IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.04.2019

PRONOUNCED ON : 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NOS.1575 & 2280 OF 2011
AND
M.P.NOS. 1 & 1 OF 2011

CMA.No.1575 of 2011

The Branch Manager,
The New India Assurance Company Limited,
Ram Complex, Paramathy Road,
Namakkal. ... Appellants/2nd Respondent

.. Vs ..

1.P.Devarayan ... 1st Respondent/Petitioner

2.K.Jayachandran ...2nd Respondent/1st Respondent

CMA.No.2280 of 2011

The Branch Manager,
The New India Assurance Company Limited,
Ram Complex, Paramathy Road,
Namakkal. ...Appellants/2nd Respondent

.. Vs ..

1.R.Sarasu ...1st Respondent/Petitioner

2.K.Jayachandran ...2nd Respondent/1st Respondent

COMMON PRAYER:

Appeals are filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 21.03.2006 made in M.C.O.P.Nos.470, 471 of 2004, on the file of the Motor Accidents Claims Tribunal, the learned Additional District Judge – cum – Fast Track Court No.III, Namakkal.

For Appellant
in both appeals : Mr.K.Padmanabhan

For R1
in both appeals : Mr.MA.P.Thangavel

For R2
in both appeals : Set ex-parte (in lower Court)

COMMON JUDGMENT

1.1 The Insurance Company is the appellant herein. Challenging the award passed in M.C.O.P.Nos.470, 471 of 2011, on the file of the Motor Accidents Claims Tribunal, the learned Additional District Judge – cum – Fast Track Court No.III, Namakkal, the appellant has come up with the present appeal on the point of liability as well as the point of quantum.

1.2 CMA.No.1575 of 2011 has been filed against the MCOP.No.470 of 2004 while CMA.No.2280 of 2011 has been filed against the MCOP.No.471 of 2004. Since both the above claim petitions along with other claim petitions Viz., MCOP.Nos.467, 468, 469, 470, 471, 482, 487 and 490 of 2004 were arising out of the same accident and filed by the claimants relating to the injury, common evidence has been adduced before the Tribunal and common judgment was referred on 21.03.2006.

2. Brief facts that are necessary for determination of these appeals are that in (CMA.No. 2280 of 2011), on 31.07.2003 at about 8.00 AM, the first respondent herein/R.Sarasu was travelling as a Coolie (load women) in a tractor, bearing registration No.TN-28-D-1905 at Kallankattuputhur, Bend near Kootachery while its driver was driving the tractor in rash and negligent manner without following the traffic rules and suddenly turned the vehicle in the bend in a rash and negligence manner, consequently the vehicle was capesfied in the right side of the road and thereby caused accident. Due to the accident, the first respondent herein/R.Sarasu had sustained multiple grievous injuries on her left hand and back head and chest and all over her body and she was admitted in Aravinth Hospital, Namakkal, for treatment. This accident had occurred only due to the rash and negligent driving of the driver of the vehicle bearing registration No. TN-28-D-1905.

3. The appellant herein/Insurance Company filed counter statement before the Tribunal denying the age, avocation and alleged income of the claimant and inter alia denied the manner of accident as projected in the claim petition. The tractor being registered for agricultural purpose only and the tractor

alone is insured with the appellant herein/Insurance Company in Policy No.721300/31/02/14909 from 13.02.2003 to 12.02.2004 and the trailer is not covered under the policy, the second respondent herein being a road contractor, has violated policy conditions and took 24 contract coolies including the first respondent herein (R.Sarasu) to travel in the Trailer (without policy coverage) attached with the tractor bearing registration No. TN-28-D-1905 and the tractor met with an accident due to over crowding of passengers in the trailer.

4. The other claimant viz., P.Devarayan/first respondent in CMA.No. 1575 of 2011 has travelled in the said trailer attached to the tractor, as a load man/owner of the vehicle who had sustained injury.

