

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2019

DELIVERED ON : 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.3212 of 2007 and 3444 of 2010

C.M.A.No.3212 of 2007:

The New India Assurance Co.Ltd.,
Coimbatore.

...Appellant/4th Respondent

Vs.

1.Rani

2.Minor Surya
rep.by her mother and guardian Rani,
the first respondent.

3.Radha

4.P.Selvaraj

5.The Oriental Insurance Co.Ltd.,
Coimbatore.

6.Anandamuthu ... Respondents/Petitioners/1st
and 2nd Respondent

C.M.A.No.3444 of 2010:

1.Rani

2.Minor Surya
(rep.by her next friend cum
guardian, Mother Rani, the
first appellant).

3.Radha

... Appellants/Petitioners

Vs.

1.P.Selvaraj

2.The Oriental Insurance Co.Ltd.,
Coimbatore.

3.Anandamuthu

4.The New India Assurance Co.Ltd.,
Coimbatore.

(Respondents 1 and 3 are set ex-parte
before the Trial Court and hence notice
may be dispensed with for them). ... Respondents/Respondents

Appeals filed under Section 173 of the Motor Vehicles Act
against the judgment and decree dated 20.03.2007 made in MACTOP
No.9 of 2006 on the file of the Motor Accidents Claims Tribunal
(Fast Track Court No.2, Additional District Judge) at
Gobichettipalayam, Erode District.

C.M.A.No.3212 of 2007:

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Mr.Ma.P.Thangavel for
R1 to R3

Mr.R.Sivakumar for R5

R4 & R6 : Exparte

C.M.A.No.3444 of 2010:

For Appellants : Mr.Ma.P.Thangavel

For Respondents: Mr.R.Sivakumar for R2

Mr.M.Krishnamoorthy for R4

COMMON JUDGMENT

The facts of the case in brief, are as follows:

On 06.11.2003, at about 18.45 hours, the deceased Rajan @
Rajendran, was driving the Maruti van bearing Reg.No.TN-37-Y-767
in the Kovai - Palakkad Road from West to East direction. The
owner of the van is the sixth respondent and the insurer of the
van is the appellant in C.M.A.No.3212 of 2007. When the van
reached near Military Camp Bridge, the lorry bearing Reg.No.KL-
10-B-7119, belonging to the fourth respondent in C.M.A.No.3212
of 2007 and insured with the fifth respondent-Insurance Company
in C.M.A.No.3212 of 2007, came in a rash and negligent manner at
high speed and both the vehicles collided with each other. Due
to the said impact, the deceased sustained grievous injuries and
died on the spot. The legal heirs of the deceased filed a claim

petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a compensation of Rs.4,60,000/- from the date of petition and the said sum has been ordered to be paid by both the insurance companies, equally.

2.CMA No.3212 of 2007 has been filed by the insurer of the van challenging the liability to pay compensation and CMA No.3444 of 2010 has been filed by the claimants for enhancement of compensation.

3.The learned counsel for New India Assurance Company Ltd. / insurer of the van / appellant in C.M.A.No.3212 of 2007, has submitted that the Tribunal, after having held that the deceased had equally contributed to the accident, erred in fastening 50% liability on the owner and insurer of the van, overlooking the legal position that the tort-feasor is not entitled to claim compensation before the Tribunal. The Tribunal ought to have exonerated the Insurance Company, since the insured had committed breach of policy conditions and plied the van with LPG; that at the time of accident, the deceased was under the influence of alcohol; that the deceased was not having any licence to drive the vehicle. Stating so, the learned counsel submitted that the claimants are not entitled for any compensation from the Insurance Company, due to the negligence on the part of the deceased.

4.The learned counsel for the claimants has submitted that even though the claimants claimed a total compensation of Rs.7,00,000/-, the Tribunal has awarded only a sum of Rs.4,60,000/- with 7.5% interest. He also submitted that the compensation awarded under various heads are very meagre, considering the fact that the family members have lost their bread-winner. Stating so, he prayed for enhancement of compensation.

