

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.3067 and 3068 of 2006
and
M.P.Nos.1 and 1 of 2006

The Oriental Insurance Co.Ltd.,
Divisional Office No.II,
St. Mary Villa Ullor,
Medical College (PO)
Bangalore.

... Appellant/3rd Respondent
in both appeals

Vs.

- 1.R.Balasundaram
- 2.Thulasigiri
- 3.Rohini Elizabeth Devis
- 4.K.Murugesan
- 5.S.Hyder Ali

(Respondents 2 and 3 ex-parte in the
Lower Court and hence notice may be
dispensed with).

Respondents in C.M.A.No.3067 of 2006/
Petitioner and Respondents 1, 2, 4 & 5

- 1.R.Balasundaram
- 2.Minor Sunanda
(rep.by father and natural
guardian, R.Balasundaram,
the first respondent herein).

- 3.Thulasigiri
- 4.Rohini Elizabeth Devis
- 5.K.Murugesan

- 6.Hyder Ali
(Respondents 3 and 4 ex-parte in the
Lower Court and hence notice may be
dispensed with).

... Respondents in C.M.A.No.3068 of 2006/
Petitioners & Respondents 1, 2, 4 & 5

Prayer:-

C.M.A.No.3067 of 2006 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 06.12.2005 made in MCOP No.456 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.3, Coimbatore.

C.M.A.No.3068 of 2006 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 06.12.2005 made in MCOP No.457 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.3, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan
in both appeals

For Respondents : Mr.V.Nicholas for R1
in CMA 3067/2006 No appearance for R4 and R5
R2 and R3 - Exparte

For Respondents : Mr.V.Nicholas for R1 and R2
in CMA 3068/2006 No appearance for R5 and R6
R3 and R4 - Exparte

COMMON JUDGMENT

The case in brief, is as follows:

On 10.09.2000 at about 05.45 p.m., the first respondent in C.M.A.No.3067 of 2006 and his wife by name Latha were proceeding in the Hero Honda motorcycle bearing Reg.No.TN-38-L-2971 from South to North direction on the Coimbatore - Mettupalayam Road. When the two-wheeler was nearing opposite to CPRM Steel Company, the Nissan Car bearing Reg.No.KA-03-P-9927, belonging to the second and third respondents in C.M.A.No.3067 of 2006 / third and fourth respondents in C.M.A.No.3068 of 2006 and insured with the appellant Insurance Company, came in a rash and negligent manner and hit against the said Hero Honda bike. The driver of the car stopped the car and ran away from the spot. Due to the said impact, both the husband and wife sustained grievous injuries. Both of them were admitted in the hospital and thereafter the injured-Latha succumbed to the injuries on 12.09.2000.

2.The injured-Balasundaram filed a claim petition before the Tribunal in MCOP No.456 of 2001, claiming a sum of Rs.50,000/-

for the injuries suffered by him. He also filed another claim petition before the Tribunal in MCOP No.457 of 2001 along with his minor daughter, claiming a sum of Rs.5,00,000/- towards compensation for the death of his wife, viz.deceased-Latha.

3.On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.35,000/- in respect of MCOP No.456 of 2001 (CMA No.3067 of 2006) and Rs.3,69,500/- in respect of MCOP No.457 of 2001 (CMA No.3068 of 2006).

4.Challenging the awards passed by the Tribunal, the Insurance Company has come up with the above appeals.

5.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has grossly erred in fastening the liability on the appellant Insurance Company in a case where the car bearing Reg.No.KA-03-P-9927 is a stolen vehicle and as such the owner of the vehicle himself is not responsible for the claim. It is also submitted that as per Ex.R9- First Information Report filed in the Kerala State, it is clear that there is evidence of theft of vehicle and hence the awards passed by the Tribunal is unsustainable against the insurer. It is further submitted that the compensation awarded by the Tribunal, is excessive and exorbitant.