5. Before the Tribunal, on behalf of the claimants, all the claim petitioners in the connected MCOPs were examined as PW1 to PW6 while the Doctors who had issued medical certificate were examined as PW7 and PW8 and documents Ex.P1 to P30 were marked. On behalf of the Insurance Company, staff of the Insurance Company were examined as RW1, RW2 and RW3 and documents Exs.R1 to R3 were marked. Since owner of the vehicle viz., K.Jayachandran had remained set ex-parte, the Insurance Company had filed petition under Section 170 of the Motor Vehicles Act and the same was allowed.

6. On consideration of both oral and documentary evidence, the Tribunal has arrived at the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the second respondent herein and also held that since all the injured were travelled in the trailer which had no insurance coverage however, the same has been attached with tractor, which is insured with the Insurance Company and hence, taking note of the nature of the policy, the Tribunal has held that the Insurance Company is not liable to pay the compensation, however, ordered for payment of compensation and given further direction that thereafter, recover the award amount from the owner of the vehicle. Accordingly, the Tribunal has awarded a sum of Rs.15,000/- in respect of MCOP.No.471 of 2004 in CMA.No.2280 of 2011 and awarded a sum of Rs.1,85,000/- in respect of MCOP.No.470 of 2001 in CMA.No.1575 of 2011.

7. Aggrieved against the judgment and decreetal order in both the MCOPs, wherein pay and recovery were directed against the Insurance Company, they have preferred the above Civil Miscellaneous Appeals.

8. The learned counsel for the appellant herein/Insurance Company would contend that the Tribunal has arrived at the conclusion that the Insurance Company is not liable to pay the

compensation and as such, the Tribunal, ought not to have ordered pay and recovery.

9. Per contra, the learned counsel for the claimants would contend that since the tractor was insured with the appellant herein/Insurance Company, the policy was in force and as the accident had taken place due to the rash and negligence driving of the driver of the tractor, the Tribunal is justified in ordering pay and recovery. He further contended that the injuries sustained by the claimant in MCOP No. 470 of 2004 (CMA.No.1575 of 2011) is now under a persistent vegetative state of condition and hence, the claimant has prayed this Court to invoke the suo moto enhancement for enhancing the compensation awarded by the Tribunal.

10. After hearing both the parties and perusing the documents, admittedly, it is apparent that both the claim petitioners travelled in the trailer attached to tractor having registration No. TN-28-D-1905. As per Ex.R1/Policy copy, the tractor was insured with the appellant herein/ Insurance Company and the insurance is valid for the period from 13.02.2003 to 12.02.2004 and as per the premium paid thereon, the policy is issued under Miscellaneous and Special Type of vehicle Policy and Package and premium was paid towards own damage and third party insurance and workman compensation to employee as could be seen from Ex.R1. From the evidence of RW1/V.Kannan, the staff of the Insurance Company and others, it is seen that the trailer is not covered under the policy and admittedly claim petitioners have travelled in the trailer and not in the tractor. There is no policy coverage to cover the passengers in the above trailer. It remains to be stated that the Tribunal has given its finding that the accident had taken place due to the rash and negligent driving of the driver of the tractor, with which, the trailer was attached. As stated supra, trailer was not insured with Insurance Company. Therefore, the Tribunal is right in coming to the conclusion that Insurance Company is not liable to pay the compensation. It appears that the Tribunal has held so, since persons travelled as load man in the trailer without knowing the present policy coverage, directed the Insurance Company to pay the award and thereafter to recover the same from the Insurance Company. This Court is unable to affix its seal on approval for the said pay and recovery clause for more than one reason.

11. In the instant case, as per the evidence available on record, viz., Ex.R1/Copy of the Policy, Ex.R2/Proposal form, Ex.R3/Investigation Report, Ex.P1/FIR, Ex.P2/Charge Sheet and judgment of the Magistrate Court, it is clear that the trailer loaded with the load material and those persons who have been taken as a loadman was engaged by the owner of the vehicle. The nature of the policy being, as stated supra, and the

