

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.3077, 3078 and 3174 of 2010
and connected Miscellaneous Petitions.

C.M.A.Nos.3077 and 3174/2010:-

- 1.The Oriental Insurance company Ltd.,
Model Branch Office, C-31, City Centre
Sector-4 B.S.City
Bokaro District, Jharkand State
- 2.The Oriental Insurance company
Ltd., Divisional Office, Parimalam
Complex, 2nd floor, No.7, E.V.N.Road
Erode-11 ..Appellants/Respondents 3 & 4

CMA.No.3078/2010:-

The Oriental Insurance company Ltd.,
Model Branch Office, C-31, City Centre
Sector-4 B.S.City
Bokaro District, Jharkand State
vs ..Appellant/Respondents 4

C.M.A.Nos.3077/2010

- 1.K.Vidyasagar
- 2.R.Anbazhagan
- 3.G.Mahadev Singh
- 4.M.Mani ..Respondents/Claimant &
Respondents 1,2 & 5

CMA.No.3174/2010:-

- 1.Selvaraj
- 2.Anbazhagan
- 3.G.Mahadev Singh ..Respondents/Claimant &
Respondents 1 & 2

CMA.No.3078/2010:-

- 1.C.Annapoorani
- 2.R.Anbazhagan
- 4.M.Mani
- 4.G.Mahadev singh ..Respondents/Claimant &
Respondents 1 & 3

Civil Miscellaneous Appeals 3077 and 3078/2010 filed under Section 173 of Motor Vehicles Act, against the order and decree dated 29th April 2010 made in M.C.O.P.No.237/2007 respectively and 261/2007 on the file of Additional District Judge, (Motor Accident Claims Tribunal), Fast Track Court No.4, Bhavani.

Civil Miscellaneous Appeal No.3174/2010 filed under Section 173 of Motor Vehicles Act, against the order and decree dated 9th April 2010 made in M.C.O.P.No.55/2009 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani.

For appellant/Insurance company
in all the above CMAs: : Mr.S.Manohar

For Respondent(s) : : Mr.C.Kulanthaivel for R1
in CMA.3077/2010
Mr.S.Kaithamalai Kumaran for R1
in CMA.3078/2010
Mr.MA.P.Thangavel for R1
in CMA.3174 of 2010
R2 to R4 - No appearance
in CMA.No.3077 & 3078 of 2010
& R2 & R3-No Appearance in
CMA.Nos.3174 of 2010

COMMON JUDGMENT

The Appellants in the above Civil Miscellaneous Appeals are the Insurance company and challenge the order and decree dated 29th April 2010 made in M.C.O.P.No.237/2007 and 261/2007 on the file of Motor Accident Claims Tribunal, Fast Track Court No.4, Bhavani and the order dated 9th April 2010 made in M.C.O.P.No.55/2009 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. (i) The case of the Petitioner/claimant[Selvaraj] in MCOP.No.55/2009:- is as follows:-

On 15.04.2007 at about 6.45 p.m., while the petitioner in MCOP.NO.55/2009 was riding his two wheeler bearing Reg.No.TN-36-H-7185 along with his friend Sivaraj in Salem to Coimbatore Main road, while going near Cauvery Bridge, N.H-47 at Komarapalayam, the 1st respondent driven Tempo Van bearing Reg.No.TN-31-A-3459 came at high speed and dashed against the two wheeler of the Petitioner as well as other two wheeler bearing Reg.No.33-AF-

4268 resulting in the Petitioner and his friend thrown away, causing multiple grievous injuries to the Petitioner. The accident occurred due to negligence of the 1st respondent driver only. The Petitioner suffered serious injuries. The Petitioner underwent treatment as inpatient in Lotus Hospital, Erode, for nearly one month, incurring heavy medical expenses. The said offending vehicle driven by the 1st respondent belongs to the 2nd respondent and the same was insured with the 3rd respondent. The Petitioner was aged 27 years and by carrying on electronic business, was earning Rs.10,000/- per month. Due to the injury he suffered, he is unable to carry on his avocation resulting in loss of income to him. Hence, he seeks a sum of Rs.2,00,000/- as compensation from the respondents.

