

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.761,762 & 884 of 2009
and M.P.Nos.1,1 & 1 of 2009

National Insurance Co. Ltd.,
Madurai.

... Appellant/2nd Respondent in CMA
No.761, 762/2009
/6th Respondent in CMA No.884 of 2009

vs

- 1.T.Ramasamy
- 2.R.Palanikumar
- 3.R.Ponraj
- 4.R.Chandrasekar
- 5.R.Kani
- 6.R.Selvarani
- 7.R.Kalarani
- 8.Minor R.Suganthi
- 9.Minor R.SenthilKumar
- 10.Minor R.Bhama
- 11.Minor R.Saravanan
- 12.Minor R.Muthukumar
- 13.Minor R.Rajesh ...Respondents 1 to 13/Petitioners 1 to 13
(Minors 8 to 13 rep. by father and natural guardian
first respondent)
- 14.R.Shanmugham
- 15.Thiruvalluvar Transport Corporation
Now known as State Express Transport Corporation
rep by the Managing Director, Chennai.
(Cause Title Accepted vide order of Court dated 04.03.2009
made in M.P.No.2 of 2009 in CMASR No.68530 of 2003)
- 16.Ayyappasamy Lorry Service,
37, Gandhi Mandaba Salai, Trichy-8.
- 17.New India Assurance Co. Ltd.,
Trichy
(Respondents 14 & 16
Ex parte in Lower Court)
... Respondents 14 to 17/Respondents
1,3 to 5 in C.M.A.NO.761/2009

1.V.Muthuraj ...1st Respondent/Petitioner
2.R.Shanmugham
3.Ayyappasamy Lorry Service
37, Gandhi Mandaba Salai, Trichy-8.

4.New India Assurance Co. Ltd.,
Trichy.
5.Thiruvalluvar Transport Corporation
Now Known as State Express Transport Corporation,
Rep. by its Managing Director,
Chennai.
(Cause Title Accepted vide order of Court
dated 25.02.2009 made in M.P.No.2 of 2009
in CMASR No.68574 of 2003)
... 2 to 5 Respondents/
Respondents 1,3 to 5 in C.M.A.NO.762/2009

1.S.Rajasekaran (Deceased) ...1st Respondent/Petitioner
2.Arulanandam
3.R.Shanmugam
4.Ramasamy

5.Ayyappasamy Lorry Service
37, Gandhi Mandaba Salai,
Trichy-8.

6.Managing Director,
State Express Transport Corporation,
Formerly known as: M.G.R.Transport Corporation,
Kancheepuram.
(Cause Title Accepted vide order of Court
dated 06.02.2009 made in M.P.No.1 of 2009
in CMASR No.68577 of 2003)
...2 to 6 Respondents/1 to 5 Respondents

7.New India Assurance Co.Ltd.,
Trichy. ...7th Respondent/7th Respondent

8.R.Selvasundari
9.R.Jawahar
10.R.Sri Devi

(RR 8 to 10 brought on record as LR's of the
deceased R1 vide order of the Court dated
07.08.2013 made in M.P.Nos.1 to 3 of 2012
in CMA No.884 of 2009)
... 8 to 10th Respondents in C.M.A.NO.884/2009

Common Prayer : Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Common Judgment and decree in M.C.O.P.Nos.200 of 1998, 9 of 1999 and 213 of 1998, respectively, dated 31.03.2003 on the file of the Motor Accidents Claims Tribunal, Additional District cum Chief Judicial Magistrate, Villupuram.

For Appellant : Mr.N.Vijaya Raghavan (for all appeals)

C.M.A.No.761 of 2009

For RR1,3,4,5,8,9,10,11,12,13 : No appearance
For R7 : Mr.V.Srikanth
For R14 & R16 : Exparte
For R15 : Mr.Dr.S.S.Swaminathan

C.M.A.No.762 of 2009

For R1 & R4 : No Appearance
For R2 & R3 : Exparte
For R5 : Mr.Dr.S.S.Swaminathan

C.M.A.No.884 of 2009

For R6 : Mr.Dr.S.S.Swaminathan
For R7 : No Appearance
For R2 to R5 : Ex-parte

COMMON JUDGMENT

These appeals are preferred by the appellant Insurance Company as against the awards passed by the Tribunal in MCOP.No.200 of 1998, MCOP.No.9 of 1999 and MCOP.No.213 of 1998 respectively.

2.The facts of the case are that on 20.06.1993 at about 5.30 a.m, the deceased-Raja Vellammal was travelling in the bus bearing Reg.No. TN-01-N-0238 belonging to the fifteenth respondent Transport Corporation in C.M.A.No.761 of 2009, from Tuticorin to Madras. When the bus reached near V-Salai Bus Stop in G.S.T.Road, Vikravandi, the lorry bearing Reg.No.TN-59-7899, belonging to the fourteenth respondent and insured with the appellant Insurance Company in C.M.A.No.761 of 2009, came in a rash and negligent manner and tried to overtake another lorry which was going in front. On seeing the above bus coming from the opposite direction, the driver of the lorry bearing Reg.No.TN-59-7899 lost control over the vehicle and dashed against the bus. Due to the impact, the deceased and several

others who had travelled in the bus, sustained multiple injuries and the deceased died on the spot. The driver and conductor of the bus also sustained grievous injuries and fractures. The legal heirs of the deceased, conductor of the bus and the driver of the bus have filed separate claim petitions before the Tribunal. Considering the materials and evidence available on record, rendering a finding that the accident had occurred only due to the rash and negligent driving of the driver of the lorry bearing Reg.No.TN-59-7899 and fastening the liability on the appellant Insurance Company, the Tribunal has awarded a total compensation of Rs.1,66,000/- to the legal heirs of the deceased, Rs.42,000/- to the conductor of the bus and Rs.91,600/- to the driver of the bus, with interest at the rate of 9% per annum from the respective dates of petitions.

