

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.325 to 330 of 2016
and C.M.P.Nos.2508 to 2513 of 2016

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Branch Office, Raghavendra Complex,
Wilson Garden, 1st Cross,
Hosur Main Road, Bangalore 560 027.
.. Appellant 2nd Respondent in all C.M.As.

Vs.

1.M.Muniraju
2.M.Hemavathi
3.M.Prasanth Kumar
4.M.Swetha
5.V.Raju
6.K.Shanthi
7.The Branch Manager,
ICICI Lombard General Insurance Co. Ltd.,
Branch Office,
Zenith House, Keshavrao Khadye Marg,
Mahalakshmi, Mumbai 400 034.

(R5 & R6 set exparte before the Tribunal)

.. Respondents/ Petitioners/ Respondents 1,3&4 in
C.M.A.No.325/2016

1.Gayathri
2.Kishore (Minor)
(2nd respondent minor rep. by
mother and NF 1st respondent)
3.V.Raju
4.K.Shanthi

5.ICICI Lombard General Insurance Co. Ltd.,
Branch Office,
Zenith House, Keshavrao Khadye Marg,
Mahalakshmi, Mumbai 400 034.

(R3 & R4 set exparte before the Tribunal)

.. Respondents Petitioners/ Respondents 1,3&4 in
C.M.A.Nos.326 & 327/2016

- 1.Ramachandira Reddy
- 2.Narendra Reddy
- 3.Thilak Reddy
- 4.V.Raju
- 5.K.Shanthi
- 6.ICICI Lombard General Insurance Co. Ltd.,
Branch Office,
Zenith House, Keshavrao Khadye Marg,
Mahalakshmi, Mumbai 400 034.

(R4 & R5 set exparte before the Tribunal)

.. Respondents Petitioners/ Respondents 1,3&4 in
C.M.A.Nos.328 & 330/2016

- 1.Gayathri
- 2.V.Raju
- 3.K.Shanthi
- 4.ICICI Lombard General Insurance Co. Ltd.,
Branch Office,
Zenith House, Keshavrao Khadye Marg,
Mahalakshmi, Mumbai 400 034.

(R2 & R3 set exparte before the Tribunal)

.. Respondents Petitioners/ Respondents 1,3&4 in
C.M.A.No.329/2016

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 20.07.2015 made in M.C.O.P.Nos.484, 486, 488, 490, 510 and 567 of 2011 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr.M.B.Gopalan (in all C.M.As.)

(In C.M.A.No.325/2016)

For RR1 & R2 : Ms.M.Malar

For R7 : Ms.R.Sreevidhya

(In C.M.A.Nos.326 & 327/2016)

For RR1 & 2 : Ms.M.Malar

For R5 : Ms.R.Sreevidhya

(In C.M.A.Nos.328 & 330/2016)

For R1 to R3 : Ms.M.Malar

For R6 : Ms.R.Sreevidhya

(In C.M.A.No.329/2016)

For R1 : Ms.M.Malar

For R4 : Ms.R.Sreevidhya

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

These Civil Miscellaneous Appeals have been filed challenging the liability as well as the compensation granted by the award dated 20.07.2015 made in M.C.O.P.Nos.484, 486, 488, 490, 510 and 567 of 2011 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.All the appeals are arising out of the common award and same accident. Hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petitions.

3.The appellant is the 2nd respondent in M.C.O.P.Nos.484, 486, 488, 490, 510 and 567 of 2011 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri. The claimants filed the said claim petitions, claiming a sum of Rs.25,00,000/-, Rs.20,00,000/-, Rs.50,00,000/-, Rs.50,00,000/-, Rs.15,00,000/- and Rs.20,00,000/- respectively as compensation for the death of Gowamma, Prithivi, Jayarama Reddy, R.Sudha @ Sudha Rani, Gayathri and Suguna respectively, who died in the accident that took place on 27.12.2010.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred due to negligence on both the drivers and fixed contributory negligence of 60% on the driver of the lorry belonging to the 3rd respondent and 40% on the driver of the Tempo van belonging to the 1st respondent and awarded a sum of Rs.19,35,000/-, Rs.5,45,000/-, Rs.25,60,000/-, Rs.26,60,000/-, Rs.5,70,000/- and Rs.1,74,000/- as compensation to the claimants respectively. The Tribunal directed the respondents 1,2 on one part and 3,4 on other part to pay the compensation at the ratio of 40:60 respectively to the claimants.

