

IN THE JUDICATE OF MADRAS HIGH COURT

DATED : 02.01.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

C.M.A.Nos.2202 to 2204 of 2013

and

M.P.Nos.1, 1 & 1 of 2013

The New India Assurance Company Ltd.,
Dharapuram,
Thiruppur District.

... Appellant/2nd Respondent
in all the above CMAs

Vs.

1.Saraswathy
2.R.Krishnamurthy
3.Mrs.Parvathy
4.M/s.Royal Sundaram Alliance,
Insurance Company Ltd.,
No.45/46 Sundaram Tower,
Whites Road, Chennai-600 014.

5.M/s.Bajaj Alliance Insurance Company Ltd.,
Branch Office, Thiruppur.

... Respondents/Petitioners/Respondents 1,3,4 & 5
in all the above CMAs

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment dated 28.01.2013 made in M.A.C.T.O.P.Nos.315, 317 & 319 of 2010 on the file of the Motor Accidents Claims Tribunal at Dharapuram, Thiruppur District.

For Appellant in all : Mr.P.G.Padmanabhan

For Respondents in all : Mr.Ma.P.Thangavel (For R1)
Mr.M.Guruprasad (For R2)
Mr.G.Vasudevan (For R4)
Mr.S.Manohar (For R5)
No appearance for R3

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

All the above three appeals have arisen out of a common award dated 28.01.2013 made in M.C.O.P.Nos.315, 317 & 319 of 2010 passed by the Motor Accidents Claims Tribunal at Dharapuram. The appellants in all the above three appeals are one and the same person viz., The New India Assurance Company Ltd.,

2.Since the parties in all the above appeals are one and the same and the issues involved are interconnected, these appeals are disposed of by way of this common judgment.

3.The 1st respondent herein is the claimant before the Tribunal. M.C.O.P.No.315 of 2010 has been filed by the claimant for the death of her son Sasivarathan in a motor accident that had occurred on 28.02.2010 involving three vehicles viz i) Maruti Zen Car bearing Reg.No.TN-33-AY-6699 owned by the 2nd respondent herein and insured with the appellant-New India Assurance Company Ltd., ii)Honda City Car bearing Reg.No.TN-39-AF-3468 owned by one Parvathi and insured with the 4th respondent herein - M/s.Royal Sundaram Alliance, iii) Maruti Omni car bearing Reg.TN-39-Y-1460 in which the 1st respondent/claimant and her son were travelling, while the same was driven by her husband. Since in the same accident the 1st respondent's husband Varatharajan also died, she has filed M.C.O.P.No.317 of 2010 claiming a sum of Rs.50 lakhs as compensation. As the 1st respondent herself sustained injuries in the said accident, she has filed M.C.O.P.No.319 of 2010 claiming a sum of Rs.10 lakhs as compensation.

4.The Tribunal has passed an award in M.C.O.P.No.315 of 2010 for a total sum of Rs.6,86,000/- as against the claim of Rs.30 lakhs, for the death of the son of the 1st respondent and in M.C.O.P.No.317 of 2010 for a sum of Rs.16,08,000/- as against the claim of Rs.50 lakhs for the death of the husband of the 1st respondent and in M.C.O.P.No.319 of 2010 for a sum of Rs.2,52,220/- as against the claim of Rs.10 lakhs for the injuries sustained by the 1st respondent.

5.The present appeals have been filed by the New India Assurance Company, insurer of the Maruti Zen car bearing Reg.No.TN-33-AY-6699 owned by the 2nd respondent herein, since the entire liability for paying the compensation was fixed on the part of New India Assurance Company Ltd., holding that the accident had occurred only due to the rash and negligent act of the car insured with the them.

6.The brief facts, which are necessary to dispose of these appeals, are as follows:- On 28.02.2010 1st respondent/claimant and her son Sasivarathan were travelling in Maruti Omni car bearing Reg.No.TN-39-Y-1460, which was driven by her husband Varatharajan, on Trichy Main Road from East to West, keeping left side of the road, in a moderate speed. While the said car was nearing Vellakovil Saratha Vanaspathi Oil Mill, another Maruti Zen car bearing Reg.No.TN-33-AY-6699 owned by the 2nd respondent herein and insured with the appellant-Insurance Company, came behind and attempted to overtake the said Maruti Omni Car in a rash and negligent manner, by touching the right side of body of the Omni car, and in that processes, it dashed against another Honda City car bearing Reg.No.TN-39-AF-3468 which came from opposite direction, as a result of which the said Honda City car moved towards it's right side and dashed against the Maruti Omini car, in which the 1st respondent and her son were dravelling being driven by her husband Varatharajan. In the said accident, the son and husband of the 1st respondent died and she sustained injuries. Hence, she has filed the above said OPs before the Tribunal claiming compensation as against the owner of the Maruti Zen Car and its insurer as well as the owner and insurer of the Honda City Car.

