

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.10.2018	Delivered on 01.11.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
CMA.Nos.731 and 732 of 2018
& CMP Nos.7013 and 7014 of 2018

United India Insurance Co. Ltd.,

Third Party Cell, Sillingi Building,
134, Greams Road,
Chennai 600 006.

.... Appellant in both the Appeals/2nd Respondent

-vs-

1. A.Semmalar

2. A.Muniammal ...Respondents 1&2/ Petitioners

3.M.Saravanan

.....3rd Respondent in/1st Respondent
CMA 731/2018

4. ***Royal Sundaram General Alliance Insurance. Co. Ltd,**
No.1, Club House Road, Chennai 2.

.... 4th Respondent/3rd Respondent
in both the Appeals

A.Semmalar

D.Kasiammal q ...Respondents 1to2/Petitioners

M.Saravanan

..... 3rd Respondent in /1st Respondent
CMA 732/2018

Civil Miscellaneous Appeals filed under Section 173 of Motor
Vehicles Act, 1988,

(i) against the judgment and decree in dated 20.11.2017 made
in MCOP No.5372 of 2012 on the file of the Motor Accidents

Claims Tribunal, Chief Court of Small Causes, Chennai.

(i) against the judgment and decree in dated 20.11.2017 made in MCOP No.5936 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar
(in both the Appeals)

For Respondents: Mr.K.Venkataramani, Senior Counsel
for M/s. M.K.Vijaya Raghavan for R1 & 2

Mr.S.Manohar for R4
for R3 - No Appearance

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

R.SUBRAMANIAN, J.

Both the appeals have been filed by the Insurance Company questioning the award of the Motor Accident Claims Tribunal, Chennai, (Chief Judge of Small Cause), Chennai, granting a sum of Rs.2,51,20,000/- as compensation for the death of one D.Arul Oli and a sum of Rs.10,38,000/- for the death of one A.Vasuki, in a motor accident that occurred on 06.01.2012, at about 6.15 a.m. near Athur Tolgate, Chennai to Trichy National Highway.

2. The case of the claimants as narrated in the Claim Petition as follows:

On 06.01.2012, the said Arul Oli was driving his own Toyota Qualis Car bearing Registration No.TN 72 9199, from Chennai to Cuddalore, the container lorry bearing Registration No. TN 04 AH 9499, owned by the 3rd respondent in the appeal one M.Saravanan and insured with the appellant Insurance Company was parked on the middle of the road without any warning signal. Due to poor visibility the driver of the car could sight the lorry only from a very close distance. This resulted in the car hitting the lorry from the rear side, resulting in the death of the driver of the car and his wife A.Vasuki. Contending that it was negligence on the part of the lorry driver in parking the lorry in the no parking area that too on a Highway that led to the accident, the claimants would seek a compensation of Rs.10,00,000/- for the death of Vasuki and Rs.3,00,00,000/- for the death of said Arul Oli. It is also contended that the said Arul Oli was a Marine Engineer and was drawing a monthly salary of about Rs.2,70,000/-. Therefore, according to the claimants, who are the daughter and mother of the deceased Arul Oli, they will be entitled to compensation for both pecuniary loss as well

as the loss of love and affection.

3. The Insurance Company resisted the Claim Petition contending that the accident did not occur in the manner suggested by the claimants. The lorry was parked only on the left extreme of the road and it is the driver of the Qualis Car namely the deceased Arul Oli, who drove the car at a very high speed and dashed against the lorry. It was further contended that the driver of the car contributed the accident to the great extent. The age and the income particulars of both the deceased persons were denied by the Insurance Company and the claimants were put to strict proof of the same.

4. The Tribunal, which heard the Original Petition on a consideration of evidence on record concluded that the accident occurred due to the negligent manner in which the lorry was parked on the road, which is admittedly no-parking zone. In coming to the said conclusion, the Tribunal relied upon the First Information Report Ex.P1, the Sketch Ex.P2 and the Charge Sheet Ex.P3.

5. The Tribunal also took note of the oral evidence of P.W.2 who had deposed that the lorry was parked in the no-parking zone without any warning light and the Qualis Car which came from Chennai proceeding towards Cuddalore dashed against on the rear right side of the lorry resulting in the accident. The Tribunal rejected the evidence of R.W.1 who was the employee of the Insurance Company and R.W.2 the driver of the lorry.

6. On the quantum, the Tribunal took the income of the deceased Arul Oli at Rs.2,70,000/- per month based on the Salary Certificate produced as Ex.P21. The Tribunal added 25% towards future prospects. After deducting 30% towards Income Tax fixed the yearly income at Rs.28,95,000/-. Deducting 1/3 towards personal expenses of the deceased, the Tribunal applied the multiplier of 13 and granted a sum of Rs.2,50,90,000/- towards loss of dependency. The Tribunal awarded Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the Tribunal worked out the total compensation of Rs.2,51,20,000/-.