5.The 2nd respondent-Insurance Company has filed these appeals, challenging the portion of the award fixing 40% of contributory negligence on the part of the driver of the Tempo van belonging to the 1st respondent and insured with the 2nd respondent-Insurance company, directing the 2nd respondent to pay 40% of the compensation awarded as well as the quantum of compensation granted by the Tribunal.

6.The 2nd respondent/appellant is the insurer of the Tempo van belonging to the 1st respondent. The learned counsel for the 2nd respondent/appellant contended that the driver of the lorry which was going in front of the Tempo van suddenly stopped without giving any signal. Due to the said negligence, the Tempo van which was going behind the lorry, dashed on the back side of the lorry and the accident occurred. The accident occurred only due to the negligence on the part of the driver of the lorry. FIR was registered only against the driver of the lorry. The driver of the Tempo van had no opportunity to avoid the accident caused due to the negligence on the part of the driver of the lorry who suddenly stopped the vehicle. The Tribunal failed to appreciate the oral and documentary evidence let in by the 2nd respondent/appellant. The amounts awarded by the Tribunal is excessive and prayed for setting aside the award.

7.Heard the learned counsel for the claimants as well as the respondents 2 & 4 and perused the materials available on record.

8.From the materials on record, it is seen that the accident occurred when the Tempo van belonging to the 1st respondent dashed against the lorry belonging to the 3rd respondent on the back side. According to the claimants, the lorry driver going in front of the Tempo van suddenly applied brake without any signal and stopped the lorry and the Tempo van went and dashed against the lorry. On the other hand, it is the contention of the 4th respondent, insurer of the lorry that the driver of the Tempo van tried to over take the lorry and dashed on the back side of the lorry and caused the accident. The 4th respondent has not examined the driver of the lorry, but only marked copy of the policy. The Tribunal took note of the fact that the Tempo van dashed against the back side of the lorry. Considering the report of the Motor Vehicle's Inspector and other documents and evidence let in, the Tribunal held that both the drivers of the vehicles belonging to the respondents 1 and 3 are responsible for the accident. The Tribunal came to the said conclusion on the ground that the vehicle going in front, for various reasons may be forced to stop the vehicle and vehicle coming behind must anticipate such possibility and must drive giving sufficient gap between the two vehicle. The said reasoning is proper and valid. In view of the same, the finding of the Tribunal fixing negligence on the part of the driver of the lorry belonging to the 3rd respondent and insured with the 4th respondent as 60% and 40% on the driver of the Tempo van belonging to the 1st respondent and insured with the 2nd respondent is confirmed.

9.As far as the quantum of compensation is concerned, the learned counsel appearing for the 2nd respondent/appellant contended that the amounts awarded by the Tribunal is excessive. She has not specifically pointed out any excessive amount awarded by the Tribunal. Considering the materials on record and since the compensation awarded by the Tribunal under various heads is not excessive, there is no reason to reduce the same.

10.In the result, all the Civil Miscellaneous Appeals are dismissed and the amount of Rs.19,35,000/-, Rs.5,45,000/-, Rs.25,60,000/-, Rs.26,60,000/-, Rs.5,70,000/- and Rs.1,74,000/- awarded by the Tribunal as compensation to the claimants respectively in all the claim petitions with interest and costs are confirmed. The respondents 1,2 and 3,4 are directed to deposit 40:60% of the award amount respectively with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos. 484, 486, 488, 490, 510 and 567 of 2011 respectively. On such deposit, the major claimants are permitted to withdraw their share of the award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd claimant in M.C.O.P.Nos.486 and 488 of 2011 are directed to be deposited in any one of the Nationalized Bank, till he attains majority. The 1st claimant, mother of the 2nd claimant is permitted to withdraw the accrued interest amount once in three months for the welfare of the minor 2nd claimant. No costs. Consequently, connected Miscellaneous Petitions are closed.

gsa

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District Judge,
(Motor Accident Claims Tribunal), Krishnagiri.
2. The section officer,
VR Section, High court, Madras

+1cc to Ms.M.Malar , Advocate SR.No. 85888

+1cc to Ms.R.Sreevidhya , Advocate SR.No. 87042

+6ccs to Mr.B.Gopalan , Advocate SR.No.87046 to 87051

C.M.A.Nos.325 to 340 of 2016
and C.M.P.Nos.2508 to 2513 of 2016

A.SK (20/02/2019)