5.The learned counsel for Oriental Insurance Co.Ltd. / insurer of the lorry / fifth respondent in C.M.A.No.3212 of 2007, has submitted that the accident had occurred only due to the rash and negligent driving of the driver (deceased) of the van and not due to the rash and negligent driving of the driver of the lorry and hence the only the insurer of the van is liable to pay compensation to the claimants.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.The main question that has to be answered is, on whose negligence the accident had occurred? P.W.2-Vijayakumar is the eye-witness to the occurrence and he has been examined on behalf

of the claimants. He deposed before the Tribunal that he along with his friends Rajan @ Rajendran (deceased), Sivadoss, Anandamuthu and Murugan were travelling in the Maruti Omni van from Coimbatore to Palakkad and at that time, the lorry in question came from the opposite side in a rash and negligent manner and dashed against the van and caused the accident. R.W.1-Murugesan, Police Constable of Madhukkarai Police Station, has been examined on the side of the insurer of the lorry. He deposed before the Tribunal that after investigation, they found out that the accident had occurred only due to the rash and negligent driving of the driver of the van. The Tribunal has examined Ex.P3-Motor Vehicle Inspector's Report. On a perusal of Ex.P3, it is seen that the front right side portion of the lorry and the front right side portion of the van, got dashed and due to the same, the accident had occurred. The Tribunal has also examined Ex.P5-Rough Sketch, from which it has been inferred that both the vehicles collided with each other in the middle of the road. In these circumstances, the Tribunal came to the conclusion that both the insurance companies are liable to pay compensation at the ratio of 50:50. The Tribunal has analysed the matter in detail, considered the materials and evidence in proper perspective and has arrived at this finding, which this Court is not inclined to interfere.

8.It was put forth before the Tribunal by the insurer of the Maruti Van, that the policy conditions had been violated, since five persons travelled in the van instead of four persons as prescribed under the policy; that no endorsement has been made in the policy as regards fixation of Gas Kit in the van and that the deceased had not driven the vehicle in the capacity of driver, since he had not been appointed as driver and therefore, the Insurance Company is not liable to pay any compensation. In this connection, the Tribunal has analysed the matter in detail and has given a finding that even though five persons had travelled in the van, it has not been proved by adducing oral or documentary evidence that due to the addition of one person, the driver was not able to drive the vehicle and consequently the accident had occurred. With regard to installation of LPG Kit, the Tribunal has given a finding that it was not proved before the Tribunal as to whether the deceased drove the vehicle using LPG, nor there was any evidence to prove that the Gas Kit has been installed violating the policy conditions. Hence, this contention was rejected by the Tribunal.

9.With regard to the contention that the deceased had not driven the vehicle in the capacity of the driver and hence the deceased cannot be treated as a driver as per the policy conditions, the Tribunal has categorically observed that the person who drives the vehicle should only possess a valid driving licence and not otherwise. The contention that the

deceased was in the drunken stage at the time of accident, has also been negatived by the Tribunal by relying upon Ex.P2-Post Mortem Report, in which nothing has been stated as to whether the deceased had consumed alcohol.

10.The above findings have been rendered by the Tribunal after considering the materials and evidence available on record in proper perspective, in a detailed manner. Hence, this Court is of the considered view that the same does not require any interference.

11.Now, this Court has to decide the quantum of compensation awarded by the Tribunal. The Tribunal has awarded a sum of Rs.4,32,000/- towards loss of income. Even though it was claimed that the deceased was earning a sum of Rs.6,500/- as driver and Ex.P9-Salary Certificate has also been filed, since it has not been proved before the Tribunal that the deceased was working in M/s.Chitra Steel as driver by adducing documents, the Tribunal came to the conclusion that the deceased would have earned not less than Rs.3,000/- as a driver and accordingly fixed the annual income at Rs.36,000/-, deducted 1/3rd of the amount towards personal expenses, adopted the multiplier of 18 and arrived at Rs.4,32,000/- towards loss of income. The Tribunal has also awarded a sum of Rs.15,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection and Rs.3,000/- towards funeral expenses.