7.The claim made by the claimant was resisted by the appellant-Insurance Company before the Tribunal, by denying that the accident was due to the rash and negligent driving of the driver of the Maruti Zen Car insured with the appellant. Likewise, the other Insurance Companies have also filed their respective counters and resisted the claim of the claimant.

8.Before the Tribunal, in order to prove her claim, the claimant examined herself as P.W.1 besides examining one Dr.Periyasamy as P.W.2 and marked 26 documents as Ex.P.1 to Ex.P.26. None of the Insurance Company let in evidence.

9.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Maruti Zen Car bearing Reg.No.TN-33-AY-6699 owned by the 2nd respondent herein and insured with the appellant-Insurance Company. By coming to such a conclusion, the Tribunal has calculated the compensation under different heads and passed the award in all the three claim petitions as stated supra. Now, aggrieved over the same, the present appeals have been filed by the appellant Insurance Company.

10.The learned counsel appearing for the appellant/Insurance Company mainly submitted that the accident is the result of the collision of three vehicles and under such circumstances, the Tribunal ought to have fixed contributory

negligence on the part of the deceased Varatharajan, who had driven the Maruti Omni Car. Further, the Tribunal has failed to note that Honda City Car bearing Reg.No.TN-39-AF-3468 came to the wrong side of the road and dashed against the Maruti Omni Car. According to the learned counsel for the appellants, since the accident is the result of the contributory negligence, the entire liability fixed on the appellant-Insurance Company is apparently wrong and the same is liable to be set aside.

11. So far as the quantum of compensation is concerned, the compensation awarded by the Tribunal on different heads is extremely on the higher side and the same needs proper modification by way of recalculation.

12. Per contra, the learned counsel appearing for the 1st respondent/claimant made his submissions supporting the award passed by the Tribunal.

13. Similarly, the learned counsel for the respondent 2 as well as the learned counsel for the respondents 4 & 5 (Insurance Companies) have also made their submissions supporting the award passed by the Tribunal.

14. Keeping in view the submissions made on either side, We have carefully perused the materials available on record.

15. It is the main submission of the learned counsel appearing for the appellant-Insurance Company that when the accident is the result of collision of three vehicles, the Tribunal ought not to have fixed the entire liability on the part of the driver of the Maruti Zen Car bearing Reg.No.TN-33-AY-6699 insured with the appellant/Insurance Company alone; that the Tribunal has also failed to note the fact that at the time of accident, Honda City Car came from the opposite direction and entered into a wrong side of the road and caused the accident; therefore, negligence has to be attributed to both the vehicles by fixing certain percentage of negligence on the part of driver of the Honda City Car also.

16. But, We are unable to appreciate the submission made by the learned counsel for the appellant, since on the side of the appellant/Insurance Company absolutely no evidence was adduced before the Tribunal. On the other hand, P.W.1 (claimant), who had sustained injuries in the accident, had clearly spoken in her evidence that at the time of accident, while she, her son and her husband were proceeding in the Maruti Omni Car, the car insured with the appellant Insurance Company viz., Maruti Zen Car bearing Reg.No.TN-33-A&Y-6699 came behind them at hectic speed and overtook the Maruti Omini Car in a rash and negligent manner touching the right side body of the Omni Car and in that

process, it dashed against the Honda City Car which was coming from the opposite direction, as a result of which, Honda City Car moved toward its right side and dash against Omni Car. Therefore, the accident had occurred only due to the negligent act committed by the driver of the Maruti Zen Car insured with the appellant/Insurance Company. In fact, no favourable reply was elucidated in the cross-examination of P.W.2 by the Insurance Company. When that being the position, We do not find any infirmity in the findings rendered by the Tribunal in fixing the entire liability on the part of the Maruti Zen Car insured with the appellant/Insurance Company. As such, absolutely We do not find any infirmity in the findings of the Tribunal that the appellant/Insurance Company is liable to pay the compensation amount.