Miscellaneous Special Type of Vehicle, is being involved in the accident, it is very much clear that it is not used for the agriculture purpose. Yet another point is that since the tractor trailer in which the claim petitioners have travelled was not insured as per the policy coverage, the Insurance company cannot be mulcted with any liability and therefore, in such circumstances, not by any direction, the insurance company could be made to pay the award amount and giving liberty to them to recover the same. This Court's attention is drawn to the decision reported in 2004 (4) CTC 459 - [National Insurance Company Limited Vs. V.Chainnamma and others], wherein, the Hon'ble Supreme Court has held that

> "Motor Vehicles Act, 1988, Sections 2(14), 244 246 - Goods Carriage - What is - Goods Carriage means any motor vehicle constructed or adapted for use solely for carriage of goods or any motor vehicle not so constructed or adapted when used for carriage of goods - Tractor is defined to mean vehicle which is not itself constructed to carry any load but excludes road roller - Trailer means any vehicle other than semi trailer and side car drawn or intended to be drawn by motor vehicle - Tractor should be used for agricultural purposes and trailer attached to tractor should also be used for agriculture purpose unless it is otherwise registered - Regular businessman dealing in vegetables carried vegetables for purpose of sale in tractor cum trailer - Such tractor cum trailer cannot be termed as goods carriage - Claim petition filed by dependents of such businessman on his death arising out of accident involving such tractor cum trailer cannot be maintained as it is not goods carriage - Even if it were goods carriage compensation could not be paid as accident occurred on 24.11.1991 and judgment of Apex Court in Asha Rani's Case, 2003 (2) SCC 223 applied"

12. Taking into consideration the nature of the policy and the premium paid thereon, in the absence of any additional premium being paid for the tractor attached with trailer or separate policy for the trailer, the Tribunal is right in coming to the conclusion that the Insurance Company is not liable to pay the compensation and rightly held that the Insurance company is exonerated from payment of compensation amount and further, it appears that there is a direction to pay the amount and recover the same, which is not supported by any legal principles and hence, the pay and recover clause granted by the Tribunal is not legally sustainable. In this view of the matter, the same is hereby stands vacated. Accordingly, it is held that appellant herein/insurance Company is exonerated from its

liability and is not required to pay and thereafter, recover the award amount as directed by the Tribunal.

13. CMA 2280 of 2011 (MCOP.No.471 of 2001)

On the point of quantum, taking into consideration, the medical evidence of PW8/Dr.Kathiravan and the permanent disability certificate issued by PW8/Dr.Kathiravan, the quantum of compensation of Rs.15,000/- awarded by the Tribunal appears to be just and fair and the same is hereby confirmed.

14. CMA.1575 of 2011 (MCOP.No. 470 of 2001) , the learned counsel appearing for the first respondent herein/injured claimant would contend that as per Ex.29/Disability Certificate, the claimant is said to have suffered partial permanent disability at 40% and in the accident, he has sustained injury to C3, C4, C5 bones in the neck and he also suffered injuries in hands and legs, due to which he has lost sensation in both the legs and both the hands and he is in a partly vegetative state.

15. On perusing the medical evidence of PW2/Devarayan and PW8/Dr.Kathiravan, who had issued Ex.P29/Disability Certificate, wherein he has stated that on 31.07.2003, he sustained cervical cord injury at C3, C4, C5 level with quadriperisia, for that he had treatment in a private hospital till 02.09.2003, wherein, he was treated conservatively. Patient recovered partially. Then he undertook treatment in Srinidhi Hospital, Namakkal, till 22.10.2003, wherein, bed sore was treated by skin grafting. Patient had the problem of continuance of urine/motion. Having regard to above medical evidence, the Tribunal fixed the disability at 40%. After going through the injuries sustained by PW2/claim petitioner, the disability fixed by the Doctor at 40% appears to be just and fair, since he has sustained injury at C2, C3 position whereby the nerves were affected and resulting in the loss of sensation in both the legs and he is unable to use the legs as before. Accordingly, he has lost earning capacity and the disability fixed by the Tribunal at 40%, appears to be reasonable and hence, the criteria fixed by the Hon'ble Supreme Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC, for adoption of multiplier method in the event of loss of earning capacity is being satisfied and the multiplier method adopted by the Tribunal is proper and fixed the notional income of the deceased at Rs. Rs.2,000/-.

