/2018/
Petitioner 1 & 2 & Respondents 1,3 & 4



Civil Miscellaneous Appeal No.2088 of 2018 filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 08.03.2017 made in M.C.O.P.No.4497 of 2010 on the file of the II Court of Small Causes (MACT), Chennai.

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Civil Miscellaneous Appeal No.2019 of 2018 filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 08.03.2017 made in M.C.O.P.No.2704 of 2008 on the file of the II Court of Small Causes (MACT), Chennai.

For Appellant : Mr.K.Moorthy
both the Appeals
For Respondents : Mr.S.Thirunavukkarasu
for respondent Nos.1 and 2
in CMA.No.2019/2018
and 1st respondent in
CMA.No.2088/2018

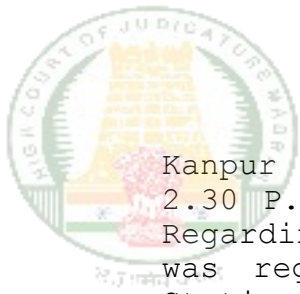
Ms.R.Srividhya
for 4th respondent in
CMA.No.2088/2018 and
5th respondent in
CMA.No.2019/2018

COMMON JUDGMENT

These appeals arise out of the common award dated 8.3.2017 passed in M.C.O.P.No.2704 of 2008 and 4497 of 2010 passed by the II Court of Small Causes, Chennai for the death of U.Karthikeyan and for the injuries sustained by Sakunthala in a road traffic accident on 30.10.2007.

2. Since both the appeals arise out of the common order and the parties are one and same, both the appeals were heard together and disposed of by this common judgment.

3. Brief facts are that on 30.10.2007 at about 5.30 hours, the respondents 1 and 2 in C.M.A.No.2019 of 2018, deceased Karthikeyan and six family members were travelling in a car bearing registration No.DL-1C-CH 7112 from Delhi to Varanasi to attend the deceased grand father's death ceremony. When they were proceeding on the National Highway near Kanpur, the car bearing registration No.DL-1C-CH-7112 and a truck/lorry bearing registration No.UP-78-N 7181 met with collision due to rash and negligent driving of the drivers of both vehicles. In the accident, the Karthikeyan and Sakunthala sustained grievous injuries. Immediately after the accident, they were taken to in Shivoy Hospital for treatment, where from, they were taken to



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Kanpur Medical Centre. Karthikeyan succumbed to injuries at 2.30 P.M. on 30.10.2007 and Sakunthala continued her treatment. Regarding the accident, a criminal case in Crime No.227 of 2007 was registered by the Station House Officer, Dhaspur Police Station, Kanpur.

4. At the time of accident the deceased Karthikeyan was aged 16 years and was studying plus one. The claimant Sakunthala was aged 40 years and she was a house wife. Stating that the accident was happened due to the rash and negligent driving of the drivers of the vehicles bearing registration No.DL-1C-CH 7112 and UP-78-N 7181, the claimants have filed the claim petitions claiming compensation of Rs.7,00,000/- and Rs.2,00,000/- respectively.

5. Resisting the claim petitions, the appellant herein filed counter stating that the accident occurred due to the negligence of the driver of the lorry bearing registration No.UP-78-N 7181, who drove the same in a rash and negligent manner and caused the accident and that the driver of the lorry was only instrumental to the accident. No compensation was payable by the appellant under law of torts and prayed for dismissal of the claim petitions. The appellant also denied the age, occupation and monthly income of the deceased as well as the injured person.

6. It is seen that the insurer of the lorry viz., New India Assurance Company Limited has also filed counter stating that the driver of the lorry bearing registration No.UP-78-N 7181 drover the lorry slowly and carefully and the driver was not at all responsible for the accident. Hence, the New India Assurance Company Limited is not liable to pay compensation to the claimants. If at all any compensation was payable, the same shall be payable only by the owner and the insurer of the car. It is stated that the compensation claimed by the claimants are excessive and exorbitant and prayed for dismissal of the claim petitions.

