IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.Nos.304 to 311 of 2016
and
CMP Nos.2468,13796,2470,13797,2472,13798,2474,13799,2476,
13800,2478,13801,2480,13802,2482 and 13803/16

M/s.National Insurance Company Ltd.,
Divisional Office - I,
LRN Complex,
Sri Saradha College Main Road,
Salem 7. ... Appellant in all the Appeals
/ 2nd Respondent in all MCOPs

-vs-

1.Nirmala
@ Josephin Nirmala. ..1st Respondent in CMA No.304/2016
/ petitioner MCOP.572/11

2. R.Elisa ... 2nd respondent in all the Appeals
and 4th respondent &1st Respondent
in CMA 309/16/ 1st Respondent in all MCOPs

Minor Naresh Nandha
Rep. By N/F Guardian
Nirmala @ Josephin Nirmala ... 1st Respondent
in CMA No.305, 306, 307 & 308/2016/
petitioner on MCOP.573/11,574/11,575/11,604/11

Nirmala @ Josephin Nirmala
Prakasam
Rajarajan ...Respondents 1 to 3 in CMA No.309/2016/
petitioners in MCOP.605/11

Rekha @ Sagaya Mary ... 1st Respondent in CMA No.310/2016
/ petitioners in MCOP.607/11

Minor Shyam
Rep. By N.F. & Guardian/Mother
Rekha @ Sagaya Mary ... 1st Respondent in CMA No.311/2016
/ petitioners in MCOP.606/11

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 31.10.2014 made in MCOP. Nos.572, 573, 574, 575, 604, 605, 607, 606 of 2011 on the file of the Motor Accidents Claims Tribunal, (II Additional District

Judge), at Salem.

For Appellant : Mrs.R.Sreevidhya
in all the Appeals

For Respondent : Mr.C.Kulanthaivel
R1 in all the Appeals

COMMON JUDGMENT

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The challenge in these Appeals filed by the Insurance Company is to the award of the compensation made by the Tribunal/II Additional District Judge, Salem, in MCOP Nos.572, 573, 574, 575, 604 to 607 of 2011. While MCOP Nos.573, 574, 604 and 605 of 2011 are cases in which the claims are filed by the legal heirs of the deceased (Fatal Cases), MCOP Nos.572, 575, 606 and 607 of 2011 are cases of injury. Since all the claim petitions arose out of the same accident, they were disposed of by a common judgment.

2. The manner in which the accident occurred as set out in the claim petitions is as follows:

All the claimants belonging to the same family all of them had gone for Pilgrimage to Velankanni and while they were returning in the Maruthi Omni Van owned by the 1st respondent and insured with the 2nd respondent, bearing Registration No.TN-30-L-3903, as they were nearing Thammampatty on Attur Main Road, the driver of the Omni van, Rajarajan, drove the vehicle in a rash and negligent manner and hit against a tamarind tree. Due to the accident while the petitioners in MCOP Nos.572, 575, 606 and 607 of 2011 sustained injuries Devis Navein, Divyanathan, Manonmani and Arulappan died on the spot. They claimed that the accident occurred due to the rash and negligent driving of the driver of the Maruthi Omni Van and a case was also registered in Crime No.70 of 2008, under Section 279, 337, 388 and 304-A IPC, against the driver. The claimants would contend that the appellant Insurance Company as the insurer of the Maruthi Omni Van is liable to pay compensation.

3. The Claimant/petitioner in MCOP No.572 of 2011 would claim that she had suffered fracture of left femur, left leg, left hip, right leg and multiple injuries all over the body. Claiming that she was employed as Noon Meal Organizer in CSI Boys School in Salem, and earning a sum of Rs.4,000/- per month and that she had suffered monetary loss due to the accident. She had claimed a sum of Rs.10,00,000/- as compensation.

4. The petitioner in MCOP No.575 of 2011 who was aged about 17 years and pursuing his Plus Two (+2) had sustained multiple fracture on right arm, right leg, right ankle and multiple injuries all over the body therefore, he had claimed a sum of Rs.10,00,000/- as compensation for the disability caused to him in the accident.

5. The petitioner in MCOP No.606 of 2011 who is a minor aged about 5 years would claim that he had sustained a fracture on left arm and multiple injuries all over the body and he has become permanently disabled due to the accident. He had claimed a sum of Rs.5,00,000/- as compensation.

6. The petitioner in MCOP No.607 of 2011 is aged about 26 years and earning a sum of Rs.4,000/- from her employment as tailor. She claims that she suffered multiple fractures on the left leg, ribs, left little toe and sustained injuries all over the body. The injuries had caused a permanent disablement and she unable to pursue her avocation as tailor. Therefore, she would claim a sum of Rs.5,00,000/- as compensation.

