

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2890 and 2958 of 2007
and M.P.Nos.1 and 1 of 2007
and

C.M.A.Nos.2162 and 2163 of 2008
and M.P.Nos.1 and 1 of 2008

C.M.A.No.2890 of 2007:

The Oriental Insurance Co.Ltd.,
Divisional Office,
Sri Krishna Complex
P.B.No.65, Jawahar Street
Pondicherry.

... Appellant/3rd Respondent

Vs

1.Kuppammal

2.Rukku

3.Sulochana

4.Sampoornam : Respondents 1 to 4/Petitioners

5.Narasimha : 5th Respondent/1st Respondent

6.Umadevi : 6th Respondent/2nd Respondent

7.V.Chandra Mohan : 7th Respondent/4th Respondent

8.Tamil Nadu State Transport Co.
(Coimbatore Division-II) Ltd.,
Chennimalai Road,
Erode-638 001,
rep.by its Managing Director.

: 8th Respondent/5th Respondent

C.M.A.No.2958 of 2007:

The Oriental Insurance Co.Ltd.,
Divisional Office,
Sri Krishna Complex
P.B.No.65, Jawahar Street
Pondicherry.

: Appellant/3rd Respondent

Vs

1.Chinnaponnu

2.Senthil

3.Vellaiammal : Respondents 1 to 3/Petitioners

4.Narasimha : 4th Respondent/1st Respondent

5.Umadevi : 5th Respondent/2nd Respondent

6.V.Chandra Mohan : 6th Respondent/4th Respondent

7.Tamil Nadu State Transport Co.
(Coimbatore Division-II) Ltd.,
Chennimalai Road,
Erode-638 001,
rep.by its Managing Director. : 7th Respondent/5th Respondent

C.M.A.No.2162 of 2008:

The Oriental Insurance Co.Ltd.,
Branch Office, Pamalam Complex,
E.V.N.Road, Erode Post & District : Appellant/2nd Respondent

Vs

1.Minor Onishwaran

2.Minor Yoganathan
(Minors rep.by Guardian
Grandmother Kaliammal).

(R1 and R2 declared as major and their
guardian / Grandmother Kaliammal (R3)
discharged from the guardianship vide
Order of this Court dated 11.07.2018
made in M.P.Nos.1 and 2 of 2010).

3.Kaliammal (Died) : Respondents 1 to 3/Petitioners

4.Umadevi : 4th Respondent/1st Respondent

5.Chandra Mohan : 5th Respondent/3rd Respondent

6.Managing Director,
Tamil Nadu Govt.Transport Corporation,
(Kovai Division 2) Head Office,
Cheenimalai Road,
Erode Post & District. : 6th Respondent/4th Respondent

C.M.A.No.2163 of 2008:

The Oriental Insurance Co.Ltd.,
Branch Office, Pamalam Complex,
E.V.N.Road, Erode Post & District. : Appellant/2nd Respondent

Vs

1.Subramanian
2.Mallika
3.Selvakumar : Respondents 1 to 3/Petitioners
4.Umadevi : 4th Respondent/1st Respondent
5.Chandra Mohan : 5th Respondent/4th Respondent
6.Managing Director,
Tamil Nadu Govt.Transport Corporation,
(Kovai Division 2) Head Office,
Cheenimalai Road,
Erode Post & District. : 6th Respondent/4th Respondent

C.M.A.No.2890 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.03.2007 made in MCOP No.544 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, and Presiding Officer for Special Court for EC Act Cases, Coimbatore.

C.M.A.No.2958 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.03.2007 made in MCOP No.545 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Judge and Presiding Officer for Special Court for E.C.Act cases, Coimbatore.

C.M.A.No.2162 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 26.12.2005 made in OP No.1521 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub-Judge, Dharapuram.

C.M.A.No.2163 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 27.12.2005 made in OP No.1853 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub-Judge, Dharapuram.

C.M.A.No.2890 of 2007:

For appellant : Mr.S.Arunkumar

For Respondents : No appearance for R7
Mr.N.Anand for R8

C.M.A.No.2958 of 2007:

For appellant : Mr.S.Arunkumar

For Respondents : No appearance for R6
Mr.N.Anand for R7

C.M.A.No.2162 of 2008:

For appellant : Mr.S.Arunkumar

For Respondents : Mr.Ma.P.Thangavel for R1 to R3
No appearance for R4 & R5
Mr.K.J.Sivakumar for R6

C.M.A.No.2163 of 2008:

For appellant : Mr.S.Arunkumar

For Respondents : Mr.Ma.P.Thangavel for R1 to R3
No appearance for R5
Mr.K.J.Sivakumar for R6

COMMON JUDGMENT

All these appeals arise out of a same accident.

