

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING JUDGMENT 04.04.2019	DATE OF PRONOUNCING JUDGMENT 14.08.2019
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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NOS.2254 OF 2011, 1009, 1010 OF 2013

CMA No.2254 of 2011

National Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.46, Moore Street,
Chennai - 1.

...Appellant/2nd Respondent

Vs.

1.Tamilanban
2.Kanmani
3.Mukilan
4.Ramu
5.Selvam

... Respondents 1 to 5/Petitioners

6.R.E.Ragavendra

... 6th Respondent/1st Respondent

7.Talk Media Private Ltd.,
No.85, Mount Road,
Lotus Towers, Guindy,
Chennai - 32.

... 7th Respondent/3rd Respondent

8.Iffco - Tokyo General Insurance Co. Ltd.,
T.Nagar, Chennai - 17.

... 8th Respondent/4th Respondent

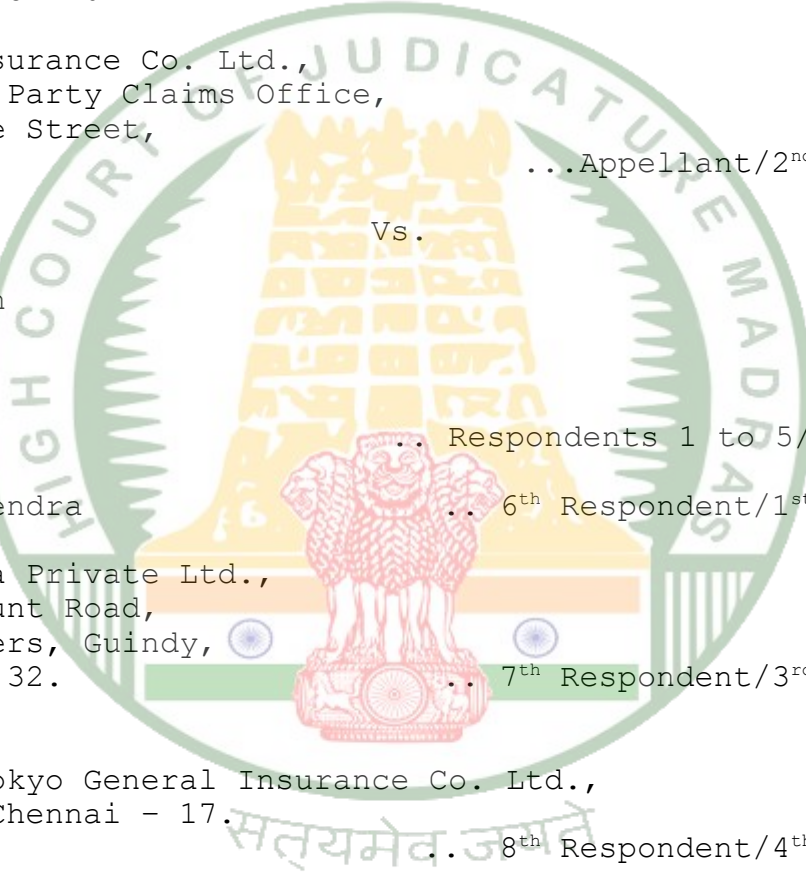
CMA No.1009 of 2013

1.Tamilzhanban
2.Kanmani
3.Mukilan
4.Ramu
5.Selvam

...Appellants/Petitioners

Vs.

1.Ragavendra



WEB COPY

2. National Insurance Co. Ltd.,
No.46 Moore Street, Chennai 600 001.

3. Talk Media Private Ltd.,
No.85 Mount Road, Lotus Towers,
Guindy, Chennai 600 032.

4. Iffco - Tokyo General Insurance Co. Ltd.,
T.Nagar, Chennai - 17.

...Respondents/Respondents

CMA No.1010 of 2013

P.K.Selvakumar

...Appellant/Petitioner

Vs.

1. Ragavendra

2. National Insurance Co. Ltd.,
No.46 Moore Street, Chennai 600 001.

3. Talk Media Private Ltd.,
No.85 Mount Road, Lotus Towers,
Guindy, Chennai 600 032.

4. Iffco - Tokyo General Insurance Co. Ltd.,
T.Nagar, Chennai - 17.

...Respondents/Respondents

COMMON PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 22.09.2010 made in M.C.O.P.Nos.7 and 8 of 2008 respectively on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, (FTC - 2), Poonamallee.

For Appellants : Mr.S.Arunkumar
in CMA 2254 of 2011
Mr.T.G.Balachandran
in CMAs 1009, 1010 of 2013

For Respondents : Mr.T.G.Balachandran for R1 to R5
in CMA 2254 of 2011
Mr.S.Arunkumar for R2
in CMAs 1009, 1010 of 2013

JUDGMENT

These three Civil Miscellaneous Appeals are filed against the award and decreetal order dated 22.09.2010 made in M.C.O.P.Nos.7, 8 of 2008 respectively on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, (FTC - 2), Poonamallee.