7. Insofar as the fatal accidents are concerned the legal representatives of the deceased had claimed compensation as follows:

7.1. In MCOP No.573 of 2011 is filed by the brother of Devis Naveen, claiming a compensation of Rs.25,00,000/- for the death of the said Devis Naveen, who was aged about 17 years and pursuing first year Bachelor of Engineering.

7.2. In MCOP No.574 of 2011, the claimant seeks compensation for the death of his father Divyanathan, the compensation claimed is Rs.50,00,000/-.

7.3.The claimant in MCOP No.604 of 2011, seeks compensation for the death of his mother in the accident, the quantum of compensation claimed is Rs.25,00,000/- .

7.4. The Claimants in MCOP No. 605 of 2011 had claimed a compensation of Rs.10,00,000/- for the death of one Arulappan, who was aged about 65 years. The 1st petitioner is the wife and the petitioners 2 and 3 are the sons of the deceased Arulappan.

8. All these Claim Petitions were resisted by the Insurance Company contending that the Policy was a cancelled Policy, inasmuch as the owner of the Car had not complied with Section 64 (3)(b). It is also contended that the driver of the Omni Van did not possess a valid driving licence. It is the further contention of the Insurance Company that the Vehicle involved in the accident, namely Maruti Omni Van had a permit capacity of only 5 passengers, however at the time of the accident, it appears that 9 persons had travelled in the Omni Van. According to the Insurance company, there is a violation of permit condition by the driver and the owner of the vehicle. Therefore, according to the Insurance Company, it cannot be liable under the policy. The age, educational qualifications and the income claimed by the claimants were all denied.

9. Before the Tribunal, the Motor Vehicle Inspector was examined as R.W.1, the driver of the Omni Van is examined as R.W.2. R.W.2 had in his evidence deposed that he did not have valid driving licence at the time of the accident. R.W.3 is the owner of the Van which met with the accident. The Tribunal on a consideration of evidence on record found that though the Insurance Company had contended that the owner of the Vehicle, namely the Maruti Van, did not pay the premium, and the policy was cancelled, the said contention of the Insurance Company has not been substantiated. The documents relied on by the Insurance Company Exs.R2 to R8, in order to prove that the Policy was cancelled, were disbelieved by the Insurance Company on the ground that they do not show that the premium is not paid. However, the Tribunal granted liberty to the Insurance Company to pay the compensation to the 3rd party petitioners and recover the same from the owner of the offending vehicle.

10. On the quantum, the Tribunal granted the following amounts as compensation for the injuries and for the death of the predecessor in interest of the claimants in the respective cases:

CMA.Nos.	MCOP.Nos.	Award Amount
CMA.No.304 of 2016	MCOP. No.572 of 2011	Rs. 1,88,980/-
CMA.No.305 of 2016	MCOP. No.573 of 2011	Rs.10,13,000/-
CMA.No.306 of 2016	MCOP. No.574 of 2011	Rs.31,95,880/-

CMA.Nos.	MCOP.Nos.	Award Amount
CMA.No.307 of 2016	MCOP. No.575 of 2011	Rs. 1,91,829/-
CMA.No.308 of 2016	MCOP. No.604 of 2011	Rs.18,61,000/-
CMA.No.309 of 2016	MCOP. No.605 of 2011	Rs. 3,41,056/-
CMA.No.310 of 2016	MCOP. No.607 of 2011	Rs. 75,023/-
CMA.No.311 of 2016	MCOP. No.606 of 2011	Rs. 1,11,771/-

11. Aggrieved by the above awards, the Insurance Company is on appeal.

12. We have heard Mrs.R.Sreevidhya, learned counsel appearing for the appellant Insurance Company and Mr.C.Kulanthivel, learned counsel appearing for the respondents/claimants.

13. Mrs.R.Sreevidhya, learned counsel appearing for the appellant Insurance Company would contend that once the Policy has been cancelled in the cancellation has been intimated to the owner of the vehicle, the Insurance Company cannot be held liable.

14. Contending contra, Mr.C.Kulanthivel, learned counsel appearing for the respondents/claimants would submit that once the Policy has been issued, the Insurance Company has no other option but satisfy the award in respect of the 3rd party claimants and it can seek recovery from the owner of the offending vehicle. He would also rely upon the judgment of the Division Bench of this Court in New India Assurance Co. v. Azhagusumathi, reported in 2015 (1) TN MAC 179. In the said decision, the Division Bench after concluding that the Insurance Company may not be liable for payment of compensation, however, held that the Insurance Company will have to pay the compensation to the claimants and recover the same from the owner of the offending vehicle. He would also rely upon the judgment of the Hon’ble Supreme Court in Oriental Insurance Co. Ltd. v. Inderjit Kaur and others, repored in 1998 (1) SCC 371, wherein, the Hon’ble Supreme Court had also upheld the award of the Tribunal directing the payment of the compensation by the Insurance company with liberty to recover the same from the owner of the offending vehicle.