7. Insofar as, the deceased Vasuki is concerned, the Tribunal took her income at Rs.6,000/- per month notionally, added 40% towards future prospects and deducting 1/3rd towards personal expenses, the Tribunal arrived monthly income at Rs.5,600/-. Applying a multiplier of 15, the Tribunal worked out the total loss of dependency at Rs.10,08,000/-, the Tribunal also awarded a sum of Rs.15,000/- each towards loss of estate and funeral expenses. Thus in all the total compensation worked out to Rs.10,38,000/-.

8. Aggrieved the Insurance Company is on appeal.

9. We have heard Mr.S.Arunkumar, learned counsel appearing for the appellant Insurance Company, Mr.K.Venkataramani, learned Senior Counsel appearing for Mr.M.K.Vijaya Raghavan, for the respondents 1 & 2/Claimants and Mr.S.Manohar, learned counsel appearing for the 4th respondent Insurance Company. The 3rd respondent, namely the owner of the lorry had remained ex-parte before the Tribunal, hence, notice to him, in this appeal is dispensed with.

10. Mr.S.Arunkumar, learned counsel appearing for the appellant Insurance Company would vehemently contend that the Tribunal was not right in fixing the entire negligence on the appellant Insurance Company, namely the insurer of the parked lorry. According to him, even though there was negligence on the part of the lorry driver in parking the lorry on the National Highway, the said act of wrongful parking alone would not absolve the car driver from following certain discipline while driving on the National Highway. Drawing our attention to the extent of damage suffered by the Car, Mr.S.Arunkumar would submit that the nature and the extent of the damages caused to the car itself would show that it was being driven at a very high speed without observing any speed restrictions. Mr.S.Arunkumar, learned counsel would further contend that the car driver could have avoided the accident, if only, he had taken proper care as the gap between the lorry and the central median was so wide that the car could have easily passed through the same.

11. Per contra, Mr.Manohar, learned counsel appearing for the 4th respondent insurer of the car would contend that the very fact that the lorry was parked on the thoroughfare lane of a National Highway, which admittedly has a service lane would amount to 100% negligence. Relying on the FIR and the Final Report filed by the Police, Mr.S.Manohar would submit that the lorry was parked on the Highway about 5 feet away from the edge of the Highway towards the centre median. Mr.S.Manohar, would also draw our attention to the Sketch filed as Ex.R2, which shows the location of the lorry and submit that the very fact that the lorry was parked 5 feet away from the left edge of the road would show that the parking of the lorry was the sole cause of the accident. Therefore, according to Mr.Manohar, the conclusion of the Tribunal regarding the negligence cannot be interfered with .

12. Mr.K.Venkataramani, learned Senior Counsel appearing for the respondents 1 and 2/claimants would contend that the Tribunal was justified in concluding that the parking of the lorry amounted to 100% negligence on the part of the driver of the lorry and therefore, the appellant Insurance Company liable to pay the entire compensation.

13. On quantum, Mr.S.Arunkumar, learned counsel appearing for the Insurance company would contend that the Tribunal erred in taking the salary of the deceased Arul Oli at Rs.2,70,000/- per annum for the entire period of 12 months. According to him, being a Marine Engineer, he would have worked for only six months for the year and therefore Rs.2,70,000/- per month should be taken as salary for 2 months.

14. Contending contra, Mr.Venkataramani, learned Senior Counsel appearing for the respondents 1 and 2/claimants would contend that there is evidence to show that the deceased was working continuously and therefore, the finding of the Tribunal on the quantum cannot be interfered with.

15. We have considered the rival submissions.

16. On the rival contentions that are advanced before us in this appeal, the following questions emerge for determination:

1. Whether the Tribunal was right in fixing 100% negligence on the part of the driver of the lorry and fastening the entire liability on the appellant Insurance Company?

2. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

17. As regards the manner in which the accident occurred, we have documentary evidence in the form of the FIR, Ex.P2 Sketch and the Final Report. The FIR would show that the lorry was parked on the road which is a National Highway and a no parking area. The accident occurred at about 6.15 a.m. in the morning in the month of January, normally the visibility is poor during the month of January particularly early in the morning. Mr.S.Arunkumar, has produced the timing of sunrise on the fate full day. From a perusal of the same, we find that the sun rise on the 6th January was at 6.34 hours. This would mean that the accident occurred prior to sun rise. Therefore, it is clear that there was very poor visibility at the time of the accident and the Toyato Qualis Car which was driven by deceased Arul Oli had came from behind and rammed against the Stationery Lorry resulting in death of at least 4 persons.

18. We find some force in the contentions of Mr.Arum Kumar, particularly in his submission relating to the speed at which the Toyato Qualis Car was driven at the time of the accident. The mangled remains of the car and the fact that the parts of the car were strewn all over the place in the site of the accident would definitely indicate that the car was being driven at a reasonably high speed at the time of the accident. The damages suffered by the car as could be assessed from the

Motor Vehicles Inspector's Report would definitely show that the car was being driven at a very high speed at the time of the impact. The driver of the lorry has been examined as R.W.2. He had deposed that he had parked the lorry to answer nature's call and the Toyota Qualis Car which was driven in such a high speed dashed against the lorry resulting in the accident.