(ii) The case of the Petitioner in MCOP.No.237/2007 [K.Vidyasagar] is as follows:-

On 15.04.2007, while the petitioner was travelling in his Bajaj motor cycle bearing Reg.No.TN-33-AF-4268 from Erode to Komarapalayam on Coimbatore-Salem National Highway 47 from west to east, near Cauvery bridge, at about 6.45 p.m., another motor cycle bearing Reg.No.TN-36-H-7185 going in front of his motor cycle from west to east and the 1st respondent drove the Tempo van bearing Reg.No.TN-31-A-3459 at high speed, and dashed against the motor cycle bearing Reg.No.TN-36-H-7185 and caused death of Sivarasu, pillion rider in the motor cycle bearing Reg.No.TN-36-H-7185 and hit against the Petitioner's motor cycle, resulting in the petitioner thrown out of the vehicle and fell down and sustained grievous injuries. The Petitioner taken treatment in Lotus Hospital, Erode. It is stated that due to injuries, he is unable to carry on his avocation viz., Screen Printing Work, by which he used to earn Rs.10,000/- per month. Thus, the Petitioner/claimant seeks a sum of Rs.5,00,000/-.

(iii) The case of the Petitioner in MCOP.No.261/2007 [C.Annapoorani] is as follows:-

On 15.04.2007, while the deceased Sivarasu was travelling as pillion rider on the two wheeler bearing Reg.No.TN-36-H-7185, on the east west Salem-Coimbatore NH 47 Road, the bike was driven by one Selvaraj carefully. At that time, near Cauvery bridge, the 1st respondent drove the Tempo van bearing Reg.No.TN-31-A-3459 at high speed, and dashed against the motor cycle bearing Reg.No.TN-36-H-7185 and caused death of Sivarasu on the spot itself and hit against another motor cycle. The claimant/mother of the Sivarasu states that the accident occurred due to negligence of the 1st respondent. It is stated that the deceased Sivarasu was aged 27 years and by taking Tution, was earning Rs.7500/- per month. The Petitioner was stated to be depending upon the income of the deceased and he was the only bread winner

of the Petitioner. Hence, the petitioner seeks a sum of Rs.5,00,000/- as compensation from the respondents.

3. In MCOP.No.55/2009, by filing counter, the 3rd and 4th respondents/insurance company contends that the accident does not occur in the manner alleged by the Petitioner. It is only due to negligence of the Petitioner, the accident occurred. The age, income and occupation as alleged in the Petitions are not admitted. The vehicle bearing Reg.No.TN-31-A-3459 belonging to the 2nd respondent was used for illegal purpose for transporting Government rice illegally to other states at the time of the accident. The same will amount to violation of Insurance policy condition. Komarapalayam Police also filed charge sheet against the 1st respondent u/s.7 of the Essential Commodities Act, apart from other IPC provisions. Thus, the 3rd and 4th respondents are not liable to pay any compensation. The Petitioner in MCOP.No.55/2009 was following another Motor cycle and due to over speed, dashed on the motor cycle, lost control and hit against the 1st respondent van which was coming in the opposite direction. As the pillion rider of the motor cycle died and the rider of the two motor cycle injured, false case was registered against the van driver, 1st respondent herein. The accident occurred only due to negligence of the Petitioner in MCOP.No.55/2009. Thus, the 3rd and 4th respondents seeks dismissal of the Petition.

4. Insofar as MCOP.No.237/2007 and 261/2007 are concerned, counter and additional counter statements filed by the 3rd and 4th respondents denying the averments made in the above MCOPs and it is stated that regarding the alleged accident, the Komarapalayam Police filed charge sheet against the driver of the vehicle under Section 279, 337 and 304(A) IPC r/w. Section 7 of Essential Commodities Act. The District Revenue Officer, Namakkal District, had initiated proceedings against the vehicle concerned including the owner and driver for the illegal transportation of the goods belonging to the Government without valid permit. The 3rd and 4th respondents thus stated that they are not liable to compensate the insured and the petitioner.

5. Before the Tribunal, MCOP.Nos.237/2007 and 261/2007 were taken up for Joint Trial and MCOP.No.55/2009 was taken up by Tribunal separately. In MCOP.No.55/2009, on the side of Petitioner, P.W.1 & P.W.2 was examined and produced documents Ex.P.1 to Ex.P.12. On the side of the respondents, R.W.1 was examined but no document was marked. In joint trial of MCOP.No.237 and 261/2007, P.W.1 to 3 were examined and Ex.1 to Ex.P.36 were marked. On the side of respondents, R.W.1 was examined and Ex.R.1 was marked. After analyzing the evidence on record, the Tribunal found negligence of the 1st respondent alone

