

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1968 and 1969 of 2014

CMA.1968/2014:-

Nagammal ..Appellant/Petitioner

CMA.No.1969 of 2014:-

A.Kristhuraaj ...Appellant/Petitioner

Vs

1.The Managing Director,
Tamil Nadu Governemnt Transport Corporation,
Villupuram.

2.T.Siva

3.The Managing Director, (Legal Section),
Royal Sundaram Alliance Insurance
Company Limited., No.46, Whites Road,
Chennai. ...Respondents in both CMAs.

CMA.No.1968 of 2013:- Civil Miscellaneous Appeal filed under
Section 173 of the Motor Vehicles Act against the judgment and
decree/Award dated 28.02.2012 passed in MCOP.No.566 of 2005 on
the file of Principal District Judge, Gingee.

CMA.No.1969 of 2013:- Civil Miscellaneous Appeal filed under
Section 173 of the Motor Vehicles Act against the judgment and
decree/Award dated 28.02.2012 passed in MCOP.No.576/2005, on the
file of Principal District Judge, Gingee.

For appellants : : Mr.M.Santhanaraman

for Respondents : : Mr.K.J.Sivakumar for R1
Mr.G.Vasudevan for R3.
R2- Set exparte before the Tribunal.

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

The above Civil Miscellaneous Appeals are filed by the appellants/claimants, challenging the judgment and decree dated 28.02.2012 passed in MCOP.No.566 of 2005 and MCOP.No.576/2005, on the file of Principal District Judge, Gingee.

2.1. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal in both CMAs.

2.2. CMA.No.1968/2014 MCOP.No.566 of 2005:-

The case of the Petitioners/claimants is that on 21.02.2005 at about 08.20 a.m., the deceased Dhamodaran was driving his lorry bearing Reg.No.TN-23-B-1157 belonging to the 2nd respondent and insured with the 3rd respondent in Gingee to Chetpet Main Road, while going near Neelampoondi Village, the 1st respondent Transport Corporation bus bearing Reg.No.TN-32-N-1311 came at high speed, dashed against the lorry causing multiple injuries to deceased Dhamodaran, who subsequently died on the way to hospital due to the fatal injury suffered. According to the Petitioners, the negligence of the 1st respondent bus driver alone resulted in the accident. The deceased Dhamodaran was aged 28 years and by working as driver was earning Rs.7500/- per month. The Petitioners who are the mother and father of the deceased was solely depending on the earnings of her son. During pendency of the MCOP, father of the deceased died and the mother was the sole claimant. Due to the demise of her son, the petitioner/mother was stated to be suffering from lack of support to sustain herself. Thus, the Petitioner sought for Rs.15,00,000/- as compensation from the 1st respondent Transport Corporation.

2.3. CMA.No.1969 of 2014 MCOP.No.576 of 2005:-

The case of the Petitioner-A.Christhuraj in MCOP.No.576 of 2005 is that on 21.02.2005 at about 8.20 a.m., while he was travelling in the 1st respondent Transport Corporation bus bearing Reg.No.TN-32-N-1311 from Gingee to Chetpet, while going near Neelampoondi village, as the driver of the bus drove the vehicle at high speed, lost control and dashed against the lorry bearing Reg.No.TN-23-B-1157 which was coming in the opposite direction. Due to the same, the Petitioner suffered multiple injuries all over his body. The Accident occurred only due to rash and negligent driving by the 1st respondent Transport Corporation bus driver. The Petitioner who was aged 29 years, by working as a Rice Mill Driver was earning Rs.6000/- per month. Due to the injury suffered, he is unable to attend to his normal work. The Petitioner suffered loss of income due to the injury he suffered and as such, sought for a sum of