16. Taking into consideration the date of the accident i.e 2004, and the age of the claim petitioner was 35 years and accordingly, in the light of the decision rendered before the Hon'ble Supreme Court of India, in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in

2009 ACJ 1298 SC, multiplier 10 is adopted by this Court.

17. As per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the claim petitioner is entitled for future prospects at the rate of 40%. At the time of accident the claim petitioner was 35 years and accordingly, loss of income is reassessed as under:

Rs.2,000 + Rs.800 = Rs.2,800/-
[40% Future Prospects of 2000 (40/100) = Rs.800/-]
Rs.2,800/- x 12 x 10 x 40/100 = Rs.1,34,400/-.

Accordingly, compensation awarded by the Tribunal towards loss of income is reassessed as stated supra. Further, for pain and suffering Rs.10,000/-, for Nutrition Rs.5,000/-, Transportation Rs.5,000/-. Loss of amenities Rs.5,000/- and towards Medical expenses Rs.60,000/-, is hereby reassessed. Altogether, Rs.2,19,400/- is the total modified compensation awarded by this Court.

18. In the decision of this Court reported in 2018 (1) TN MAC 592 (DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others], the Division Bench has held that though the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, the Court could take suo motu decision for enhancing the compensation amount awarded by the Tribunal, by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33 C.P.C. and Section 151 CPC as well as Article 227 of the Constitution of India. The relevant paragraph No.9 of the above said decision is extracted hereunder:-

> "9.Though the Appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the Compensation awarded by the Tribunal from Rs.14,57,000/- to Rs.17,83,600/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33, C.P.C., and Section 151 C.P.C., as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are beneficial in nature and what is required to be awarded is Just and Reasonable Compensation. Therefore, even in the absence of Appeal/Cross-Appeal by the Claimants, this Court has got power and jurisdiction to enhance the Compensation, which has been recognised by the

Honourable Supreme Court in Nagappa v. Gurdayal Singh, 2004 (2) TN MAC 398 (SC)."

19. Thus, suo motu, this court has ordered the enhanced compensation in CMA.No. 1575 of 2011 and accordingly, the appeal is allowed with the above stated modification.

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Income	Rs.1,08,000/-	Rs.1,34,400/-
Pain and suffering	Rs. 10,000/-	Rs. 10,000/-
Transportation	---	Rs. 5,000/-
Nutrition and extra nourishment	Rs. 7,000/-	Rs. 5,000/-
Loss of amenities	---	Rs. 5,000/-
Medical expenses	Rs. 60,000/-	Rs. 60,000/-
Total	Rs.1,85,000/-	Rs.2,19,400/-

20. In the result:

(i) Civil Miscellaneous Appeal in CMA.Nos.1575, 2280 of 2011 filed by the Insurance Company is partly allowed to the limited extent on the part of liability of Insurance company.

(ii) (a) CMA 2280 of 2011 (MCOP.No.471 of 2001) : The quantum of compensation of Rs.15,000/- awarded by the Tribunal is hereby confirmed.

(b) CMA.1575 of 2011 (MCOP.No. 470 of 2001) : The award is modified as follows:

Total	Compensation awarded by the Tribunal:	Compensation awarded by this Court:
	Rs.1,85,000/-	Rs.2,19,400/-

(c) The award amount will carry interest at the rate of 7.5% per annum.

(iii) The second respondent/owner of the vehicle is directed to deposit the award amount as ordered by this court, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iv) On such deposit, the claimant is permitted to withdraw the amount awarded by the Tribunal with proportionate interest, less the amount already withdrawn, if any.

(v) The claimant shall pay necessary Court fee, if any, on the enhanced compensation.

(vi) No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(Arbitration)

//True Copy//

Sub Assistant Registrar

dua

To

1. The Motor Accidents Claims Tribunal,
   Additional District Judge-cum-Fast Track Court No.III,
   Namakkal.

2. The Section Officer,
   V.R.Section, High Court,
   Madras.

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.70155

C.M.A.Nos.1575 & 2280 of 2011
and
M.P.Nos. 1 & 1 of 2011

CNR(CO)
CS/02/06/2020