

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2804 to 2809 of 2005

1. The Oriental Insurance Co. Ltd.,
59, Raja Veedhi, Gobi.

2. The Oriental Insurance Co. Ltd.,
Branch Office, Post Box No.S30,
Gobi - 638 452.

... Appellants in all the
appeals

Vs

1. Raakkiannan
2. P.N.Saminathan
3. P.Shanmugam
4. Yuvaraj
5. S.Singaram

... Respondents in
C.M.A.No.2804 of 2005

1. Minor Karthikeyan,
rep. by his grandmother &
next friend Mariammal
2. Mariammal
3. P.N.Saminathan
4. P.Shanmugam
5. S.Singaram

... Respondents in
C.M.A.No.2805 of 2005

1. Murugan
2. Easwari
3. P.N.Saminathan
4. P.Shanmugam
5. S.Singaram

... Respondents in
C.M.A.No.2806 of 2005

1. Balasubramani @ Balu
2. P.N.Saminathan
3. P.Shanmugam
4. Yuvaraj
5. S.Singaram

... Respondents in
C.M.A.No.2807 of 2005

1. Dhanalakshmi @ Ammani
2. P.N.Saminathan
3. P.Shanmugam
4. Yuvaraj
5. S.Singaram

... Respondents in
C.M.A.No.2808 of 2005

1. Prema @ Peramayee
2. P.N.Saminathan
3. P.Shanmugam
4. Yuvaraj
5. S.Singaram

... Respondents in
C.M.A.No.2809 of 2005

C.M.A.No.2804 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.06.2004 made in MACTOP No.330 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Bhavani.

C.M.A.No.2805 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.06.2004 made in MACTOP No.334 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Bhavani.

C.M.A.No.2806 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.06.2004 made in MACTOP No.335 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Bhavani.

C.M.A.No.2807 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.06.2004 made in MACTOP No.390 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Bhavani.

C.M.A.No.2808 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.06.2004 made in MACTOP No.405 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Bhavani.

C.M.A.No.2809 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.06.2004 made in MACTOP No.551 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Bhavani.

For Appellants
in all the appeals

: Mr.S.N.Chandrasekara Bharathi
for Mr.M.Krishnamoorthy

For Respondents
in CMA 2804/2005

: Mr.P.M.Doraiswamy for R1

For Respondents : Mr.Ma.P.Thangavel for R1 & R2
in CMA 2805/2005

For Respondents : Mr.Ma.P.Thangavel for R1 & R2
in CMA 2806/2005

For Respondents : Mr.Ma.P.Thangavel for R1
in CMA 2807/2005

For Respondents : Mr.Ma.P.Thangavel for R1
in CMA 2808/2005

For Respondents : Mr.Ma.P.Thangavel for R1
in CMA 2809/2005

COMMON JUDGMENT

All these appeals are preferred by the insurance companies against the common award dated 23.06.2014, passed by the Motor Accidents Claims Tribunal, Sub Court, Bhavani, in MCOP Nos.330, 334, 335, 390, 405 and 551 of 2001 respectively.

2.The case in brief is as follows:

On the fateful day, i.e., on 26.04.2001, at about 3.30am, one Ayyammal and others were travelling in the lorry bearing Regn.No. TCD 3789 insured with the first appellant Insurance Company. When the vehicle was proceeding on Bhavani - Anthiyur Main Road, a Tractor bearing Registration No.TN28-V 6395 insured with the second appellant insurance company, had a head on collision with the lorry. Due to the said impact, some of the persons succumbed to the injuries, besides other persons receiving grievous injuries. Stating that the accident had occurred due to the rash and negligent driving of the drivers of both the vehicles, the legal heirs of the deceased and the injured filed claim petitions before the Tribunal, which awarded compensation in those petitions, as under:

CMA No.	MCOP No.	Amount (Rs.)
2804/2005	330/2001	2,68,000/-
2805/2005	334/2001	3,45,200/-
2806/2005	335/2001	3,54,064/-
2807/2005	390/2001	2,87,000/-
2808/2005	405/2001	97,500/-
2809/2005	551/2001	20,000/-

These amounts have been awarded with interest at the rate of 9% per annum, from the respective dates of the claim petitions. Aggrieved over the same, the appellants have come up with the present Civil Miscellaneous Appeals.