Rs.6,00,000/- as compensation from the 1st respondent-Transport Corporation.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 1st respondent Transport Corporation contends that the accident does not occur in the manner alleged by the Petitioners in both claim petitions. The driver of the 1st respondent bus was proceeding at normal speed in Gingee to Chetpet Main Road and at 8.20 a.m., while going near Neelampoondi Village, lorry bearing Reg.No.TN-23-B-1157 driven by the deceased Dhamodaran came at high speed in a rash and negligent manner in the opposite direction and inspite of best efforts of 1st respondent bus driver, who took the bus to the left extreme mud portion of the road, the lorry belonging to the 2nd respondent came at high speed and dashed against the 1st respondent bus, causing injuries to several persons. The accident occurred only due to negligence of the lorry driver viz., the deceased Dhamodaran. The said person did not possess valid driving licence. The age, occupation, monthly income earned by the said deceased Dhamodaran and the injury Petitioner-Khristuraj is not correct. The injured Petitioner has not suffered any functional disability. As such, the compensation claimed is highly excessive. As the deceased Dhamodaran itself was a tortfeasor, no amount is payable by the 1st respondent-Transport Corporation. Thus, the 1st respondent sought for dismissal of both the Petitions.

4. The 3rd respondent-Insurance Company opposing the claim Petitions, by filing counter, contends that the 2nd respondent Lorry was not insured with them at the time of the accident. The Police have filed FIR against 1st respondent bus driver only. The accident occurred due to negligence of the 2nd respondent Lorry driver. Thus, the 3rd respondent sought for dismissal of the Petitions.

5. Before the tribunal, MCOP.No.566 of 2005, MCOP.No.567 of 2005 were taken up for joint trial along with two other MCOP Nos.568 and 611 of 2005. When the Petitioners examined P.W.1 to P.W.5 , produced documents Ex.P.1 to Ex.P.15 to prove the claim.

On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, after analyzing the evidence on record, found negligence of both the vehicle drivers resulted in the accident, passed award for a sum of Rs.2,00,000/- as compensation to the Petitioners in MCOP.No.566 of 2005, payable equally by the respondents 1 and 3. In MCOP.No.576 of 2005, the Tribunal passed an award for a sum of Rs.30,000/- payable equally by the 1st and 3rd respondents.

6. Being not satisfied with the quantum of the award passed by the Tribunal, the Petitioners/claimants have come forward

with the appeals in CMA.No. 1968 of 2014 against MCOP.No.566 of 2005 and in CMA.No.1969 of 2014 against MCOP.No.576 of 2005.

7. In CMA.1968/2014 (MCOP.No.566/2005), the learned counsel for the Petitioner/claimant/appellant contended that the Tribunal wrongly applied multiplier '5' taking note of the age of the 1st petitioner/mother of the deceased Dhamodaran . The tribunal ought to have adopted multiplier on the basis of the age of the deceased. The monthly income of the deceased was fixed at Rs.4000/- even though he was earning Rs.7500/- as lorry driver. The amount awarded by the tribunal is very low and the same requires enhancement.

8. In CMA.No.1969/2014 (MCOP.No.576/2005), the learned counsel for the Appellant/Claimant contends that the injured A.Krishthuraj suffered multiple grievous injuries, but the Tribunal failed to appreciate the disability suffered by him properly. Even though the disability was fixed at 23% by the doctor, the Tribunal fixed the disability at 15% and the same is not proper. The Tribunal failed to consider the fracture in the right leg. The Petitioner is unable to attend to his normal work and hence the Tribunal award is very nominal and sought for enhancement of the quantum of the award passed by the Tribunal. Thus, the Petitioner/injured claimant sought for enhancement of the award amount by entertaining the appeals.

9.1. Per contra, the learned counsel for the 1st respondent-Transport Corporation contends that the deceased Dhamodaran itself being a tortfeasor equally responsible for the accident. The Tribunal ought to have deducted 50% of the award amount payable by the Petitioner in MCOP.No.566 of 2005 in CMA.No.1968 of 2014.

9.2. On the other hand, the learned counsel for the 3rd respondent/Insurance company contends that as the negligence of 1st respondent bus driver alone caused the accident, the 3rd respondent is not liable to pay any compensation. Thus, the 3rd respondent sought for dismissal of the appeal.