caused the accident, passed an award for a sum of Rs.87,450/- in MCOP.No.3174/2010 payable by respondents 1 to 4 jointly and severally and Rs.2,24,853/- in MCOP.No.237/07 and Rs.3,77,000/- in MCOP.No.261/2007 payable by the respondents 1 to 5 jointly and severally. Aggrieved over the said finding of the Tribunal, the 3rd and 4th respondents have come forward with the present appeals.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the Appellants/Insurance company submits that the tribunal, failed to appreciate the fact that the 1st respondent driven tempo van bearing Reg.No.TN-31-A-3459 was carrying smuggled rice meant for fair price shops and due to the accident, the driver and the owner of the vehicle who are the 1st and 2nd respondent herein were charge sheeted by the Police u/s.7 of the EC Act. The vehicle was involved in carrying smuggled goods which amounts to violation of policy condition and as such, the Tribunal ought to have exonerated the 3rd and 4th respondents. The 1st and 2nd respondents were carrying smuggled rice and thereby violated provisions of Motor Vehicles Act, permit conditions and also policy conditions and therefore, the 3rd and 4th respondents are not liable to pay any compensation. The Tribunal provided compensation under different heads in all the above MCOPs in an excessive manner. Thus, the 3rd and 4th respondents/appellants seek to set aside the award passed by the Tribunal by entertaining the appeal.

8. Per contra, the learned counsel for the Petitioner/claimant in each MCOP/CMA contends that the accident having occurred due to negligence of the 1st respondent driver, the respondents as the driver, owner and insurer of the offending vehicle are liable to pay the compensation. The Tribunal, considering the nature of injuries suffered by the injured victim and also considering the loss of life in respect of deceased C.Sivarasu, has passed just and fair award which needs no interference. Thus the Petitioner/claimant in all the appeals seek for dismissal of the appeals.

9. The only contention raised by the Appellants/Insurance company before this court is that the Tempo van bearing Reg.No.TN-31-A-3459 belonging to the 2nd respondent and driven by 1st respondent which was involved in the accident with another motor cycle bearing Reg.No.TN-33-AF-4268 and the Mini van was carrying PDS rice meant for Civil Supplies Corporation illegally

and the same was smuggled to places outside the State and the same is against the provisions of law. Thus, the learned counsel for the appellants/ 3rd and 4th respondents / Insurance company contends that it amounts to violation of Permit as well as Insurance Policy conditions. Hence, he seeks to exonerate the 3rd and 4th respondents /Insurance company from liability.

10. It is clear from the evidence of P.W.1, the Petitioner in MCOP.No.55/2009 that as he was riding the two wheeler bearing Reg.No.TN-36-H-7185, the 1st respondent driven Tempo van dashed against him. The Police also registered Ex.P.1-FIR against the 1st respondent driver only. After completion of investigation, charge sheet also filed against the 1st respondent only. The contents of Ex.P.1-FIR and Ex.P.6-Charge sheet corroborates the evidence given by P.W.1 and to the manner in which the accident occurred. The Petitioner also produced copy of the Rough sketch and the observation Mahazar at the accident spot prepared by the Police as Ex.P.2 and Ex.P.4 as the same also supports the claim of the Petitioner only. It is also clear Ex.P.4 and Ex.P.5-MVI reports that there was no mechanical defect. There is no contra evidence on the side of the respondents regarding the manner in which the accident occurred. As such, the Tribunal is justified in fixing the negligence on the 1st respondent tempo van driver alone has caused the accident. The Tribunal after analyzing the evidence, held that the respondents failed to prove that the rice carried in the Tempo van illegally and only the registration of FIR against respondents 1 and 2 cannot be concluded that 1st and 2nd respondents were carrying ration rice illegally in the tempo van. The 3rd respondent examined R.W.1 and he has spoken about violation of policy condition. The Police laid charge sheet u/s.7 of the EC Act. The burden is on the 1st and 2nd respondent to prove that they have not committed any violation of Policy conditions. However, the 1st respondent and 2nd respondent have not come forward to contest the matter. As such, the contention of the respondents 3 and 4, based on Ex.P.1-FIR and Ex.P.6-charge sheet that the 2nd respondent vehicle was involved in transporting PDS rice illegally at the time of the accident is to be accepted. As stated earlier, since there is violation of policy condition, the contention of 3rd and 4th respondents that they are entitled to recover the award amount from the 2nd respondent/owner is to be accepted.

11. The Tribunal has passed award for a sum of Rs.87,450/- in MCOP.No.55/2009 and Rs.3,77,000/- in MCOP.No.261/2007 and Rs.2,24,853/- in MCOP.No.237/2007. The conclusion of the Tribunal towards quantum of compensation awarded is not

seriously disputed by either side counsel.