7. Before the Tribunal, common trial was conducted. On the side of the claimants, the 1st claimant in M.C.O.P.No.2704 of 2008 was examined as P.W.1 and the claimant Sakunthala was examined as P.W.2. Dr.Saravaa Bhavanadam was examined as P.W.3 and Exs.P1 to P22 were marked. No oral and documentary evidence was adduced on the side of the owners of the car and lorry and its insurers.

8. Upon consideration of the oral and documentary evidence produced by the claimants and upon hearing the rival submissions, the Tribunal held that the accident was occurred due to the rash and negligent driving of the drivers of both the vehicles bearing registration Nos.DL-1C-CH 7112 and UP-78-N 7181.



9. As far as quantum of compensation is concerned, taking the notional income of the deceased at Rs.5,000/- per month and after deducting one-third towards personal expenses, the Tribunal fixed the monthly income of the deceased at Rs.3,334/- and calculated the yearly income at Rs.40,008/-. Adopting multiplier 18, calculated the pecuniary loss at Rs.7,20,144/-, rounded off to Rs.7,20,200/-. Adding other heads, the Tribunal awarded total compensation Rs.11,24,300/-, rounded off to Rs.11,24,000/- for the death of the deceased Karthikeyan.

10. In so far as claim in M.C.O.P.No.4497 of 2010 is concerned, the Tribunal awarded total compensation of Rs.2,97,100/- rounded off to Rs.2,97,000/-.

11. In its award, the Tribunal held that though the claimants have claimed Rs.7,00,000/- and Rs.2,00,000/- respectively as compensation, by relying upon the decision of the Hon'ble Supreme Court in Nagappa v. Gurudayan Singh and others, reported in 2003 ACJ 12 (SC), the Tribunal awarded total compensation so arrived at. Since the accident was occurred due to rash and negligent driving of both the vehicles, the Tribunal directed both the insurer of the vehicles to deposit the compensation amount at the ratio of 50% each within two months. Aggrieved by the negligence and liability fastened, the appellant has preferred these appeals.

12. Challenging the award of the Tribunal, the learned counsel for the appellant submitted that the Tribunal fastened the liability based on the FIR, which cannot a conclusive proof as there was no eye witness to the accident. He would submit that the accident occurred due to rash and negligent driving of the lorry and therefore, the owner and the insurer of the lorry are alone liable to pay compensation awarded by the Tribunal. The learned counsel further submitted that there was no negligence on the part of the driver of the car and therefore, the appellant, who is the insurer of the car, is not liable to pay the compensation of 50% awarded by the Tribunal. Further, the total compensation awarded by the Tribunal is excessive.

13. Reiterating the reasoning given by the Tribunal in the award, the learned counsel appearing for the claimants submitted that after analysing the oral and documentary evidence, the Tribunal has rightly held that the accident was occurred due to the rash and negligent driving of both the vehicles. As far as quantum of compensation awarded by the Tribunal is concerned, the learned counsel submitted that the total compensation awarded by the Tribunal in these cases are just and reasonable and there is no need to interfere with the same and therefore, prayed for dismissal of the appeals.



14. The point that arises for consideration is whether the Tribunal was right in fastening the liability on both the vehicles and whether the total compensation awarded by the Tribunal is excessive.

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15. Admittedly, the insurer of the lorry has not preferred any appeal against the award passed by the Tribunal.

16. The case of the claimants is that on 30.10.2007 when they were travelling in the car bearing registration No.DL-1C-CH-7112 from Delhi to Varanasi to attend the deceased grand father death ceremony (grand father went Varanasi as pilgrimage and died at Varanasi), the car and the truck bearing registration No.UP-78 N 7181 collided due to rash and negligent driving of the drivers of both the vehicles. Due to the impact, the deceased Karthikeyan sustained fatal injuries and Sakunthala sustained grievous injuries. Therefore, both the drivers and its insurer are liable to pay the compensation. According to the claimants, after the accident they were taken to Shivoy Hospital for treatment, where Karthikeyan succumbed to injuries.