10. Heard both sides and perused the records carefully.

11. Issue of negligence and liability:-

The 1st respondent in MCOP.No.566 of 2005 Nagammal, the mother of the deceased Dhamodaran deposed as P.W.4. While the injured Petitioner Khristhuraj in MCOP.No.576 of 2005 has deposed as P.W.1. Admittedly P.W.4 Nagammal is not an eyewitness. However, Khristhuraj has travelled in the bus which met with the accident. Likewise, the other two petitioners in other MCOP.Nos.568 and 611 of 2005 also deposed as P.W.2 and P.W.3 stating that they also travelled in the above said vehicle at the time of accident and they suffered injuries. It is clear from the evidence of P.W.1 that on 21.02.2005 at about 8.20

a.m., while the 1st respondent bus bearing Reg.No.TN-32-N-1311 was proceeding from Gingee to Chetpet Main road, while going near Neelampoondi village, the 1st respondent bus driver proceeded at high speed, dashed against the Lorry which was coming in the opposite direction. The Village Administrative Officer has given Ex.P.1-Complaint against the 1st respondent bus driver. It is clear from P.W.1 as well as contents of EX.P.1-FIR that the accident occurred due to negligence of the 1st respondent-Transport Corporation bus driver only. On the other hand, the 1st respondent has not chosen to examine either the driver of the bus or any other witness to contradict the version given by the eyewitness. However, as pointed out by the Tribunal, the accident occurred while both the heavy vehicles were moving in the highways and as such both the vehicle drivers are held jointly liable for the accident. However, as the FIR is registered against the driver of the 1st respondent bus, it is appropriate to fix the negligence on the part of the 1st respondent bus driver as well as the deceased Dhamodaran, viz., the driver of the 2nd respondent Lorry in the ratio of 70% : 30% instead of equal responsibility fixed by the Tribunal. Thus, the 1st respondent as well as the 2nd respondent vehicle drivers due to their negligence and high speed, caused the accident and they contributed to the accident in the ratio of 70% : 30%.

12. Issue of quantum of award:-

CMA.No.1968 of 2014 MCOP.No.566 of 2005:-

(i) The mother of the deceased who deposed as P.W.4 stated that her son deceased Dhamodaran worked as Heavy Vehicle driver and was earning Rs.7500/- per month. She produced Ex.P.9 Driving Licence and also Ex.P.8-Post Mortem Certificate. The age of the deceased was 28 years as per Ex.P.9 Driving Licence and Ex.P.8 Post Mortem Certificate. The Tribunal, however took the age of the mother of the deceased and fixed multiplier as '5'. The same is not proper. The age of the deceased alone is to be taken into consideration for fixing multiplier. As such, the deceased Dhamodaran being 28 years old, the multiplier to be applied is '17'. The mother of the deceased who deposed as P.W.4 stated that her son by working as Heavy Vehicle Driver was earning Rs.7500/- per month. The accident occurred during 2005.

It is clear from Ex.P.9 Driving Licence that the deceased possessed valid licence. However, there is no proof for the earnings of the deceased Dhamodaran. Taking into consideration the fact that the deceased was a Heavy Vehicle Driver, it is appropriate to fix the notional income of the deceased at Rs.5000/- instead of Rs.4000/- fixed by the Tribunal. The deceased being a Bachelor, 50% of the income has to be deducted; as he was aged 28 years and employed as a driver, 40% of the income has to be added towards Future Prospects. The calculation

for the loss of dependency to the family of the deceased Dhamodaran is as follows:-

Monthly income : Rs.5000/-

Add : 40% towards future prospects (2000)

5000 + 2000 = 7000

Deduction: 50% towards personal expenses of the deceased

7000 -50% (3500) - 3500

3500 x 12 x 17 = 7,14,000/-.

(ii) Since the mother lost her son/deceased, it is appropriate to award Rs.5000/- towards "loss of love and affection". Further, a sum of Rs.2000/- is provided towards Transport Charges. Following the decision of Apex Court in National Insurance Co. Ltd., Vs. Pranay Sethi and others [2017 (2) TN MAC 609 (SC)], towards Funeral expenses, Rs.15,000/- and towards "loss of estate", Rs.15,000/- is awarded.

(iii) Thus, a total sum of Rs.7,51,000/- is arrived as total compensation amount for the death of the Dhamodaran. Since the deceased Dhamodaran is the tortfeasor and this court fixed 30% negligence as against him, the Appellant/Petitioner in MCOP.No.566 of 2005 is entitled to 70% of the award amount of Rs.7,51,000/- being 5,25,700/-. The compensation of 70% of the award amount viz., Rs.5,25,700/- is payable by the respondents jointly and severally to the Petitioner/Nagammal in MCOP.No.566 of 2005/Appellant in CMA.No.1968 of 2014.