2.The learned counsel for the appellant Insurance Companies has submitted that the Tribunal ought to have exonerated the appellant insurance companies from their liability to pay compensation to the claimants, since the owner of the vehicle has permitted the driver to carry the passengers in the goods vehicle and thereby violated the terms and conditions of the policy. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

3.Per contra, the learned counsel for the respondent(s)/claimants submitted that the Tribunal, after examining the oral and documentary adduced by the parties, has rendered its findings on negligence and liability on the insurance companies and awarded the just compensation and hence, the same do not call for any interference in the hands of this Court.

4.Heard the learned counsel for the appellants Insurance Companies and the learned counsel for the respondent(s)/claimant (s) and perused the materials available on record.

5.With regard to the finding on negligence, the Tribunal has taken into consideration the evidence of P.W.1 to P.W.6/claimants, according to whom, on 26.04.2001 at about 3.30am, the deceased and the injured were travelling in the lorry bearing Regn.No.TCD 3789, to go to Nasiyanur to unload the bricks and when the vehicle was nearing Paruvachi, Periyasamy Tea Stall on Bhavani to Anthiyur Main Road, a Tractor bearing registration No.TN-28-V 6395, came in a rash and negligent manner from the opposite direction and dashed against the lorry. Ex.P1 -FIR was registered based on the complaint given by one Singaram, who was driver of the Tractor involved in the said accident, as per which, the driver of the lorry was responsible for the accident. Ex.P2 is rough sketch; Ex.P3 is the observation mahazar; and Ex.P4-Motor Vehicle Inspector's report. Considering those oral and documentary evidence, the Tribunal has rightly arrived at the conclusion that there was head-on collision between the lorry and the Tractor and the accident had occurred on account of the negligence on the part of drivers of both the vehicles, which finding this Court is not inclined to interfere.

6.As regards the liability, it was putforth on the side of the appellants that since the deceased and the injured travelled in the goods carrying vehicle as unauthorised passengers and thereby the owner of the vehicle has violated the policy conditions, the appellants insurance companies are not liable to pay any compensation to the claimants. However, the Tribunal, based on the evidence and materials available on record, was of the view that the deceased and injured have travelled in the

vehicle as loadman and not as gratuitous passengers and accordingly, fastened on the liability on the appellants insurance companies at 50% each, which, in the opinion of this Court, is perfectly valid in law and hence, the same is hereby confirmed.

7. In respect of the quantum of compensation relating to MCOP No.330 of 2001 (CMA No.2804 of 2005), P.W.1/husband of the deceased, has in his evidence, deposed that the deceased was aged about 21 years and was earning a sum of Rs.3,000/- per month as a coolie. However, no proof was produced to substantiate the same. Hence, the Tribunal has fixed the monthly income of the deceased as Rs.2,000/- and thereafter, applying the unit method for deduction of personal expenses of the deceased and considering the age of the deceased, adopted the multiplier of 17 and ultimately determined the compensation under the head "loss of income" at Rs.1,63,200/-. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and awarded the said sum towards the contribution of the deceased to the family and hence, the same is hereby confirmed. That apart, the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.50,000/- towards loss of consortium, and Rs.50,000/- towards loss of love and affection to the claimant. The Tribunal has properly analysed the materials and evidence available on record and has awarded reasonable compensation on those heads and therefore, the same need not be interfered with by this Court.

8. In respect of the quantum of compensation relating to MCOP No.334 of 2001 (CMA No.2805 of 2005), P.W.2/mother of the deceased, has in her evidence, deposed that the deceased was aged about 25 years and was earning a sum of Rs.3500/- per month as a coolie. However, no proof was produced to substantiate the same. In the absence of any evidence, the Tribunal has fixed the monthly income of the deceased as Rs.2,500/- and applying the unit method for deduction of personal expenses and considering the age of the deceased, adopted the multiplier of 17 and determined the compensation under the head "loss of income" at Rs.2,65,200/-. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and awarded the said sum towards the contribution of the deceased to the family and hence, the same is hereby confirmed. That apart, the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.75,000/- towards loss of love and affection to the claimants of the deceased. The Tribunal has properly analysed the materials and evidence available on record and has awarded reasonable compensation on those heads and therefore, the same need not be interfered with by this Court.

9. In respect of the quantum of compensation relating to MCOP No.335 of 2001 (CMA No.2806 of 2005), P.W.3/father of the deceased, has in his evidence, deposed that the deceased was aged about 24 years and was earning a sum of Rs.4,000/- per month as a coolie. However, no proof was produced to substantiate the same. In the absence of any evidence, the Tribunal has fixed the monthly income of the deceased as Rs.2,500/- and applying the unit method for deduction of personal expenses of the deceased and considering the age of the deceased, adopted the multiplier of 17 and determined the compensation under the head "loss of income" at Rs.2,99,064/-. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and awarded the said sum towards the contribution of the deceased to the family and hence, the same is hereby confirmed. That apart, the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.50,000/- towards loss of love and affection to the parents of the deceased. The Tribunal has properly analysed the materials and evidence available on record and has awarded reasonable compensation on those heads and therefore, the same need not be interfered with by this Court.