2.The CMA.No.2254 of 2011 is filed by the Insurance Company challenging the award passed in M.C.O.P.No.7 of 2008 granting compensation of Rs.6,54,000/- for the death of one Cheziyan in the accident on the ground of liability and quantum of compensation.

3.The CMA.Nos.1009, 1010 of 2013 are filed by the claimants seeking enhancement of compensation awarded in M.C.O.P.No.7 of 2008 (for death of Cheziyan) and M.C.O.P.No.8 of 2008 (for the injury of P.W.2 Selvakumar) and as both MCOPs have emerged for the compensation from the very same accident, common evidence was let in and Common Judgment was pronounced on 22.09.2010. As against which, the above CMAs have been filed.

4.The CMA.Nos.2254 of 2011 and 1010 of 2013 have been filed challenging the award passed in M.C.O.P.No.7 of 2008 filed by the legal representatives/legal dependents of the deceased Cheziyan, who died in the accident.

5.The learned counsel for the appellant in CMA.No.2254 of 2011/Insurance Company has contended that the deceased was driving a two wheeler on the wrong side of the road and he had invited the accident and hence, he is not entitled for any compensation. This Court has considered the said contention with regard to the oral and documentary evidence adduced before the Court.

6.It is to be stated that the claim petitioner in M.C.O.P.No.8 of 2008 namely Selvakumar was examined as P.W.2 as an occurrence witness, since he has travelled in the said two wheeler driven by the deceased Cheziyan. P.W.2 Selvakumar, who is the occurrence witness, had clearly deposed that while he was travelling in the two wheeler driven by the deceased Cheziyan, he had travelled in the said vehicle as a pillion rider. The first respondent has driven the Lorry in a rash and negligent manner and the front side of the lorry hit against the two wheeler and thereafter, dragged on the two wheeler for 100 feet distance from the place of occurrence and due to the break of skull, the brain came out and consequently, the said Cheziyan died on the spot. This part of the evidence of P.W.2, who is admittedly the occurrence witness, having travelled in the vehicle which remains uncontroverted either by oral evidence or

by documentary evidence on the side to the first and second respondents namely owner of the lorry or the Insurance Company also assumes significance. Furthermore, even as per Ex.P1 First Information Report said to have been given by a person standing near by the scene of the crime, also lent support to the oral evidence of P.W.2, as to the manner of the accident and also that the vehicle was driven only on the correct side of the Road and hence, in the absence of any contra evidence to the occurrence evidence of P.W.2 coupled with the contents of the First Information Report, the version of P.W.2 is held to be believable and the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving on the part of the driver of the first respondent-Lorry and the second respondent being the insurer of the first respondent-lorry, both are jointly and severally liable to pay the compensation and such a finding rendered by the Tribunal does not warrant any interference on this appellate stage.

7.The C.M.A.No.1009 of 2013 (M.C.O.P.No.7 of 2008) on the point of quantum of compensation, both the parties were heard. As per Ex.P6 Salary certificate issued by the Employer Talk Media Private Limited, Chennai, the deceased Cheziyan joined the office on 01.09.2005 and was working and he was given the Permanent Provident Fund number and also Employer code as 7428 and after dis-allowing Extra Allowances of O.D Charges, it can be fixed at Rs.6000/- per month. Since the said Cheziyan was aged about 25 years as his date of birth is 08.07.1981 and while the date of the accident is 13.12.2006 as could be seen in the driving licence in Ex.P4. At the time of the accident, the deceased was aged about 25 years and he has drawing a sum of Rs.6000/- per month after deducting the liable allowances.

8.Since as per the Constitutional Judgment Reported in 2017 (2) Tamil Nadu Motor Accident Cases 39 National Insurance Co. Ltd., -vs- Pranay Sethi and others, 50% has to be added towards future prospectus as the deceased was in permanent job as it is seen from the salary certificate and accordingly it is calculated at Rs.6000/- + Rs.3000/- = Rs.9000/-. At the time of the accident, since the deceased was a bachelor, 50% has been deducted towards his personal expenses and accordingly it is calculated at Rs.9000/- - Rs.4500/- = Rs.4500/-. As per the decision reported in 2009 TN MAC Volume 2 Sarla Verma and others -vs- Delhi Transport Corporation and another, the proper multiplier of 18 has to be applied Rs.4500/- x 12 x 18 = Rs.9,72,000/-. Out of the said amount 15% i.e., Rs.1,45,800/- has to be deducted towards Income Tax and the loss of income is calculated at Rs.8,26,200/- [Rs.9,72,000/- - Rs.1,45,800/- = Rs.8,26,200/-]. The parents of the deceased namely the claim petitioners 1 and 2 / appellants 1 and 2 in C.M.A.No.1009 of 2013 and the brothers of the deceased viz., appellants 3 to 5 in

C.M.A.No.1009 of 2013 are legally dependents and all of them are entitled for compensation towards loss of love and affection at the rate of Rs.50,000/- x 5 = Rs.2,50,000/- and the 1st claim petitioner is entitled to Rs.15,000 towards funeral charges and Rs.15,000/- towards loss of estate and the compensation is assessed at as Rs.11,06,200/-.