2.On 03.05.2001 at about 00.30 hours (night), the deceased Thangaraj was travelling in the bus bearing Reg.No.TN-33-N-0887 as a passenger from Coimbatore to Erode. The bus was proceeding towards Eastern side on the northern edge of the East-West Coimbatore to Avinashi Main Road near Kolipannal. At that time, the lorry bearing Reg.No.PY-04-3434 driven by one Narasimha in a rash and negligent manner, came from the opposite direction at high speed and dashed against the bus in which the deceased Thangaraj and others were travelling. Due to the said impact, the deceased sustained grievous injuries all over the body and died on the spot. The two wives of the deceased and his

daughters have filed a claim petition before the Tribunal claiming a sum of Rs.6,00,000/- as compensation. The said claim relates to CMA No.2890 of 2007 (MCOP No.544 of 2006). In the same accident, one Dass alias Raju had also sustained injuries and died. The wife, son and mother of the deceased Dass alias Raju have filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. The said claim relates to CMA No.2958 of 2007 (MCOP No.545 of 2006).

3.On consideration of the materials and evidence available on record, the Tribunal had given a finding that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and accordingly fixed the negligence on the part of the lorry driver.

4.In respect of CMA No.2890 of 2007 (MCOP No.544 of 2006), the Tribunal awarded a compensation of Rs.2,97,100/- with interest at the rate of 7.5% per annum from the date of petition, and the said sum has been directed to be paid by the driver of the lorry, owner of the lorry and the appellant Insurance Company. In respect of CMA No.2958 of 2007 (MCOP No.545 of 2006), the Tribunal awarded a compensation of Rs.3,19,500/- with interest at the rate of 7.5% per annum from the date of petition, and the said sum has been directed to be paid by the driver of the lorry, owner of the lorry and the appellant Insurance Company, jointly and severally.

5.In the same accident, one Vijayalakshmi and her husband sustained injuries and died. The minor sons and the mother of the deceased have filed a claim petition before the Tribunal claiming a sum of Rs.7,00,000/- as compensation. The said claim relates to CMA No.2162 of 2008 (MCOP No.1521 of 2001). In the same accident, the deceased Leela Subramaniam sustained grievous injuries and died. The husband, daughter and son of the deceased have filed a claim petition before the Tribunal claiming a sum of Rs.7,00,000/- as compensation. The said claim relates to CMA No.2163 of 2008 (MCOP No.1853 of 2001).

6.On consideration of the materials and evidence available on record, the Tribunal awarded a compensation of Rs.3,54,000/- with interest at the rate of 7.5% per annum from the date of petition, in respect of CMA No.2162 of 2008 (MCOP No.1521 of 2001) and a sum Rs.2,80,000/- with interest at the rate of 7.5% per annum from the date of petition, in respect of CMA No.2163 of 2008 (MCOP No.1853 of 2001). The compensation awarded in these appeals have been directed to be paid by the appellant Insurance Company.

7.The judgment in MCOP Nos.1521 and 1853 of 2001 have been passed by the Motor Accidents Claims Tribunal, Subordinate

Judge, Dharapuram. The judgments in MCOP Nos.544 and 545 of 2006 have been passed by the Motor Accidents Claims Tribunal, Additional District & Sessions Judge and Presiding Officer for Special Court for E.C.Act Cases, Coimbatore.

8.Challenging all these awards, the appellant Insurance Company have come up with these appeals, questioning the entire liability fixed on them by the Tribunal.

9.The learned counsel for the appellant Insurance Company in all these appeals, has submitted that the Tribunal has erred in holding that the driver of the lorry was responsible for the accident in spite of the fact that the accident had occurred only due to the rash and negligent driving of the driver of the bus. The learned counsel for the appellant has submitted that in respect of a claimant relating to the same accident, the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Erode has passed an award in MCOP No.192 of 2002 dated 20.08.2003 holding that the drivers of both the vehicles, viz. State Transport Corporation and the lorry, were responsible for the accident and accordingly, passed on the liability on the Transport Corporation also at the rate of 50%. He further submitted that the said finding of the Tribunal has also been affirmed by this Court in C.M.A.No. 3131 of 2004 dated 24.11.2010 and hence, the same analogy has to be applied to the case on hand. On the other hand, the learned counsel has not questioned the quantum of compensation awarded by the Tribunal in all these cases.

10.The learned counsel for the claimants in these appeals have submitted that the Tribunal has correctly considered the materials and evidence and has correctly awarded the just and fair compensation and hence the same does not require any interference in the hands of this Court.

11.Since the quantum of compensation is not questioned by the learned counsel for the appellant Insurance Company, this Court is not inclined to interfere with the same. The only submission of the learned counsel for the appellant Insurance Company in these appeals, is that in the judgment passed in MCOP No.192 of 2002 dated 20.08.2003 relating to a claim arising out of the same accident, the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Erode, fixed the negligence on the part of both the drivers of the bus and the lorry and the said finding has been affirmed by this Court in the judgment made in CMA No.3131 of 2004 on 24.11.2010. Therefore, the Insurance Company is liable to pay only 50% of the compensation awarded by the Tribunal in all these cases, according to the learned counsel.

