

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1871 to 1876 of 2009

K.Ganeshmani .. Appellant in C.M.A.No.1871 of 2009

1.K.Anand

2.K.Ganesmani

3.B.Kalyanaraman (Deceased)

(Appellants 1 & 2 recorded as LRs
of the deceased. 3rd appellant vide
order dated 15.03.2012
made in M.P.1 of 2011 in

C.M.A.No.1872 of 2009.) .. Appellants in C.M.A.No.1872 of 2009

1.B.Kalyanaraman (Deceased)

2.K.Anand

3.K.Ganeshmani

(second & third appellants brought
on record as LRs of the deceased sole
appellant vide order dated
15.03.2012 made in M.P.1 of 2011.
In C.M.A.No.1873 of 2009.)

.. Appellants in C.M.A.No.1873 of 2009

K.Anand

.. Appellant in C.M.A.No.1874 of 2009

Minor A.P.Mahathee

.. Appellant in C.M.A.No.1875 of 2009

(Rep. By next friend Mother Padma)

K.Padma

.. Appellant in C.M.A.No.1876 of 2009

WEB COPY Vs

1.K.Velusamy

2.United India Insurance Co Ltd.,
Rep. By its Divisional Manager,
Dr.Sankaran Road,
Namakkal.

3.M/s.Sri Ragavendra Travels,
No.2, IV Main Road,
United India Colony,
Kodambakkam,
Chennai - 24.

4.New India Assurance Co Ltd.,
Paramathy Road,
Namakkal.

.. Respondents in all the C.M.As

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.11.2008 made in M.C.O.P.Nos.855, 856, 857, 858, 859 and 860 of 2006 on the file of Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.T.Dhanyakumar

For Respondents : Mr.D.Baskaran for R2
Mrs.R.Sree Vidhya for R4

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the claimants against the awards of a sum of Rs.30,000/- towards compensation to the claimant in C.M.A.No.1871 of 2009, Rs.51,000/- towards compensation to the claimants in C.M.A.No.1872 of 2009, Rs.1,76,332/- towards compensation to the claimants in C.M.A.No.1873 of 2009, Rs.30,000/- towards compensation to the claimant in C.M.A.No.1874 of 2009, Rs.10,000/- towards compensation to the claimant in C.M.A.No.1875 of 2009 and Rs.10,000/- towards compensation to the appellant/claimant in C.M.A.No.1876 of 2009.

2.The case in brief, is as follows:

On 04.06.2006, the appellants in these appeals, along with the deceased Malliga were travelling in the Innova car bearing Reg.No.TN-09-AM-4988 belonging to the third respondent and insured with the fourth respondent Insurance Company in these appeals, from Namakkal to Chennai. When the car crossed Thozhudur, the lorry bearing Reg.No.TN-28-C-1747 came from the opposite direction in a rash and negligent manner and dashed against the car. Due to the said impact, the appellants/claimants in C.M.A.No.1871 of 2009 and C.M.A.Nos.1873 to 1876 of 2009 sustained injuries and the mother of the appellants 1 and 2 (deceased-Malliga) in C.M.A.No.1872 of 2009 died on the spot. The injured as well as the legal heirs of the deceased filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.30,000/-, Rs.51,000/-, Rs.1,76,332/-, Rs.30,000/- Rs.10,000/- and Rs.10,000/- respectively, with interest at the rate of 7.5% per

annum from the respective dates of the petitions. Giving a finding that the accident had occurred due to the rash and negligent driving of the both the drivers of the vehicles, the Tribunal fixed the contributory negligence on the part of both the drivers at the ratio of 50:50 and directed the owners of the vehicles as well as the insurance companies to pay 50% of the compensation jointly and severally, to the claimants.

3.Challenging the same, the appellants / claimants have filed the present Civil Miscellaneous Appeals.

4.The learned counsel for the appellants / claimants have submitted that the Tribunal has erred in deducting 50% of the compensation as contributory negligence on the part of the driver of the car and failed to properly appreciate the facts, circumstances and law involved in the case. He would also submit that the compensation awarded towards various heads are meagre. Stating so the learned counsel prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the second and fourth respondent Insurance Companies have submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the awards, which do not require any interference in the hands of this Court.

6.Heard both sides and perused the records.