15. The three statutory defences have been taken by

the Insurance Company in the case on hand

(1) Cancellation of the Policy

(2) Absence of license for the driver of the car

(3) Over loading of the Vehicle.

All the three defences, even assuming held to be perfectly valid can only result in an order of pay and recover, the Tribunal has done only that and therefore, we do not think that there is any scope for interfering with the findings of the Tribunal on the question of liability of the Insurance Company, to satisfy the award vis-à-vis the claimants, who are the third parties to the contract.

16. As regards the quantum, though, Mrs.R.Sree Vidhya, learned counsel for the appellant Insurance Company would contend that the compensation awarded is on a higher side, she is unable to demonstrate, as to how, the compensation can be termed as unjust or unreasonable.

17. In MCOP No.572 of 2011, the claimant had suffered fractures on left femur and metatarsal Bone. She was employed as a Noon Meal Organizer, the Tribunal assessed the disability at 30% and granted a sum of Rs.60,000/- towards permanent disability, Rs.25,000/- towards pain and suffering, Rs.20,000/- for extra nourishment, Rs.30,000/- towards removal of plate, Rs.47,380 towards medical expenses based on bills and Rs.5,000/- towards Transportation, apart from awarding Rs.1,000/- towards damage to clothing and Rs.6,000/- for X-ray Bills. In all the total compensation awarded works out to Rs.1,88,980/-. We do not find that the award granted under various heads is unreasonable.

18. Insofar as MCOP No.573 of 2011 is concerned, the deceased was aged about 19 years at the time of accident and he was a first year B.E.Student, the Tribunal has taken his monthly income at Rs.9,000/- and after deducting 50% towards personal expenses and applying a multiplier of 18, arrived the loss of dependency at Rs.9,72,000/-. The Tribunal also awarded a sum of Rs.30,000/- towards loss of love and affection, Rs.5,000/- towards transportation, Rs.5,000/- towards funeral expenses, Rs.1,000/- towards damage to clothing. The total compensation thus awarded worked out to Rs.10,13,000/-.

19. We must at once point out that the award is actually on the lower side. The Tribunal has not taken into account future prospects and the amounts awarded towards loss of love and affection and funeral expenses

are also on the lower side. Since the claimants have not challenged the award, we do not propose to enhance the same. We do not find any ground to interfere with the award on quantum.

20. In MCOP No.574 of 2011, the deceased was working as a Teacher, drawing a salary of Rs.21,350/-. The Tribunal had added 30% towards future prospects considering the age of the deceased, namely 45 years and has arrived a monthly income at Rs.27,989/-. The Tribunal has deducted 1/3 for his personal expenses and the multiplier was fixed at 14. The monthly loss of dependency was worked out at Rs.18,660/- and applying a multiplier of 14 as aforesaid, the total loss of dependency was worked out as Rs.31,34,880/-. The Tribunal has granted Rs.50,000/- towards loss of love and affection, Rs.5,000/- for transportation, Rs.5,000/- for funeral expenses, Rs.1,000/- for damage to clothing. In all the total award was Rs.31,95,880/-.

21. We find that there is concrete documentary evidence to show the income of the deceased. The Tribunal had applied the correct deduction as well as the correct multiplier as per the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, reported in 2009 INSC 756. We, therefore, do not find any scope for interfering with the award on quantum.

22. In MCOP No.575 of 2011, the Tribunal has awarded a sum of Rs.1,91,829/- for the injuries suffered by the minor, who was aged about 17 years at the time of the accident. It is seen that he had suffered fracture in the right femur and right tibia with lacerated wound in right ankle. The Tribunal has taken disability at 35% and awarded Rs.70,000/- towards permanent disability. The Tribunal also awarded a sum of Rs.25,000/- towards pain and suffering, Rs.20,000/- towards extra nourishment, Rs.30,000/- for removal of plate, Rs. 40,129/- towards medical expenses, based on bills, Rs.5,000/- for transportation, Rs.1,000/- for damage to clothing and Rs.700/- towards X-rays bills. In all the Tribunal granted a sum of Rs.1,91,829/- as compensation.

23. Here again, we find that the compensation awarded under the head of pain and suffering is below par. We, however, do not propose to interfere with the award inasmuch as the claimant has not questioned the award.

