

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.74 to 76 of 2015
and M.P.Nos.1(3) of 2015

The Divisional Manager,
M/s National Insurance Company Limited,
No.110, J.N.Street,
Puducherry.

...Appellant in all C.M.As./
3rd Respondent

Vs.

1.Thirumangai
2.Tmt.Vasantha
3.Kamal Mydeen
4.Reliance General Insurance
Company Limited, represented
by its Authorized Signatory
Pudhucherry 605004

... Respondents in all C.M.As./
Petitioner & Respondents1,2,4

(R2 & R3 were set exparte before the Tribunal)

Common Prayer: Civil Miscellaneous Appeals filed under
Section 173 of Motor Vehicles Act, 1988, against the
common award and decree dated 26.06.2013 made in
M.C.O.P.Nos.1456 to 1458 of 2009 on the file of the I
Additional District Court, (Motor Accident Claims
Tribunal), Cuddalore.

For Appellant : Mr.R.Ravichandran
[in all C.M.A.s]

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

These Civil Miscellaneous Appeals have been filed
against the common award dated 26.06.2013 made in
M.C.O.P.Nos.1456 to 1458 of 2009 on the file of the I
Additional District Court, (Motor Accident Claims
Tribunal), Cuddalore.

2.All the three appeals are arising out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The appellant-Insurance Company is the 3rd respondent in M.C.O.P.Nos.1456 to 1458 of 2009 on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Cuddalore. The 1st respondent/claimant filed the said claim petitions, claiming a sum of Rs.20,00,000/-, Rs.15,00,000/- and Rs.25,00,000/- as compensation for the death of Singaram, Chandrakala & Madivanan, father, mother and brother of the 1st respondent respectively, who died in the accident that took place on 01.03.2009.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the drivers of the lorry as well as the car and fixed 50% contributory negligence on the part of both the vehicles. The Tribunal awarded a sum of Rs.10,50,000/-, Rs.4,90,000/- and Rs.8,74,000/- respectively as compensation to the 1st respondent in the claim petitions and directed the respondents 2, 3 and the appellant to pay half of the compensation amount and the 4th respondent to pay the remaining half of the compensation granted by the Tribunal.

5.Against the said common award dated 26.06.2013 made in M.C.O.P.Nos.1456 to 1458 of 2009, the appellant-Insurance Company has come out with these appeals.

6.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing 50% negligence on the part of the driver of the lorry and 50% liability on the appellant. The accident occurred only due to rash and negligent driving by the deceased/driver of the car and FIR was registered only against him. The Tribunal erred in accepting the evidence of P.W.2 and P.W.3, who are alleged to be the eye-witnesses, instead of accepting the evidence of R.W.1/the driver of the lorry and FIR. The Tribunal has failed to see that the lorry was parked on the left side of the road and the driver of the car drove the same in a rash and negligent manner and dashed against the lorry, which was waiting in the traffic due to the accident involving some other vehicle, and caused the accident. The Tribunal erred in awarding the compensation towards non-pecuniary benefits/loss of dependency to the first respondent and contended that the straight-jacket formula cannot be applied in these cases. The first respondent has not suffered any loss of dependency and prayed for reducing the compensation awarded by the Tribunal in all the claim

petitions.

7. Heard the learned counsel appearing for the appellant-Insurance Company and perused all the materials available on record.

8. From the materials on record, it is seen that in the accident, the driver and two occupants of the Tata Indica Car bearing Registration No. TN-31-AA-3123 died. According to the first respondent, taking advantage of the situation, the driver of the lorry has lodged a complaint against the driver of the car. From the common award, it is seen that the first respondent has sent legal notice [Ex.P8] to the respondents 2 & 3 i.e., the owners of the lorry bearing Registration No. TN-57-B-1459 by registered letter and SHO, Veppur and Deputy Superintendent of Police. The copy of the acknowledgment cards for having served the same on them were marked as Exs.P9 and P10. From Ex.P8, it is seen that the first respondent has taken steps and objected to the registration of FIR against the deceased/the driver of the car. The contention of the learned counsel appearing for the appellant that the first respondent ought to have taken further steps and Ex.P8 was issued only to file claim petitions, is without merits. P.W.2 and P.W.3 have categorically stated that the accident occurred only due to rash and negligent driving by the driver of the lorry. The Tribunal considering the evidence of P.W.2 and P.W.3, as well as the evidence of R.W.1, the driver of the lorry, has accepted the evidence of P.W.2 and P.W.3 for valid reasons. The Tribunal further took note of the fact that three occupants died and the driver of the car could have avoided the accident, if he had not driven the car in a high speed and fixed 50% negligence on the part of the deceased/ driver of the car and 50% negligence on the part of the driver of the lorry and directed the appellant to pay 50% of the compensation. The award of the Tribunal with regard to liability on the part of the appellant is confirmed and the appellant is directed to pay 50% of the compensation awarded.

9. As far as the contention of the learned counsel appearing for the appellant with regard to the quantum of compensation awarded by the Tribunal is concerned, no valid grounds have been made out to interfere with the same and this Court finds that the quantum of compensation awarded by the Tribunal is just and reasonable. Hence, there is no error in the award warranting interference by this Court.

10. In view of the same, all the appeals are dismissed and sum of Rs.10,50,000/-, Rs.4,90,000/- and Rs.8,74,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant respectively, along with interest and

costs are confirmed. The appellant-Insurance Company is directed to deposit 50% of the award amount 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 to the credit of M.C.O.P.Nos.1456 to 1458 of 2009 respectively. On such deposit, the 1st respondent/claimant in all CMA's are permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

msm/gsa
To

1. The I Additional District Judge,
Motor Accident Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court of Madras.
Chennai-600 104.

+3ccs to Mr.R.Ravichandran , Advocate SR.No. 936,937,938
C.M.A.Nos.74 to 76 of 2015
and M.P.Nos.1(3) of 2015

A.SK(25/04/2019)

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