3.Challenging the same, the appellant Insurance Company has come up with these appeals.

4.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 accident was solely due to the rash and negligent driving on the part of the driver of the bus belonging to the State Transport Corporation. It is also submitted that the compensation amounts awarded by the Tribunal are excessive.

5.Per contra, the learned counsel for the respondent Transport Corporation has submitted that the Tribunal has taken into account each and every aspect into consideration and has awarded the compensation amounts which are just, fair and reasonable. It is also submitted that the Tribunal has correctly fastened the liability on the appellant Insurance Company.

6.Despite the service of notice and the name of the respondents/claimants having been printed in the cause list, there is no representation on their behalf.

7.This Court has considered the submissions made by the learned counsel for the appellant and the learned counsel for the respondent Transport Corporation and also perused the grounds and all the materials available on record.

8.The Tribunal has taken note of the following, while passing separate awards in respect of these MCOPs:

- (a) Ex.P1 First Information Report.
- (b) There is no eye witness to the accident
- (c) Out of the vehicles involved in the present case, the driver of the lorry bearing Reg.No.T.N.59-7899, was rash and negligent in his driving.
- (d) Corroboration of Motor Vehicle Inspection Report with

other evidence would find out which driver of the vehicle was negligent.

9.Placing reliance on the above parameters, the Tribunal has fastened the liability on the appellant Insurance Company, which in the considered view of this Court, does not require any interference, since the same was based on evidence and documents adduced by both sides. Added to the above, no new fact was forthcoming on the side of the insurer to show that the claims of the claimants are false or incorrect. Hence, the findings on negligence and liability by the Tribunal are confirmed as such.

10.As far as the quantum of compensation awarded by the Tribunal, in respect of M.C.O.P.No.200 of 1998 (C.M.A.No.761 of 2009), the Tribunal has awarded a sum of Rs.1,44,000/- towards loss of income, Rs.20,000/- towards loss of love and affection and Rs.2,000/- towards funeral expenses. In respect of M.C.O.P.No.9 of 1999 (C.M.A.No.762 of 2009), the Tribunal has awarded a sum of Rs.2,000/- towards extra nourishment, Rs.20,000/- towards fracture, Rs.15,000/- towards disability and Rs.5,000/- towards pain and suffering. In respect of M.C.O.P.No.213 of 1998 (C.M.A.No.884 of 2009), the Tribunal has awarded a sum of Rs.60,000/- towards fractures, Rs.4,600/- towards medical expenses, Rs.20,000/- towards disability, Rs.2,000/- towards extra nourishment and Rs.5,000/- towards pain and suffering.

11.The Tribunal, placing reliance on the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor and taking note of the II Schedule of the Motor Vehicles Act, and all other aspects in a proper perspective, 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.

12.At the juncture, the learned counsel for the appellant has submitted that the interest rate fixed by the Tribunal at 9% per annum is on the higher side and hence, the same has to be reduced.

13.The said submission of the learned counsel for the appellant has some force. The accident was of the year 1993, the Tribunal has passed the awards during 2003, the appeals were filed during the year 2009, but the appeals are being disposed of only now, i.e., during 2019. Taking note of the same, this Court is of the considered view that it would be appropriate to

reduce the same to 7.5%. Accordingly, the interest rate fixed by the Tribunal at 9% per annum from the respective dates of petitions, stands modified to 7.5% per annum from the respective dates of petitions.

14. In the result, the Civil Miscellaneous Appeals are partly allowed by upholding the findings of the Tribunal on negligence and quantum and by modifying the interest rate from 9% to 7.5% per annum from the respective dates of petitions. The appellant Insurance company and the owner of the vehicle viz., R. Shanmugham are directed to jointly and severally deposit the compensation amounts with the modified interest at 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. The minor respondents 8 to 13 in C.M.A.No.761 of 2009 would have attained majority by now. Hence, on such deposit being made, the respondents 2 to 4 in CMA.No.884 of 2009, who are the legal heirs of the first respondent/claimant, are permitted to withdraw the compensation amount in equal proportion; and all the respondents/claimants in other two appeals, are permitted to withdraw their respective compensation amounts, as per the ratio of apportionment made by the Tribunal, on making proper application. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rk

To

The Motor Accidents Claims Tribunal,
The Additional District cum Chief Judicial Magistrate,
Villupuram.

Copy to

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

+3cc to Mr.S.S.Swaminathan, Advocate sr.70335, 70336, 70337

+3cc to Mr.N.Vijayaraghavan, Advocate Sr.71583,71584,71585

C.M.A.Nos.761,762 & 884 of 2009
and M.P.Nos.1,1 & 1 of 2009

srg 12/05/2021