17. So far as the quantum of compassionate is concerned, it is seen that in M.C.O.P.No.315 of 2010, which was filed for the death of the son of the claimant, the Tribunal has awarded a sum of Rs.6,86,000/- as against the claim of Rs.30 lakhs. On a perusal of the materials available on record, We find that at the time of accident, the deceased Sasivarnan (son of the claimant) was aged 20 years and studying in B.E (Mechanical) first year in Perundurai Gongu Engineering College. It is further case of the claimant that he was also working as part time employee in Venna Apparals Baniyan Company owned by his father Varatharajan. Thus, the claimant has put forth the case that while studying B.E., the deceased Sasivarnan was earning Rs.10,000/- per month by working as a part time employee. But, except the oral evidence of P.W.1, no documentary evidence was produced to show the income earned by the deceased Sasivarnan. Therefore, the Tribunal has rightly rejected the case put forth by the claimant and fixed a sum of Rs.6,000/- as monthly income of the deceased Sasivarnan, on a finding that on completion of B.E. Course, there is every possibility for him to earn a minimum sum of Rs.6,000/- per month. Thus, by fixing a sum of Rs.6,000/- as monthly income of the deceased Sasivarnan, the Tribunal deducted 1/3rd amount and arrived at a sum of Rs.4,000/- and thereafter, by applying multiplier 18 based on the age of the deceased Sasivarnan, who was aged 20 years at the time of accident, the Tribunal has awarded a sum of Rs.6,50,000/- as compensation towards loss of income. That apart, the Tribunal has awarded a sum of Rs.30,000/- for loss of love and affection, a sum of Rs.3,000/- for transport expenses and a sum of Rs.5,000/- for funeral expenses. Thus, the Tribunal has passed an award for a total sum of Rs.6,86,000/- for the death of the claimant's son Sasivarnan as against the claim of Rs.30 lakhs. Absolutely, We do not find any infirmity in awarding the said compensation by the Tribunal.

18. In respect of the claim of Rs.50 lakhs made by the

claimant for the death of her husband Varatharajan, it is the case of the claimant that her husband Varatharajan (deceased) was earning a sum of Rs.50,000/- per month, by running a banniyan company in the name and style of Veena Apparals Banniyan Company and also from the agricultural operations in three acres land owned by him. In order to prove the income earned by the deceased Varatharajan before the Tribunal, on the side of the claimant, Ex.P.17-Income Tax Return for the years 1995-2005 was produced to show that he was an income tax assessee. The claimant has also produced Ex.P.18-Settlement Deed showing that he was owning the land. But, the Tribunal by rightly rejecting the said documents has come to the conclusion that the said documents will not be helpful to come to a conclusion that the deceased was earning a sum of Rs.50,000/- per month. Further, the Tribunal by considering the present day cost of living, by fixing a nominal sum of Rs.15,000/- as monthly income of the deceased, by applying multiplier 16 and by deducting 1/3rd towards personal expenses, has arrived at a sum of Rs.15,60,000/- as loss of income. That apart, the Tribunal has awarded a sum of Rs.40,000/- for loss of consortium and a sum of Rs.3,000/- for transportation and a sum of Rs.5,000/- for funeral expenses. Thus, the Tribunal has passed an award for a total sum of Rs.16,08,000/- as compensation for the death of the husband of the claimant. We find that the Tribunal has awarded a reasonable compensation even in this case also. Hence, the same needs no interference from this Court.

19. So far as the personal injuries sustained by the claimant are concerned (M.C.O.P.No.319 of 2010), the Tribunal has awarded a sum of Rs.2,52,220/- as against the claim of Rs.10 lakhs. On a perusal of the materials available on record, it is seen that on account of the accident, the claimant has sustained fracture injury on the left thigh and she took treatment in the hospital from 28.02.2010 to 09.03.2010 as inpatient. In order to prove the percentage of the disability suffered by the claimant, Disability Certificate was marked as Ex.P.25, which would show that the disability suffered by the victim is 28%. But, the Tribunal by fixing the disability suffered by the claimant at 25% has awarded a sum of Rs.50,000/- for disability, at the rate of Rs.2,000/- for each percentage of disability. That apart, the Tribunal has awarded a sum of Rs.1,69,720/- for medical expenses, which is supported by medical bills and a sum of Rs.20,000/- for pain and sufferings, a sum of Rs.7,500/- for extra-nourishment and a sum of Rs.5,000/- for transportation. Thus, the Tribunal has passed an award for a total sum of Rs.2,52,220/-. Even in this case also, We do not find any infirmity in the compensation awarded by the Tribunal as the same is a reasonable compensation.

20. On the whole, the appellant/Insurance Company has not

made out any case compelling this Court to make an interference with the award passed by the Tribunal. The compensation amounts awarded by the Tribunal under different heads in all the above three cases are well within the principles laid down by the Hon'ble Supreme Court in various decisions. Hence, all the above appeals fail and the same are liable to be dismissed.

In fine, all the above three appeals are dismissed. The appellant/Insurance Company is directed to deposit the entire compensation amount, after deducting the amount if any already paid, with accrued interest as awarded by the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st respondent/claimant is entitled to withdraw the same by making necessary application before the Tribunal. Connected Miscellaneous Petitions are also closed. No costs.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

To,

1. The Motor Accidents Claims Tribunal,
Dharapuram, Thiruppur District.

2. The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+3cc's to Mr.P.G.Padmanabhan, Advocate SR.No.39, 40, and 41
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.311
+1cc to Mr.S.Manohar, Advocate SR.No.111
+1cc to Mr.G.Vasudevan, Advocate SR.No.97

C.M.A.Nos.2202 to 2204 of 2013
and
M.P.Nos.1, 1 & 1 of 2013

NMI (CO)
GN (05/02/2018)