(iv) The modified compensation amount to the Appellant in CMA.No.1968/2014 / Petitioners in MCOP.No.566 of 2005 is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court. (Rs.)
1.	Loss of dependency	1,60,000	7,14,000
2.	Funeral expenses	5,000	15,000
3.	Loss of love and affection	25,000	5,000
4.	Loss of estate	10,000	15,000
5.	Transport expenses	--	2,000
	Total	2,00,000	7,51,000 70% of the award amount being Rs.5,25,700/-

13. CMA.No.1969 of 2014 MCOP.No.576 of 2005:-

(i) The injured Petitioner A.Krishthuraj states that he suffered multiple injuries and particularly in his right foot,

left hand and stomach portion. The Petitioner also stated that he underwent treatment at Government Hospital, Gingee, and produced Ex.P.4-Wound Certificate as well as Ex.P.15 Accident Register Extract. The Petitioner also stated that he suffered fracture in his right leg. Due to the injury he suffered, he is having pain all over his body.

The Petitioner examined the doctor P.W.5 and he stated that on examination, he found the petitioner suffering from pain below the right leg knee cap. Further P.W.5 doctor stated that the petitioner is not in a position to walk around normally and is unable to stand on his own. Thus, the disability suffered by the Petitioner is fixed at 23%. The doctor issued P.W.12 disability certificate to that effect. However, P.W.5 doctor admitted that he has not given treatment to the Petitioner and no calculation memo is attached with Ex.P.12 disability certificate. In such circumstances, the Tribunal fixed the disability suffered by the Petitioner at 15%. However, considering the fracture and other injuries suffered by the Petitioner and in the absence of any contra evidence, this court is inclined to fix the disability suffered by the Petitioner at 20%.

(ii) Admittedly, there is no evidence to show that the Petitioner suffered any functional disability. According to P.W.1, by working as rice mill driver, he is earning Rs.6000/- per month. Even though oral evidence admits that he work as Advocate Clerk, there is no document to prove the same. As such, it is proper to fix the monthly income of the injured at Rs.2000/-.

(iii) Admittedly the petitioner has suffered fracture. However, the doctor has not stated anything about functional disability suffered by the Petitioner. Hence for the 20% disability suffered by the Petitioner, it will be appropriate to compensate at the rate of Rs.2000/- per percentage of disability. Thus the disability compensation will be Rs.2000/- x 20% = Rs.40,000/-.

(iv) The Tribunal has awarded various amounts under different heads. The same appears to be reasonable and it requires no interference by this court. Accordingly, the modified compensation is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Disability	15,000	40,000
2.	Pain and suffering	5,000	5,000
3.	Medical expenses	3,000	3,000
4.	Transport expenses	3,000	3,000

5.	Nutritious meal	2,000	2,000
6.	Loss of income	2,000	2,000
	Total	30,000	55,000

The compensation amount of Rs.55,000/- is payable by the respondents jointly and severally.

14. In the result,

(i) This Civil Miscellaneous Appeals are Partly Allowed;

(ii) CMA.No.1968 of 2014: The award amount is enhanced to Rs.7,51,000/- from Rs.2,00,000/- and 70% of the award amount being 5,25,700/- is payable to the Claimant in MCOP.No.566 of 2005.

(iii) CMA.No.1969 of 2014: The award amount is enhanced to Rs.55,000/- from Rs.30,000/- for the claimant in MCOP.No.576/2005.

(iv) The award amount will carry interest at the rate of 7.5% p.a. from the date of petition till the date of realisation;

(v) The respondents are jointly and severally liable to pay the award amount, along with proportionate accrued interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited. The liability ratio will be 50% : 50% on R1/Transport Corporation and R3/Insurance company.

(vi) Both the Appellants in CMA.1968 & 1969 of 2014 are entitled to withdraw their award amount along with accrued interest. The Tribunal shall pass necessary orders for disbursement of the award amount. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

nvsri
To

1. The Motor Accident Claims Tribunal, (Sub Court) Gingee.

2. The Section Officer, VR Section, High Court Madras.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.38755

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.38754

+2cc to Mr.G.Vasudevan, Advocate SR.No.38774

C.M.A.Nos.1968 and 1969 of 2014

GMV (31/10/2018)