

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1986 of 2003
and C.R.P.Nos.558 and 559 of 2003

C.M.A.No.1986 of 2003:-

National Insurance Co.Ltd.,
Jawaharlal Nehru Street
Pondicherry ..Appellant/2nd Respondent

Versus

1.Habeeb Rahman
2.Razia Begum
3.K.Gnanaseelan ..Respondents/Petitioner 1 & 2,
(3rd respondent exparte) 1st Respondent

C.R.P.Nos.558 and 559 of 2003:-

Razia Begam ..Petitioner in Crl.R.P.No.558 of 2003

Habib Rahman ..Petitioner in Crl.R.P.No.559 of 2003

Versus

The National Insurance Company Ltd.,
Jawaharlal Nehru Street,
Pondichery. ..Respondent in both the petitions

Prayer in C.M.A.No.1986 of 2003:-

C.M.A., filed against the Judgment and decree made in
M.C.O.P.No.1107/2000 dated 16.10.2001 on the file of the Motor
Accident Claims Tribunal, Principal Subordinate Court,
Cuddalore.

C.R.P.Nos.558 and 559 of 2003:- Civil Revision Petitions
filed against the fair and decreetal order made in I.A.Nos.2181
of 2002 and 2182 of 2002 in M.C.O.P.No.1107/2000 on the file of
the Motor Accident Claims Tribunal, Prl.Sub-Judge, Cuddalore,
dated 07.01.2003.

C.M.A.No.1986 of 2003:-

For Appellant : Mr.N.Vijayaraghavan

For respondents : Mr.R.Muralidharan for R1 and R2.

C.R.P.Nos.558 and 559 of 2003:-

For Appellants : Mr.S.R.Muralidharan

For Respondent : Mr.N.Vijayaraghavan

C O M M O N O R D E R

1.1. The Civil Miscellaneous Appeal is filed against the fair and decreetal order made in M.C.O.P.No.1107/2000 dated 16.10.2001 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Cuddalore.

1.2 The Revision Petitioners have filed the above Civil Revision Petitions against the fair and decreetal order dated 07.01.2003 made in I.A.Nos.2181 of 2002 and 2182 of 2002 in M.C.O.P.No.1107/2000 on the file of the Motor Accident Claims Tribunal, Prl.Sub-Judge, Cuddalore.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners in M.C.O.P.No.1107 of 2000 is that on 24.01.2000 at about 3.30 p.m., while the 1st petitioner was going with his son to school in his bicycle in the Bungalow street near V.O.C.Lane at Panurthi, the lorry bearing Registration No.TN-28-F-6316 belonging to the 1st respondent and insured with the 2nd respondent came at high speed driven in rash and negligent manner dashed against the cycle, resulting in the death of the 6 year old son of the petitioners on the spot itself. The petitioners were looking forward to future with great hope of the deceased minor son. According to the Petitioners, the accident occurred only due to the negligence of the 1st respondent lorry driver. The deceased boy was aged 6 years and he was a student. Hence, the petitioners seek a sum of Rs.5,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the 2nd respondent/Insurance Company contends that on 24.01.2000, the accident did not occur as alleged by the petitioners. The 1st respondent vehicle was

proceeding at moderate speed, at that time, the 1st petitioner who was riding his bicycle along with his deceased son, suddenly tried to cross the road without noticing the on coming vehicle and met with the accident. The negligence of the petitioner's deceased son alone caused the accident. The claim of the petitioners is very exorbitant as the negligence of the deceased alone caused the accident. The respondents are not liable to pay any compensation. Hence, the 2nd respondent seeks dismissal of the petition.

5. Before the Tribunal, the 1st petitioner examined himself as P.W.1 and produced documents Ex.P.1 to P.6 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. On the basis of available materials on record, the Tribunal found that the negligence of the 1st respondent vehicle driver alone caused the accident and awarded a sum of Rs.2,29,500/- as compensation to the petitioners. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Corporation has come forward with the present civil miscellaneous appeal.

6. The learned counsel for the appellant/2nd respondent/Insurance Company contended that the Tribunal fixed the compensation at higher level without any valid materials and also applied wrong multiplier. The negligence on the part of the 1st petitioners who rode the bicycle alone caused the accident, but the same was not considered by the Tribunal. Hence, the 2nd respondent/Insurance Company seeks to set aside the award passed by the Tribunal by allowing the appeal.

7. On the other hand, the learned counsel for the petitioners/claimants contended that the Tribunal, on the basis of available evidence passed a just and fair award and the same needs no interference. Thus, the petitioners/claimants sought for dismissal of the appeal.