12.The Tribunal has correctly considered the materials and evidence, adopted the correct multiplier and arrived at the compensation towards contribution of the deceased to the family. The amounts awarded towards other heads are also very reasonable and hence the same does not require any enhancement.

13.In the result, the Civil Miscellaneous Appeals are dismissed. No costs. Accordingly, both the Insurance Companies are directed to deposit the compensation amount in respect of their liability with interest, as ordered by the Tribunal, after deducting the amount 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.3212 of 2007 would have attained majority by now. Hence, on such deposit, all the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

KM

To

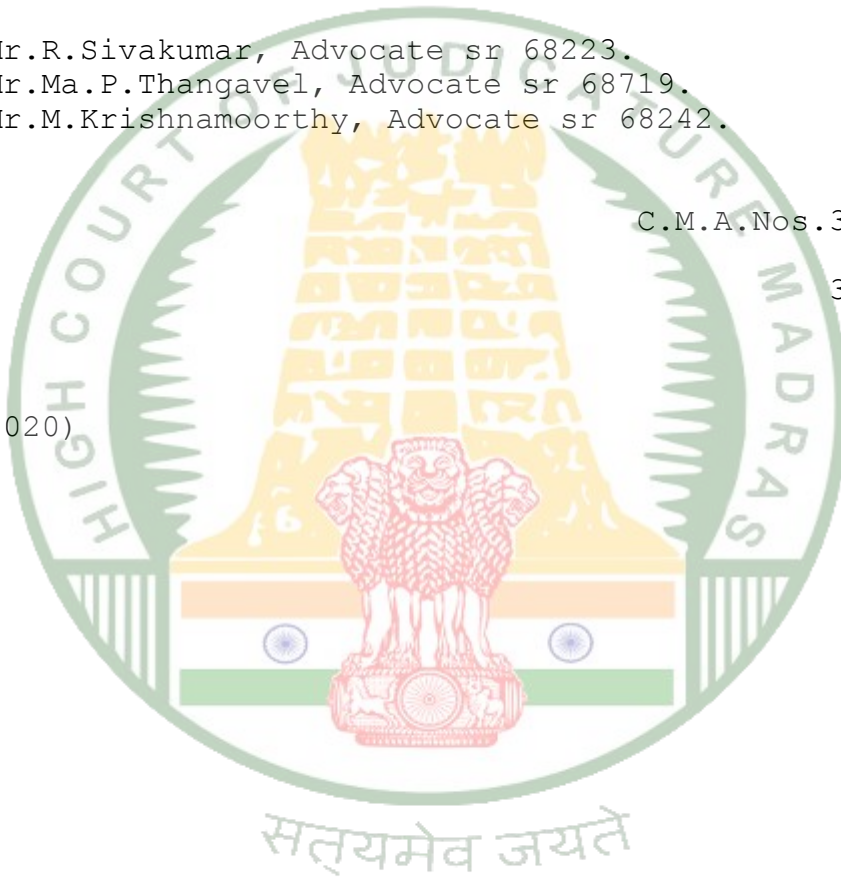
1.The Motor Accidents Claims Tribunal,
(Fast Track Court No.2, Additional District Judge)
at Gobichettipalayam, Erode District.

Copy to
The Section Officer,
VR Section, High Court, Madras 104.

+1 CC to Mr.R.Sivakumar, Advocate sr 68223.
+1 CC to Mr.Ma.P.Thangavel, Advocate sr 68719.
+1 CC to Mr.M.Krishnamoorthy, Advocate sr 68242.

C.M.A.Nos.3212 of 2007
and
3444 of 2010

GJ(CO)
SP(12/02/2020)



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