6.The learned counsel for the claimants in these appeals, has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the compensation which is just, fair and reasonable. He also submitted that the Tribunal has rightly fixed the liability on the part of the appellant Insurance Company, being the insurer of the car bearing Reg.No.KA-03-P-9927. Therefore, according to the learned counsel for the claimants, the judgment of the Tribunal does not require any interference in the hands of this Court.

7.Heard the learned counsel for the appellant Insurance Company and also the learned counsel for the claimants and perused the materials available on record carefully and meticulously.

8.P.W.1 is the first respondent / injured in C.M.A.No.3067 of 2006. He deposed before the Tribunal that he was proceeding in his Hero Honda bike bearing Reg.No.TN-38-L-2971 along with the deceased Latha, on the Coimbatore - Mettupalayam Road on the date of accident; that when the bike reached near CPRM Company, the Nissan car bearing Reg.No.KA-03-P-9927 came in a rash and negligent manner and dashed against the bike, causing injuries to him and his wife Latha (deceased). Ex.P1 is the First

Information Report filed against the second respondent in C.M.A.No.3067 of 2006. On a perusal of Ex.P1, it is clear that the accident had occurred in the manner deposed by P.W.1. P.W.1 had not preferred the complaint leading to the filing of First Information Report. But, according to Ex.P1, the second respondent in C.M.A.No.3067 of 2006 drove the car in a rash and negligent manner and dashed against the injured. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Nissan car. The Tribunal has also observed that once it is decided that the driver of the car is responsible for the accident, the question as regards the entitlement of compensation also follows in favour of the claimants and accordingly fastened the liability on the insurer of the car. The Tribunal has correctly considered the materials and evidence on record and fastened the liability on the insurer of the car. Hence, this Court is not inclined to interfere with the same.

9. With regard to the quantum of compensation, the Tribunal has awarded a sum of Rs.2,000/- towards medical expenses, Rs.1,000/- each towards transportation expenses, extra nourishment and pain and suffering, Rs.3,000/- towards loss of earning during the treatment period and Rs.27,000/- towards loss of earnings on account of permanent disability, totalling to Rs.35,000/-, with interest at the rate of 7.5% per annum from the date of petition, in respect of CMA No.3067 of 2006. The amounts awarded towards these heads are very reasonable and hence the same are confirmed.

10. In respect of the death of the deceased Latha (CMA No.3068 of 2006), the Tribunal relied upon the decision of the Hon'ble Supreme Court in The Oriental Insurance Co.Ltd. v. Hansrajbhai V.Kodala and others, reported in 2001 ACJ 827 (SC) and fixed the notional income of the deceased at Rs.30,000/- per annum and thereafter applied the multiplier of 18, deducted 1/3rd of the amount towards personal expenses of the deceased and awarded a sum of Rs.3,60,000/- towards loss of income. The Tribunal has also awarded a sum of Rs.5,000/- towards loss of consortium, Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses. Thus, the Tribunal awarded a total compensation of Rs.3,69,500/-. The Tribunal has rightly considered the materials and evidence, correctly assessed the income of the deceased by relying upon the judgment of the Hon'ble Supreme Court reported in 2001 ACJ 827 (SC), adopted the correct multiplier and arrived at Rs.3,60,000/- towards loss of income. The amounts awarded by the Tribunal towards other heads are also very reasonable and hence the same are confirmed.

11. In the result, the Civil Miscellaneous Appeals are

dismissed. No costs. Consequently, the connected miscellaneous petitions are closed. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The second respondent Minor in C.M.A.No.3068 of 2006 would have attained majority by now. Hence, on such deposit, the claimants are permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Presiding Officer,
The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court No.3, Coimbatore.

Copy To

The Section Officer,
VR Section, Madras High Court.

+lcc to Mr.N.Vijayaraghavan, Advocate, S.R.No.69482

+lcc to Mr.V.Nicholas, Advocate, S.R.No.69065

C.M.A.Nos.3067 and 3068 of 2006
and

सत्यमेव जयते M.P.Nos.1 and 1 of 2006

GJ(CO)

CS/04/06/2020

WEB COPY