9.The CMA No.1010 of 2013 (M.C.O.P.No.8 of 2008), the P.W.2 Selvakumar, who suffered injury in the accident which taken place on 13.12.2006 deposed that due to the accident he has suffered fracture of Mid shaft of tibia both bone right leg and multiple injuries and after the injury, he has taken treatment of first aid at Thirupathi Sri Venkateswara Hospital on 13.12.2006 and treated as In-patient at Parvathy Hospital, Chrompet, Chennai from 14.12.2006 to 20.12.2007 (7 days) and the surgery was taken place on 14.12.2006 and plate and screw were fixed on the right leg and produced Ex.P6 Salary Certificate issued by his Employer.

10.The P.W.3 Doctor Saichandran had deposed that there was a surgery after the accident and both the bones on the right leg were fractured and metal rods have been fixed and the Fibula bone was malunited and there is a restriction of 30 degree rotational movement and issued Ex.P11 disability certificate fixing the disability suffered by the claimant/appellant at 45% and the Tribunal has fixed at 35% and awarded Rs.1500/- per percentage. On re-appreciation of the evidence, it is seen that the Doctor has not deposed anything with regard to loss of earning capacity and in the absence of any positive evidence, the claimant/appellant had suffered functional disability resulting in deduction of his earning capacity and hence, this Court is of the considered view that the essential criteria fixed in the Rajukumar's case for adoption of the multiplier method is not being satisfied in this case and hence, the contention of the learned counsel for the appellant/claimant for adoption of multiplier method cannot be accepted and taking into consideration the nature of the injury that both the bones have been broken on his right leg and there is an angular restriction for more than 30 degrees, the disability is fixed at 45% and a sum of Rs.67,500/- is awarded by fixing a sum of Rs.1,500/- per percentage of disability. Further, under the head of pain and sufferings Rs.10,000/-, Transportation Charges Rs.8000/- and for Nutrition and Extra Nourishment Rs.7000/- and for Loss of income during the period of treatment Rs.15,000/- and for Medical Expenses as per Ex.P9 Rs.30,000/- and for Attenders Charges Rs.7000/- and for Loss of Amenities Rs.7000/- is awarded. In total, the claimants are entitled to a sum of Rs.1,51,500/- as total compensation.

S.No.	Head	Amount granted by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
1	Partial Permanent Disability	Rs.52,500/-	Rs.67,500/-
2	Transportation Charges	Rs.5,000/-	Rs.8,000/-
3	Pain and Sufferings	Rs.10,000/-	Rs.10,000/-
4	Nutrition and Extra Nourishment	Rs.5,000/-	Rs.7,000/-
5	Loss of Income	Rs.5,000/-	Rs.15,000/-
6	Medical Expenses	Rs.30,000/-	Rs.30,000/-
7	Attenders Charges	Rs.5,000/-	Rs.7,000/-
8	Loss of Amenities	-	Rs.7000/-
	Total Compensation	Rs.1,12,500/-	Rs.1,51,500/-

11.In the result,

(I) C.M.A.No.2254 of 2011 filed by the Insurance Company is dismissed.

(II) C.M.A.No.1009 of 2013 filed by the claimants is partly allowed and the award amount is enhanced from Rs.6,54,000/- to Rs.11,06,200/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(III) The second respondent in CMA No.1009 of 2013 / Insurance Company is directed to deposit the enhanced award amount of Rs.11,06,200/- with accrued interest at the rate of 7.5% per annum from the date of claim petition with costs, to the credit of M.C.O.P.No.7 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.2, Poonamallee, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(IV) On such deposit, the appellants in C.M.A.No.1009 of 2013/claimants 1 to 5 are permitted to withdraw the enhanced award amount with accrued interest as apportioned by the Tribunal, less the amount already withdrawn, if any.

(V) The appellants in CMA.No.1009 of 2013/claimants 1 to 5 shall pay necessary Court fee, if any, on the enhanced compensation.

(VI) C.M.A.No.1010 of 2013 filed by the injured Selvakumar is partly allowed and the award amount is enhanced from Rs.1,12,500 to Rs.1,51,500/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(VII) The second respondent in C.M.A.No.1010 of 2013 / Insurance Company is directed to deposit the enhanced award amount to the credit of M.C.O.P.No.8 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.2, Poonamallee, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(VIII) On such deposit, the appellant in C.M.A.No.1010 of 2013/claimant is permitted to withdraw the enhanced award amount with accrued interest, less the amount already withdrawn, if any.

(IX) The appellant in CMA No.1010 of 2013 shall pay necessary Court fee, if any, on the enhanced compensation.

(X) There shall be no order as to costs in all the three appeals.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rna

To

1. The Motor Accidents Claims Tribunal,
Additional District and Sessions Court,
Fast Track Court No.2,
Poonamallee.
2. The Section Officer,
VR Section, High Court, Madras-104.

+2cc to Mr.T.G.Balachandran, Advocate, S.R.No.69261, 69262
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.69326

C.M.A.Nos.2254 of 2011,
1009, 1010 of 2013

CNR(CO)
CS/14/02/2020