10. In respect of the quantum of compensation relating to MCOP No.390 of 2001 (CMA No.2807 of 2005), P.W.4/claimant, has in his evidence, deposed that he was aged about 30 years and was earning a sum of Rs.2,000/- per month as a cleaner. However, no proof was produced to substantiate the same. P.W.7/Doctor has deposed about the nature of the injuries sustained by the respondent/claimant and he issued Ex.P12-disability certificate to the tune of 50%. Ex.P9 is wound certificate. Placing reliance on those oral and documentary evidence, the Tribunal has rightly taken the monthly income of the respondent/claimant at Rs.2,000/- and permanent disability at 50% and adopted the multiplier of 18 as per the II schedule to the Motor Vehicles Act and quantified the compensation under the head "loss of income due to permanent disability" at Rs.2,16,000/- (24,000/- x 18 x 50/100), which this Court is not inclined to interfere. That apart, the Tribunal has awarded Rs.50,000/- towards pain and suffering, Rs.20,000/- towards extra nourishment, Rs.1000/- transport charges, Rs.300/- towards medical expenses as per Ex.P14. Thus, the Tribunal has awarded the total compensation of Rs.2,87,000/- to the respondent/claimant, which is fair, just and reasonable and the same cannot be said to be excessive and exorbitant at any stretch of imagination, considering the nature of the injuries sustained by the respondent/claimant and in the given facts and circumstances of the case and hence, the same is hereby confirmed.

11. In respect of the quantum of compensation relating to MCOP No.405 of 2001 (CMA No.2808 of 2005), P.W.5/claimant, has

in her evidence, deposed that the he was aged about 25 years and was earning a sum of Rs.2,000/- per month as a coolie. However, no proof was produced to substantiate the same. P.W.7/Doctor has deposed about the nature of the injuries sustained by the respondent/claimant and issued Ex.P13-disability certificate to the tune of 20%. Ex.P10 is wound certificate. Placing reliance on those oral and documentary evidence, the Tribunal has rightly taken the monthly income of the respondent/claimant at Rs.2,000/- and permanent disability at 20%, adopted the multiplier of 18 as per the II schedule to the Motor Vehicles Act and quantified the compensation under the head "loss of income due to permanent disability" at Rs.86,400/- (24,000/- x 18 x 20/100), which this Court is not inclined to interfere. That apart, the Tribunal has awarded Rs.50,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment, Rs.1000/- transport charges, Rs.100/- towards X-ray bill as per Ex.P15. Thus, the Tribunal has awarded the total compensation of Rs.97,500/- to the respondent/claimant, which is fair, just and reasonable and hence, the same need not be interfered.

12.In respect of the quantum of compensation relating to MCOP No.551 of 2001 (CMA No.2809 of 2005), P.W.6/claimant has in her evidence, deposed that she was aged 28 years and was earning a sum of Rs.1500/- per month; she claimed that in the accident, she sustained multiple grievous injuries and all over her body. The Tribunal, after considering the materials and evidence let-in by the respondent/claimant, determined Rs.20,000/- towards loss of strength as total compensation, which in the opinion of this Court, is just and reasonable and hence, the same is hereby confirmed.

13.In the result, all the appeals stand dismissed. No costs. The appellants are directed to deposit their respective compensation along with interest and costs, as awarded by the Tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. It is submitted by the learned counsel for the respondents/claimants that the minor respondent in CMA.No.2805 of 2005 attained majority as of now. Hence, on such deposit being made, the respondent(s)/claimants in all these appeals are permitted to withdraw their respective shares, as apportioned by the Tribunal, on making proper application.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

av/rk
To

1.The Motor Accidents Claims Tribunal
Sub Court, Bhavani.

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

+2 Ccs to Mr.M.Krishnamoorthy, Advocate sr 42034, 52149
+2 Ccs to Mr.P.M.Doraiswamy, Advocate sr 51863, 42646
+3 CCS to Mr.Ma.P.Thangavel, Advocate sr 51825, 42922.

C.M.A.Nos.2804 to 2809 of 2005

CNR (CO)
SP (08/09/2020)



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