IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2759 to 2763 of 2009
and
M.P.Nos. 1, 1,1,1 and 1 of 2009

Divisional Manager,
M/s. United India Insurance Company Ltd.,
Dindigul .. Appellant in all CMAs / 2nd respondent

Vs.

1. Chinnammal ..1st respondent/claimant
2. R.Madhanacholapandian ..2nd Respondents in CMA.No.2759 of 2009/ 1st respondent

1. Thangavelu ...1st respondent/claimant
2. R.Madhanacholapandian ..2nd Respondents in CMA.No.2760 of 2009 /1st respondent

1. Minor Vijayakumar (rep.by his father and next friend Thangavel) ..1st respondent/claimant
2. R.Madhanacholapandian ..2nd Respondents in CMA.No.2761 of 2009/1st respondent

1. Subramanian ..1st respondent/claimant
2. R.Madhanacholapandian ..2nd Respondents in CMA.No.2762 of 2009/1st respondent

1. Thangavel ..1st respondent /claimant
2. R.madhanacholapandian .. Respondents in CMA.No.2763 of 2009/1st respondent

(R2 set exparte before the Tribunal in all CMAs)

Prayer in all CMAs: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.08.1998 in M.C.O.P.Nos.177 to 181 of 1992 on the file of the Motor Accidents Claims Tribunal, (Additional Sub Judge), Chengalpattu.

For Appellant	: M/s.R.Sreevidhya in all CMAs
For R1	: No appearance in all CMAs
R2	: Exparte in all CMAs

COMMON JUDGMENT

All these appeals arise out of a same accident, which took place on 18.09.1991. On that date, at about 4.30 hours, the first respondent in CMA Nos.2759 to 2762 of 2009 (MCOP Nos.177 to 180 of 1992) / injured (4 persons) and the child of the first respondent in CMA No.2763 of 2009 (MCOP No.181 of 1992) and others, were travelling in the lorry bearing Reg.No.TAZ-7377 belonging to the second respondent and insured with the appellant Insurance Company, which was proceeding from Chengalpattu to Maduranthagam. When the lorry reached near Padalam Koot Road, due to the rash and negligent driving of its driver, the lorry got capsized. Due to the impact, the first respondent in CMA Nos.2759 to 2762 of 2009 sustained injuries and the child of the first respondent in CMA No.2763 of 2009 sustained grievous injuries and died. The injured as well as the legal heir of the deceased filed separate claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal has awarded compensation in those petitions, as under:

CMA No.	MCOP No.	Amount (Rs.)
2759/2009	177/1992	15,000/-
2760/2009	178/1992	7,500/-
2761/2009	179/1992	10,000/-
2762/2009	180/1992	7,500/-
2763/2009	181/1992	20,000/-

These amounts have been awarded with interest at the rate of 12% per annum, from the respective dates of the claim petitions and the Tribunal has directed both the owner and the Insurance Company to pay the compensation, jointly and severally, to the claimants.

2.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeals.

3.The learned counsel for the appellant has submitted that the claimants have travelled in the lorry as unauthorised passengers and hence the Tribunal ought to have fully exonerated the Insurance Company from payment of compensation, since such liability is not contemplated under the Motor Vehicles Act, 1988. She further submitted that the compensation amounts awarded by the Tribunal are excessive.

4.Despite the service of notice and the names of the first respondent in these appeals, have been printed in the cause list, there is no representation on behalf of the first respondent in these appeals. However, considering the passage of time, this Court is inclined to dispose of these appeals, on merits.

5.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

6.It was put forth on behalf of the second respondent / owner of the vehicle before the Tribunal that the driver of the lorry in question applied sudden brake in order to avoid dashing against another lorry which was coming from the opposite direction and at that time, the road was also wet because of rain and hence the lorry got capsized. But according to Ex.P1-First Information Report, the lorry in question tried to overtake another lorry going in front and because of the same, the accident had occurred. Taking note of the same, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry in question, holding that had the driver been careful and vigilant in driving the vehicle without trying to overtake the lorry proceeding in front, the accident could have been avoided. It was put forth on behalf of the Insurance Company before the Tribunal that the second respondent / owner of the vehicle had violated the conditions laid down in the policy, since the driver of the vehicle was not possessing the valid driving license and that apart, they have allowed more passengers to travel in the lorry, than the permissible limit as per the policy conditions. With regard to this aspect, the Tribunal has observed that since it has been accepted that the insurance policy is comprehensive in nature, the contention of the Insurance Company that they are not liable to pay compensation, on the ground that the injured and the deceased travelled as unauthorised passengers, cannot be accepted. The findings of the Tribunal on negligence and liability are based on proper analysation of the materials and evidence available on record, by the Tribunal and hence the same are confirmed.

7.With regard to the quantum of compensation awarded by the Tribunal in all these cases, the Tribunal has relied upon the First Information Report, Accident Registers of the injured, Death Certificate of the deceased and the evidence of the witnesses and all other aspects in a proper perspective and has awarded the above compensation amounts under various heads to the claimants. Further, this Court is of the considered view that the compensation amounts awarded are reasonable and justifiable and hence the same are confirmed.

8.At this juncture, the learned counsel for the appellant Insurance Company has submitted that the appellant cannot be saddled with the interest at the rate of 12% per annum. This Court finds some force in the said contention. Considering the fact that the accident took place on 18.09.1991; the claim petitions were disposed of by the Tribunal on 27.08.1998; the appellant has filed these appeals during the year 2009 and the same are being disposed of only now i.e., 2019, this Court is inclined to reduce the rate of interest from 12% to 7.5% per annum. Accordingly, the interest rate fixed by the Tribunal at the rate of 12% per annum from the respective dates of petitions, stands modified to 7.5% per annum from the respective dates of petitions.

9.In the result, these Civil Miscellaneous Appeals are partly allowed. No costs. The appellant Insurance Company is directed to deposit the compensation amounts, as ordered by the Claims Tribunal, but with the modified interest rate of 7.5% per annum from the respective dates of petitions, and costs, less the amounts already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, all the major claimants are permitted to withdraw the same, on making proper application before the Tribunal.

10.In respect of C.M.A.No.2761 of 2009, it is seen from the judgment of the Tribunal that the father of the minor (Thangavelu) has been permitted to receive the compensation amount of Rs.10,000/- awarded by the Tribunal to the minor. If the father of the minor had not received the same till now, since the first respondent minor-Vijayakumar would have attained majority by now, he is permitted to withdraw the same on making proper application before the Tribunal. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

av/rk

To
1. The Additional Sub Judge,
Chengalpattu.

C.M.A.Nos.2759 to 2763 of 2009
and
M.P.Nos. 1, 1,1,1 and 1 of 2009

tm(co)
aa05/08/2020