12. Considering the fact that the Petitioner suffered multiple grievous injuries which was established by Ex.P.7-Wound Certificate and Ex.P.8-Discharge summary, Ex.P.10-Disability certificate, the compensation provided by the Tribunal to the tune of Rs.87,450/- is appropriate and the same does not warrant any interference. Likewise, in the other MCOP.Nos.237/07 and 261/2007, the compensation awarded is based on materials available on record, which requires no interference. Accordingly, the quantum of the award passed by the Tribunal is confirmed. As such, the award amount awarded by the Tribunal in MCOP.No.237/07 at Rs.2,24,853/- and in MCOP.No.261/2007 at Rs.3,77,000/- is also confirmed.

13. In the result,

(i) CMA.Nos.3174/2010, 3077/2010 and 3078/2010 are allowed.

(ii) PAY AND RECOVERY:- The appellants/Respondents 3 and 4 are directed to pay the compensation award amount to the Petitioners/claimants at first instance along with proportionate accrued interest and cost, if not already deposited and recover the same from the owner of the offending vehicle, bearing Reg.No.TN-31-A-3459 thereafter, in the manner known to law.

(iii) The award amount granted by the Tribunal viz., Rs.87,450/- in MCOP.No.55/2009; Rs.3,77,000/- in MCOP.No.261/2007 and Rs.2,24,853/- in MCOP.No.237/2007, are confirmed.

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

(v) The claimants in each CMA are entitled to withdraw the same along with accrued interest, less the amount, if any already withdrawn.

(vi) The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount. No costs. Consequently, connected CMPs are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Additional District Judge,
(Motor Accident Claims Tribunal)
Fast Track Court No.4,
Bhavani.
2. The Subordinate Judge,
(Motor Accidents claims Tribunal)
Bhavani.

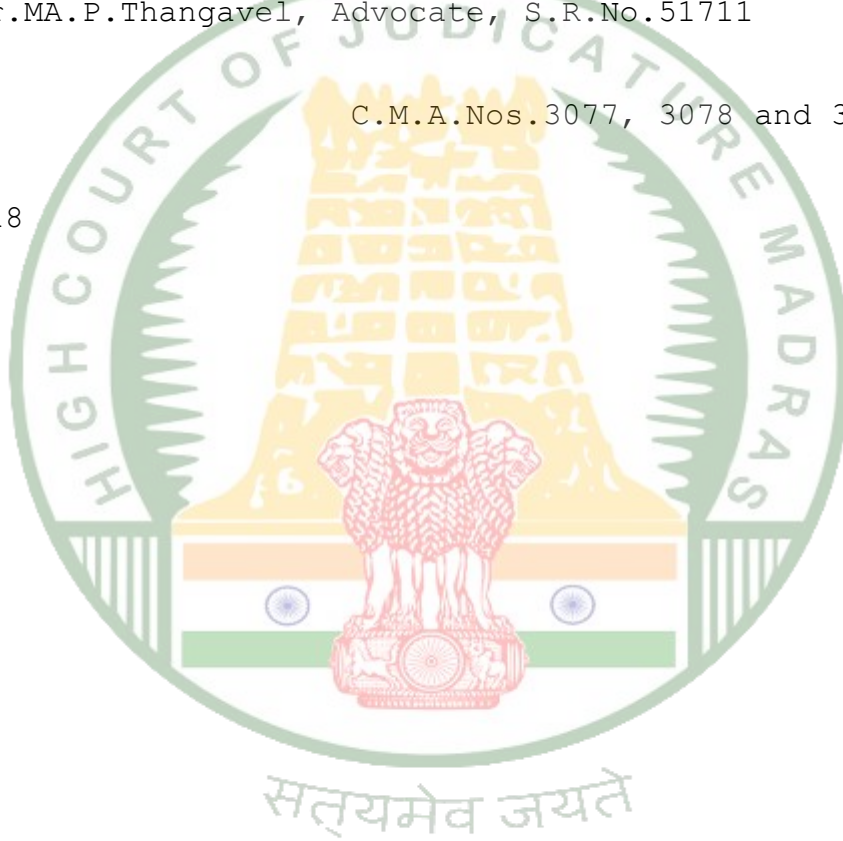
+3cc to Mr.S.Manohar, Advocate, S.R.No.50951 & 50953

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.51286

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.51711

C.M.A.Nos.3077, 3078 and 3174 of 2010

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