8. Along with the C.M.A., Civil Revision Petition Nos.558 and 559 of 2003 filed by the petitioners is also taken up. The petitioners/claimants after the Tribunal passed the award in M.C.O.P.No.1107 of 2000, filed I.A.Nos.2181 and 2182 of 2002 before the Subordinate Court, Cuddalore, seeking permission to withdraw 50% of the award amount deposited in the Court. The said Petitions were opposed by the 2nd respondent/Insurance Company and the Tribunal by its order dated 07.01.2003 passed the following orders:-

"I.A.No.2181 of 2002 in MCOP.No.1107 of 2000:-

1.That the petitioner be and hereby permitted to withdraw the amount of Rs.69,666/- after furnishing security for the amount by the petitioner. "

"I.A.No.2182 of 2002 in MCOP.NO.1107 of 2000:-

Permission granted for the amount of Rs.69,666/- after furnishing security for the amount by the petitioner."

Challenging the said orders passed in I.A.Nos.2181 & 2182/2002 in MCOP.No.1107/2000, the Revision Petitioners/Claimants have come forward with Civil Revision Petitions 558 and 559 of 2003.

9. The learned counsel for the petitioners/claimants contended that the petitioners are poor people and in need of money and directing them to furnish security is unwarranted. Hence, the petitioners seek to entertain the Revision Petitions and to permit them to withdraw the amount without furnishing security.

10. The learned counsel for the 2nd respondent/Insurance Company, even though opposed the Civil Revision Petitions, fairly conceded that there is no need to furnish security and the C.M.A., preferred by the Insurance Company itself can be disposed of finally. Thus, the C.M.A as well as Civil Revision Petitions are taken up today for disposal.

11. The petitioners stated that on the fateful day, as the 1st petitioner was proceeding in bicycle with his deceased son as pillion rider, the lorry belonging to the 1st respondent came at high speed dashed against the cycle, resulting in the death of the minor son at the occurrence spot itself. The police registered Ex.P.1 - F.I.R against the driver of the 1st respondent lorry only. Further it is clear from Ex.P.4 - Copy of judgment passed in C.C.No.275 of 2011 by Judicial Magistrate, Panruti, that the driver of the offending lorry was found guilty and convicted for the occurrence. It is clear from Ex.P.2 - Motor Vehicle Inspector Report that there was no mechanical defect in the said lorry.

12. It is clear from the above said evidence that the rash and negligent driving of the 1st respondent lorry driver alone caused the accident. The 2nd respondent/Insurance Company has not let in any contra evidence to disprove the claim of the petitioners. As such, the conclusion arrived at by the Tribunal that the 1st respondent lorry driver alone is responsible for the accident is just and proper.

13. The petitioners stated the deceased who is their son was aged 6 years, at the time of the accident. It is clear from Ex.P.3 - Post-mortem report and Ex.P.5 - Birth certificate of the deceased that the deceased was aged 6 years. Since the deceased was aged 6 years and being a student, the Tribunal fixed the notional monthly income only at Rs.15,000/- and applied multiplier '15'. Since the deceased was a minor boy, the Tribunal did not deduct any amount towards personal expenses. Thus, the Tribunal awarded a sum of Rs.15,000 * 15 =

Rs.2,25,000/- as loss of dependency to the petitioners.

14. The learned counsel for the 2nd respondent/Insurance Company contended that the amount fixed by the Tribunal is on higher side. However, considering the fact that the occurrence took place during the year 2000 and the victim being a minor boy, the Tribunal has fixed the notional annual income at Rs.15,000/- only. No ground is made out by the appellant/Insurance Company to contradict or reduce the same. As such, this Court finds no merit in the contention of the Insurance Company to modify or alter the amount awarded by the Tribunal towards loss of dependency. As such, no ground is made out to interfere with the conclusion arrived at by the Tribunal. Thus, the plea of the appellant/Insurance Company has to fail. The point is answered accordingly and the C.M.A., is dismissed.

15. As the appeal filed by the Insurance Company itself is dismissed, the petitioners/claimants are entitled to withdraw the entire amount remaining in the deposit as they are entitled for the same. There is no need for them to furnish security as directed by the Principal Subordinate Court, Cuddalore/Motor Accident Claims Tribunal. Hence, the impugned order dated 07.01.2003 passed in I.A.Nos.2181 and 2182 of 2002 is modified to the extent that there is no need for the petitioners in Civil Revision Petitions to furnish security for withdrawal of 50% of the balance award amount remaining in deposit.

16. In the result,

(i) Civil Revision Petition Nos.558 and 559 of 2003 are allowed to the extent indicated above. No costs.

(ii) Civil Miscellaneous Appeal No.1986 of 2003 is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Prl.Sub-Judge, Cuddalore.

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

+1cc to Mr.R.MURALIDHARAN, Advocate, S.R.No.19504

+1cc to Mr.N.VIJAYARAGHAVAN, Advocate, S.R.No.19749

CMA.No.1986 of 2003
and
C.R.P.Nos.558 and 559 of 2003

NMI (CO)
TR(30/05/2018)



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