24. The claim in MCOP No.604 of 2011 relates to the

death of Manonmani, who was aged about 40 years. She was, according to the claimant, working in a Computer Centre, earning a sum of Rs.20,000/- per month. Though there was no documentary evidence of her income, the Tribunal took her income at Rs.10,000/- per month and added 50% towards future earning capacity after deducting 1/3 towards her personal expenses, the Tribunal calculated the loss of dependency at Rs.10,000/- per month. Considering the age of the deceased the Tribunal applied a multiplier of 15 and arrived the loss of dependency at Rs.18,00,000/-. The Tribunal has also awarded a sum of Rs.50,000/- towards loss of love and affection, Rs.5,000/- towards transportation, Rs.5,000/- towards funeral expenses, Rs.1000/- for damage to clothing, in all a sum of Rs.18,61,000/- awarded by the Tribunal.

25. Though, the Tribunal has taken the future prospects at 50%, we find that the fixation of the monthly income as Rs.10,000/- cannot be said to be on par. We, therefore, find that the award on a whole is just and reasonable and does not call for interference at our hands.

26. The Claimants in MCOP No.605 of 2011, had sought for compensation for the death of Arulappan, who was aged about 65 years. The Tribunal had taken the monthly income of the deceased Arulappan, at Rs.5,000/-, after deducting 1/3 towards his personal expenses, the Tribunal assessed the loss of dependency at Rs.3,334/-. Since the deceased was aged about 65 years at the time of the accident, the Tribunal adopted a multiplier of 7 and arrived at the total loss of dependency at Rs.2,80,056/-, the Tribunal also award a sum of Rs.25,000/- towards loss of love and affection to the two sons, Rs.25,000/- towards loss of consortium to the wife, Rs.5,000/- towards transportation, Rs.5,000/- towards funeral expenses, Rs.1,000/- towards damage to clothing, the total award worked out to Rs.3,41,056/-.

27. Despite her best efforts Mrs.R.Sreevidhya, learned counsel appearing for the Insurance company is unable to point out that the award is excessive and unjust. Hence we do not find any material which would enable us to interfere with the award.

28. In MCOP No.606 of 2011, the claimant sought for compensation for the injuries caused to him in the accident. The discharge summary issued by the Gokulam Hospital, Salem, shows that there was a fracture in the left femur bone and in the left arm. His left shoulder has lost 10 degrees of movement. Therefore, the Tribunal

had assessed the disability at 20%, the Tribunal awarded a sum of Rs.40,000/- as compensation towards the disability. The Tribunal also awarded a sum of Rs.30,000/- towards pain and suffering, Rs.20,000/- for extra nourishment, Rs.15,421/- towards medical expenses, Rs.5,000/- towards transportation, Rs.1,000/- for damage to clothing and Rs.350/- for X-ray bill. In all the Tribunal awarded a sum of Rs.1,11,771/- .

29. Here again the award appears to be just and reasonable, inasmuch as the Tribunal has assessed the disability only at 20%, though there was scope for assessing it at a higher percentage. We, therefore, do not think that the award calls for interference.

30. In MCOP No.607 of 2011 has been filed by the claimant seeking compensation for the injuries caused. It is claimed that she is a tailor by profession. The injuries suffered are multiple fractures. From the discharge summary, it is seen that the PIP joint space has narrowed and left little toe deformed. The movement of the left leg is affected, apart from pain emanating, if she stands for long time. It is also found that she is not able to walk fast. The Tribunal has assessed the disability at 10% and granted a sum of Rs.20,000/- for permanent disability. Inasmuch as she is a tailor, the Tribunal had awarded a sum of Rs.15,000/- towards partial loss of earning capacity. The Tribunal has awarded a sum of Rs.10,000/- each for pain and suffering and extra nourishment, apart from awarding a sum of Rs.6,000/- for X-ray Bills and Rs.1,000/- for damage to clothing. In all the Tribunal awarded a sum of Rs.75,023/- .

31. The amount awarded towards pain and suffering, considering the nature of injuries, is below par. We however find that the overall award is just and reasonable considering the nature of the injuries.

32. In view of the foregoing conclusions, we do not find any merit in the appeal and the appeal is therefore dismissed. The apportionment made by the Tribunal in each of the Claim Petitions are confirmed. However, we make no order as to costs in these appeals. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

jv

To
The II Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

+1cc to Mrs.R.Sreevidhya , Advocate SR.No. 61379
+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 61416

CMA.Nos.304 to 311 of 2016
and Connected Miscellaneous Petitions

ASK(15/10/2018)