

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1447 to 1449 of 2015

National Insurance Co. Ltd.,
Rep. by its Branch Manager,
Muruga Complex, 1st Floor,
No.12, K.K.Road,
Villupuram.

...Appellant/3rd Respondent

Vs.

1.Kanagalakshmi
2.Minor. Kumararajan
3.Minor. Balamurugan
4.Minor. Balavendran

Minors rep.1st respondent-Mother/
Respondents 1 to 4 /Petitioners

5.S.Balakrishnan
6.R.Sridhar

7.New India Assurance Company Ltd.,
Rep. by its Branch Manager,
No.149, First Floor,
Bharathiyar Road,
Karaikkal

..Respondents 5 to 7 in
C.M.A.No. 1447 of 2015/
Respondent

1.Parameswari
2.S.Balakrishnan
3.R.Sridhar

..1st Respondent /Petitioner
..Respondents 2 to 4 /Respondents

4.New India Assurance Company Ltd.,
Rep. by its Branch Manager,
No.149, First Floor,
Bharathiyar Road,
Karaikkal

.. Respondents in
C.M.A.No. 1448 of 2015

1.Kamachi
2.Minor. Vaijayanthi Priyadharshini
3.Minor. Asvini Revathi (Minors rep.by 1st Respondent-Mother)
4.Venugopal
5.Thyanayagi ..Respondents 1 to5/Petitioner

6.S.Balakrishnan
7.R.Sridhar
8.New India Assurance Company Ltd.,
Rep. by its Branch Manager,
No.149, First Floor,
Bharathiyar Road,
Karaikkal

.. Respondents 6 to 8 in
C.M.A.No.1449 of 2015/
Respondents.

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 13.06.2012 made in M.C.O.P.Nos.188 to 190 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Mayiladuthurai, Nagapattinam District.

In all CMAs:

For Appellant : Mr.J.Chandran

In C.M.A.No1447 of 2019

For R1 to R4 : Mr.G.Thiyagarajan

In C.M.A.No1448 of 2019

For R1 : Mr.G.Thiyagarajan

In C.M.A.No1448 of 2019

For R1 to R3 & R5 : Mr.G.Thiyagarajan

Mr.S.Manohar for New India Assurance Co.Ltd.,

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed against the award dated 13.06.2012 made in M.C.O.P.Nos.188 to 190 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Mayiladuthurai, Nagapattinam District.

2.All the three appeals are arising out of the same accident and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petitions for the sake of convenience.

3.The appellant/Insurance Company is third respondent in M.C.O.P.Nos.188 to 190 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Mayiladuthurai, Nagapattinam District. The claimants filed the said claim petitions, claiming a sum of Rs.25,00,000/-, Rs.23,00,000/-, Rs.24,00,000/- respectively as compensation for the death of three persons namely, Thavasamuthu, Mathizhagan and Rajendran, who died in the accident that took place on 06.10.2000. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry/first respondent belonging to the second respondent and directed both second respondent as well as third respondent being owner and insurer of the said lorry to pay a sum of Rs.5,55,000/-, Rs.5,97,000/- and Rs.5,97,000/- as compensation to the claimants. Against the said award dated 13.06.2012 made in M.C.O.P.Nos.188 to 190 of 2004, the third respondent/Insurance Company has come out with the present three appeals challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

4.The learned counsel appearing for the third respondent-Insurance Company contended that the total compensation awarded by the Tribunal is excessive and unsustainable in law. The accident occurred only due to rash and negligent driving by the deceased/rider of the motorcycle and claimants are entitled to compensation only under Section 140 of the Motor Vehicles Act. EX.P1/FIR relied on by the claimants shows that three persons travelled in motorcycle and rider of the motorcycle dashed on the back side of the parked lorry. The Tribunal ought to have considered that entire negligence is on the part of the rider of motorcycle. Three persons travelled in the motorcycle is contrary to the statute and the Tribunal has erred in fixing liability on the third respondent/Insurance Company and prayed for setting aside the award of the Tribunal.

5.Per contra, the learned counsel appearing for the claimants contended that the lorry belonging to the second respondent was driven by the first respondent in a rash and negligent manner, who overtook the motorcycle and suddenly stopped in the middle of the road. The deceased, who was riding motorcycle could not stop the vehicle and dashed on the back side of the lorry. The accident occurred only due to rash and negligent driving by the first respondent. The compensation awarded by the Tribunal is meagre and prayed for dismissal of all the three appeals.

6. Heard the learned counsel appearing for the third respondent/Insurance Company as well as the learned counsel appearing for the claimants in C.M.A.No1447 to 1449 of 2015 and perused the materials available on record.

7. The contention of the claimants is that the first respondent/driver of the lorry overtook the motorcycle and suddenly stopped in the middle of the road as a result, the motor cyclist dashed against the back side of the lorry and all the three persons died on the spot. According to the claimants, the accident occurred at 10 o'clock in the night and it was raining heavily and there was no light. The driver of the lorry stopped the lorry without danger light on the back. To substantiate their case, the claimants have examined PW2/eye witness, who has deposed in his evidence that the accident occurred only due to negligence on the part of the driver of the lorry and FIR was also lodged against the first respondent-the driver of the lorry. The third respondent/Insurance Company did not examine the driver of the lorry to prove that the accident occurred only due to rash and negligent driving by the deceased/the rider of the motorcycle. The Tribunal properly appreciating the evidence on record has held that the accident occurred only due to rash and negligent driving by the driver of the lorry. The claimants have contended that all the three deceased persons were earning Rs.8,000/-, Rs.8,000/- and Rs.6,000/- respectively at the time of the accident. The Tribunal has fixed notional income at Rs.4,000/- per month for all the deceased in the absence of any evidence with regard to income and by applying multiplier, considering the age awarded compensation towards loss of income. The Tribunal has also awarded compensation under conventional heads. The Tribunal has not granted any enhancement for future prospects and the amounts granted under conventional heads are meagre. Considering that the Tribunal has not granted any amount for future prospects, the amounts awarded under the conventional heads are meagre and no contributory negligence is fixed on the deceased for triple riding and this Court is not inclined to interfere with the award of the Tribunal.

8. In the result, the award passed by the Tribunal is hereby confirmed and all the three Civil Miscellaneous Appeals are dismissed. The third respondent/National Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective award amount along with proportionate interest and costs, after adjusting the amount already withdrawn, if any. The share of

the minor claimants are directed to be deposited in any one of the Nationalised Bank, till they attain majority. The mother of the minor claimants are permitted to withdraw the accrued interest once in three months, for the welfare of the minor claimants. No costs.

rst

Sd/-
Assistant Registrar

//True Copy//

To Sub Assistant Registrar

1. The Motor Accident Claims Tribunal
Additional Subordinate Judge,
Mayiladuthurai,
Nagapattinam District.

2. The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.J.Chandran, Advocate, vide SR.No.5732

+3cc to Mr.G.Thiagarajan, Advocate, vide SR.No.5769,5770 & 5771

+1cc to M/s.S.Manohar, Advocate, vide SR.No.6125

C.M.A.Nos.1447 to 1449 of 2019

Kak(21/04/2019)

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