7.The 1st appellant in C.M.A.No.1872 of 2009 has been examined as P.W.1 before the Tribunal. He deposed before the Tribunal in the chief examination that even though the lorry driver drove the lorry in a rash and negligent manner, had the car driver been cautious and careful in driving the car, the accident would have been averted. Further, the fourth respondent Insurance Company had not examined the driver of the lorry to substantiate that the accident had occurred solely due to the negligence of the lorry driver. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the drivers of both the car and the lorry, which finding, this Court is not inclined to interfere. But, having given such a finding, after arriving at the quantum of compensation in each of these cases, which in the considered opinion of this Court are just and reasonable, the Tribunal directed the respondents herein to pay only 50% of the award amounts to the claimants. Having come to the conclusion that the accident had occurred due to the rash and negligent driving of the drivers of both the vehicles, the Tribunal ought to have fixed the liability at 50% on both the Insurance Companies, being the insured for the vehicles in question and the Tribunal

ought not to have deducted 50% amounts from the original compensation amounts arrived at, on the ground that there was contributory negligence on the part of the driver of the car in which the claimants have travelled. In these circumstances, the compensation amounts which were originally arrived at by the Tribunal, will hold good. If that is taken into consideration, the claimants are entitled to the following compensation amounts:-

MCOP No.	CMA No.	Amount (Rs.)
855/2006	1871/2009	60,000/-
856/2006	1872/2009	1,02,000/-
857/2006	1873/2009	3,52,664/-
858/2006	1874/2009	60,000/-
859/2006	1875/2009	20,000/-
860/2006	1876/2009	20,000/-

The interest rate fixed by the Tribunal at the rate of 7.5% per annum from the respective dates of petitions, is confirmed.

8. These Civil Miscellaneous Appeals are allowed to the extent indicated above. No costs.

9. The second and fourth respondent Insurance Companies are directed to deposit the award amounts with interest and costs, as ordered above, in the ratio of 50:50, 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. On such deposit, the major claimants are permitted to withdraw the same on making proper application before the Tribunal. The share of the minor appellant in C.M.A.No.1875 of 2009 shall be deposited in a fixed deposit in any one of the Nationalised Banks, till the minor attains majority. The mother of the minor, who is also the appellant in C.M.A.No.1876 of 2009, is permitted to withdraw the interest amount accrued in the bank deposit, once in three months directly from the bank, which shall be used for the benefit and welfare of the minor.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

gbi

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

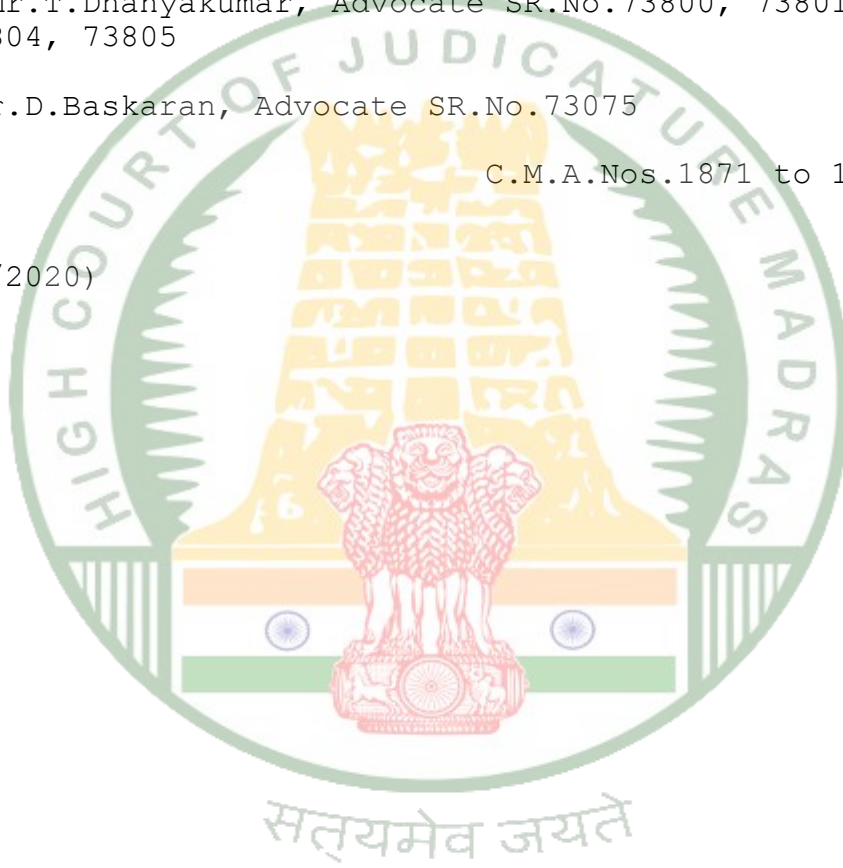
2.The Section Officer,
VR Section,
Madras High Court.

+6ccs to Mr.T.Dhanyakumar, Advocate SR.No.73800, 73801, 73802,
73803, 73804, 73805

+1cc to Mr.D.Baskaran, Advocate SR.No.73075

C.M.A.Nos.1871 to 1876 of 2009

NRL (CO)
GMY (14/08/2020)



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