17. The claimants have produced Ex.P1-FIR and its true translation copy as Ex.P2, where from it is seen that a criminal case in Crime No.95 of 2007 was registered by the Fatehpur Police Station under Section 279, 337, 338, 427 and 304A IPC against the drivers of the car and the truck/lorry. The police has filed Ex.P10-charge sheet to the effect that the accident was occurred due to the rash and negligent driving of both the drivers. To disprove the same, the appellant and the insurer of the truck have not produced any material. In fact, the appellant has not examined anybody to prove its case. When the appellant pleaded that they are not liable to pay the compensation, it is their bounden duty to prove that the accident was not occurred due to the rash and negligent driving of the car.

18. It appears that based on Exs.P1, P2 and Ex.P10-charge sheet, the Tribunal has held that the accident was occurred due to the rash and negligent driving of both the drivers of the car and the truck. The said finding of the Tribunal is based on evidence. Therefore, this Court is of the view that the Tribunal was right in fastening the liability on both the vehicles viz., car bearing registration No.DL-1C CH 7112 and UP-78-N 7181.

19. As far as quantum of compensation is concerned, in M.C.O.P.No.2704 of 2008, the Tribunal has awarded total compensation of Rs.11,24,000/- for the death of deceased Karthikeyan.



20. In his evidence, P.W.1 stated that at the time of accident, his son Karthikeyan was aged 16 years and was studying plus one. Ex.P18 is the school certificate, where from it is seen that the date of birth of the deceased was mentioned as 8.1.1991. There is no dispute that the claimants in M.C.O.P.No.2704 of 2008 are the legal heirs of the deceased Karthikeyan. To prove that the claimants in M.C.O.P.No.2704 of 2008 are the legal heirs, they have produced Ex.P17 legal heir certificate.

21. Relying upon the decision in National Insurance Company Limited v. R.Vimala, reported in 2015 (2) TNMAC 490 (DB), the Tribunal has fixed the notional income of the deceased at Rs.5,000/- per month. After deducting one-third i.e., Rs.1,666/- towards personal expenses, the Tribunal has taken the monthly income of the deceased at Rs.3,334/- and calculated the yearly income at Rs.40,008/-. Adopting multiplier 18, the Tribunal has calculated the pecuniary loss at Rs.7,20,144/-. In my considered opinion, Rs.7,20,144/- arrived at by the Tribunal under the head pecuniary loss is just and reasonable.

22. As far as the compensation awarded under other heads are concerned, the Tribunal awarded Rs.2,00,000/- towards loss of love and affection; Rs.1,79,100/- towards medical expenses and Rs.25,000/- towards funeral expenses. Since the claimants have lost their son at the age of 16 and also lost love and affection of their son, the Tribunal was right in awarding Rs.2,00,000/- under the head loss of love and affection. The Tribunal awarded compensation of Rs.1,79,100/- towards medical expenses. The claimants have produced Ex.P3 medical bills. To disprove that the claimants have not spent the said amount, the appellant has not produced any material. In the absence of any rebuttal evidence, the Tribunal was right in awarding Rs.1,79,100/- towards medical expenses.

23. The Tribunal has awarded Rs.25,000/- towards funeral expenses, which is also in my opinion is reasonable. Thus, the total compensation of Rs.11,24,000/- awarded by the Tribunal for the death of deceased Karthikeyan is just and reasonable and no need to interfere with the same.

24. In so far as M.C.O.P.No.4497 of 2010 is concerned, the Tribunal has awarded total compensation of Rs.2,97,000/- for the injuries sustained by the claimant Sakunthala.