12.This Court has perused the copy of the judgment of this Court in CMA No.3131 of 2004 relating to the claim arising out of the same accident. It is seen that departmental enquiry was conducted against the driver of the Transport Corporation, but he was not aware of the result of the said enquiry. This Court observed that the mere fact that the Transport Corporation has taken departmental action against its own driver, shows that there was negligence on his part, as otherwise there is no reason to hold any departmental enquiry; that when the Transport Corporation has let in evidence through the Branch Manager, nothing prevented them from producing the details of the enquiry report or examining the driver of the Transport Corporation, against whom rash and negligent driving is alleged. Considering the fact that it was a head-on collision between the two vehicles, this Court upheld the finding of the Tribunal therein, both the drivers are equally responsible for the accident and accordingly confirmed the finding rendered by the Tribunal therein. It is to be noted that the said finding in respect of negligence has been rendered by the Tribunal therein, prior to the finding rendered by the Tribunal in the present cases. In the circumstances, while confirming the quantum of compensation awarded by the Tribunal in all these cases, this Court holds that both the drivers of the bus and the lorry are responsible for the accident and accordingly the appellant Insurance Company and the respective Transport Corporation in these appeals have to pay the compensation in the ratio of 50:50.

13.Accordingly, in respect of C.M.A.No.2890 of 2007, the appellant Insurance Company is directed to deposit 50% of the compensation awarded by the Tribunal with proportionate interest, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The eighth respondent Transport Corporation is directed to deposit 50% of the compensation awarded by the Tribunal with proportionate interest, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal. If the Insurance Company had already deposited the amount of compensation fully as directed by this Court earlier during admission and if the same had not been withdrawn by the claimants, the Insurance Company is permitted to withdraw the balance 50% with proportionate interest from the deposited amount. If the entire amount had already been withdrawn, the Insurance Company is at liberty to recover the balance 50% amount from the eighth respondent Transport Corporation / owner of the bus.

14.Similarly, in respect of C.M.A.No.2958 of 2007, the appellant Insurance Company is directed to deposit 50% of the

compensation awarded by the Tribunal with proportionate interest, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The seventh respondent Transport Corporation is directed to deposit 50% of the compensation awarded by the Tribunal with proportionate interest, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal. If the Insurance Company had already deposited the amount of compensation fully as directed by this Court earlier during admission and if the same had not been withdrawn by the claimants, the Insurance Company is permitted to withdraw the balance 50% with proportionate interest from the deposited amount. If the entire amount had already been withdrawn, the Insurance Company is at liberty to recover the balance 50% amount from the seventh respondent Transport Corporation / owner of the bus.

15. Similarly, in respect of C.M.A.No.2162 of 2008, the appellant Insurance Company is directed to deposit 50% of the compensation awarded by the Tribunal with proportionate interest, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The sixth respondent Transport Corporation is directed to deposit 50% of the compensation awarded by the Tribunal with proportionate interest, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal. If the Insurance Company had already deposited the amount of compensation fully as directed by this Court earlier during admission and if the same had not been withdrawn by the claimants, the Insurance Company is permitted to withdraw the balance 50% with proportionate interest from the deposited amount. If the entire amount had already been withdrawn, the Insurance Company is at liberty to recover the balance 50% amount from the sixth respondent Transport Corporation / owner of the bus.

16. Similarly, in respect of C.M.A.No.2163 of 2008, the appellant Insurance Company is directed to deposit 50% of the compensation awarded by the Tribunal with proportionate interest, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The sixth respondent Transport Corporation is directed to deposit 50% of the compensation awarded by the Tribunal with proportionate interest, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal. If the Insurance

Company had already deposited the amount of compensation fully as directed by this Court earlier during admission and if the same had not been withdrawn by the claimants, the Insurance Company is permitted to withdraw the balance 50% with proportionate interest from the deposited amount. If the entire amount had already been withdrawn, the Insurance Company is at liberty to recover the balance 50% amount from the sixth respondent Transport Corporation / owner of the bus.

17.The Civil Miscellaneous Appeal are allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal
Additional District & Sessions Judge and
Presiding Officer for Special Court for E.C.
Act Cases, Coimbatore.

2.The Motor Accidents Claims Tribunal, Sub-Judge,
Dharapuram.

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

+1cc to Mr.S.Arunkumar, Advocate, SR.No.73361.

+1cc to Mr.Ma.P.Thangavel, Advocate, SR.No.72650.

+2ccs to Mr.K.J.Shivakumar, Advocate, SR.No.72844 & 72843.

WEB COPY

C.M.A.Nos.2890 and 2958
of 2007
and M.P.Nos.1 and 1 of 2007
and
C.M.A.Nos.2162 and
2163 of 2008
and M.P.Nos.1 and 1 of 2008

CNR (CO)

CSR: 06.03.2020