19. Considering the entire evidence that has been placed before us, we are of the considered opinion that the entire negligence cannot be fastened only on the driver of the lorry. No doubt, the lorry was parked in the no-parking area that too on a Highway, but, we have also found that the driver of the Qualis Car was also driving the car at a very high speed violating the speed restrictions on the Highway. We are, therefore, of the considered view that the driver of the car had also contributed to the accident. We are, therefore, of the opinion that the negligence has to be apportioned between the lorry driver and the car driver.

20. On the quantum of the negligence, we find that there is a violation of the no-parking zone by the driver of the lorry and at the same time there is the violation of the speed restriction by the driver of the car. Of course, the violation of the speed restriction is only an assumption made by us on the basis of the material, which shows the extensive damage that has been caused to the car. We are, therefore, of the considered opinion that the negligence could be apportioned at 75% on the driver of the lorry and 25% on the driver of the car.

21. Since we have held that the driver of the car had also contributed to the accident to the extent of 25%, he or his dependants cannot seek compensation from the insurer of the car as he would be the tort-feasor. Therefore, the claimants in MCOP No.5936 of 2012 would be entitled to only the 75% compensation as payable by the appellant Insurance Company.

22. Insofar as the deceased Vasuki is concerned, it is a case of the composite negligence and not contributory negligence, therefore, the appellant Insurance Company and the 4th respondent Insurance Company are liable to pay the compensation for the death of the deceased Vasuki, inasmuch as she was a passenger in the car.

23. Mr.S.Arunkumar, learned counsel would submit that the quantum of compensation awarded is on higher side. Drawing our attention to the contract of service, which has been produced as Ex.P22, Mr.S.Arunkumar, would contend that the said contract was only for a period of 6 years and therefore, the Tribunal was not right in calculating the loss of dependency for taking into account the income for the period of 12 months. We are afraid such a contention cannot be entertained, in view of the fact that there is evidence to show that the deceased Arul Oli had

joined duty immediately within the month after discharge and it has been shown that he has been continuously employed.

24. Insofar as the deceased in MCOP NO.5372 of 2012 is concerned, the Tribunal has taken the income only at Rs.6,000/- and calculated the loss of dependency at Rs.10,08,000/-. We do not think that the quantum can be said to be on the higher side.

We, therefore, see no reason to interfere with the award on the quantum. We had already decided that the contribution of the lorry was to an extent of 75% to the accident and the contribution of the driver of the car was to the extent of 25%. Therefore, the appellant Insurance Company as the insurer of the lorry would be liable to pay only 75% of the compensation awarded by the Tribunal. The remaining 25% liability would be on the insurer of the car. Since we have found that the driver-cum-owner of the car had contributed to the accident to the tune of 25%, the 4th respondent Insurance Company will not incur any liability insofar as the MCOP No.5936 of 2012 is concerned.

25. At the same time, insofar as the deceased Vasuki, is concerned, she was only a passenger, it is a case of composite negligence and not contributory negligence, therefore, the appellant Insurance Company would be liable to an extent 75% and the 4th respondent Insurance Company, the insurer of the car, would be liable to the extent of 25%.

26. In the light of the above, both the appeals are partly allowed. The negligence on the part of the driver of the lorry is fixed at 75% and the negligence on the part of the driver of the car is fixed at 25%. However, there shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petitions are closed.

27. The Insurance Companies are directed to deposit their respective shares of the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, claimants will be entitled to withdraw the compensation as per the apportionment made by the Tribunal in MCOP No.5936 of 2012. Insofar as MCOP No.5372 of 2012 is concerned, the deceased was the mother of the 1st claimant and daughter-in-law of the 2nd claimant, a mother-in-law cannot be a dependent on daughter-in-law. Therefore, the apportionment made granting Rs.9,00,000/- to the daughter and Rs.1,38,000/- mother-in-law is set aside and the entire compensation of Rs.10,38,000/- with accrued interest and costs is directed to be paid over to the 1st claimant Ms.Semmalar, daughter of the deceased Vasuki.

28. A Memo has been filed by the learned counsel for the appellant stating that the name of the 4th respondent Insurance Company has been changed as Royal Sundaram General Insurance Company Ltd., instead of Royal Sundaram Aliance Insurance Company Ltd. The Memo is ordered, the Registry is directed to amend the cause title showing the 4th respondent in both the Appeals as Royal Sundaram General Insurance Company Ltd., instead of Royal Sundaram Aliance Insurance Company Ltd. Registry is directed to carry out the amendment before issuing the order copy.

Sd/-
Assistant Registrar(CCC)

***Amended as per order dated 01/11/2018
made in CMA. 731 & 732/18**

//True Copy//

Sub Assistant Registrar

jv

To

1.The Motor Accident Claims Tribunal,
Chief Court of Small Causes,
Chennai.

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

+2cc to Mr.S.Manohar, Advocate, S.R.No.75433 &75434

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.76116

+2cc to Mr.M.K.Vijayaraghavan, Advocate, S.R.No.75068 &75069

CMA.Nos.731 and 732 of 2018
& CMP Nos.7013 and 7014 of 2018

GP(CO)
GSP(31/01/2019)

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