25. According to the claimant in M.C.O.P.No.4497 of 2010, in the accident she had sustained grievous injuries and had taken treatment in Shivoy Hospital, Kanpur as inpatient from 30.10.2007 to 15.11.2007 for Cranio Cerebral. According to the claimant, she had incurred Rs.1,07,027/- towards medical



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expenses and produced Ex.P19 medical bills. Considering the nature of injuries sustained by her and also taking note of the fact that the claimant had incurred Rs.1,07,027/- towards medical expenses, the Tribunal was right in awarding the said amount.

26. As stated supra, in the accident the claimant Sakunthala sustained grievous head injury and in fact she went to coma stage. P.W.3 Doctor treated the claimant and issued Ex.P22-disability certificate assessing the disability at 30%. Considering the nature of injuries, period of treatment and the percentage of disability, the Tribunal awarded Rs.75,000/- towards disability and the same is maintained.

27. The Tribunal awarded Rs.10,000/- towards loss of earning, Rs.25,000/- towards non-pecuniary damage, Rs.20,000/- towards loss of amenities, Rs.25,000/- towards pain and suffering and Rs.10,000/- towards attender charges. Considering the nature of injuries sustained by the claimant in the accident, the compensation awarded by the Tribunal under the aforesaid heads are maintained.

28. The Tribunal awarded Rs.50,000/- towards transportation, food, damage to articles and the miscellaneous expenditure. As stated supra, in the accident, the claimant Sakunthala sustained grievous head injury and had taken treatment in Shivoy Hospital, Kanpur as inpatient from 30.10.2007 and discharged on 15.11.2007 for Cranio Cerebral. She was admitted with coma scale. She was managed with conservativity IV Anti-bio-tics, I.V. Proton pump inhibition I.V. Antimetetics, I.V. Plasure expanders, IV directives. Taking note of the fact the place of accident and the hospital and the period of treatment, the Tribunal awarded Rs.50,000/-, which in my considered opinion is reasonable and the same is maintained. Thus, the total compensation of Rs.2,97,000/- awarded by the Tribunal is just and reasonable. Therefore, this Court finds that there is no illegality in the award of the Tribunal.

29. Though in both the claim petitions, the claimants have claimed Rs.7,00,000/- and Rs.2,00,000/- as compensation, the Tribunal by relying upon the judgment of the Hon'ble Supreme Court in Nagappa v. Gurudayal Singh and others, reported in 2003 ACJ 12 (SC), awarded the full amount as determined by it.

30. In Nagappa v. Gurudayal Singh and others, supra, the Hon'ble Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal considers that the claimant is entitled to get more compensation than claimed, the Tribunal



may pass such as award. The Hon'ble Supreme Court said that the only embargo was that it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable.

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31. In the case on hand, the total compensation awarded by the Tribunal in both the cases is just and reasonable compensation and therefore, it cannot be said the the the compensation awarded by the Tribunal is fanciful. Considering the over all aspects, this Court finds that the total compensation awarded by the Tribunal is just, equitable, fair and reasonable and the same is liable to be confirmed.

32. As far as fastening of liability on the two vehicles involved in the accident is concerned, as stated supra, the finding of the Tribunal is based on evidence and this Court do not want to take a different view. Since the charge sheet filed in this case would show that the accident was occurred due to the negligence of both the vehicles viz., car and the lorry, as rightly ordered by the Tribunal, the insurer of both the vehicles are liable to pay the compensation at the rate of 50% each.

33. In the result, both the Civil Miscellaneous Appeals are dismissed by confirming the common award dated 08.03.2017 passed by the Tribunal in M.C.O.P.Nos.2704 of 2008 and 4497 of 2010. The appellant Insurance Company is directed to deposit 50% of the compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

The II Judge, (MACT) Small Causes Court, Chennai

+2cc to Mr.K.Moorthy, Advocate, S.R.No.64110, 64111

+2cc to Mr.S.Thirunavukkarasu, Advocate, S.R.No.64005, 64004

+2cc to Ms.R.Srividhya, Advocate, S.R.No.65185, 65186

C.M.A.Nos.2088 and 2019 of 2018
and

CMP.Nos.16208 and 15684 of 2018

PA(Co)

CS/26/11/2018