

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.Nos.2818, 2819, 2820 & 2821 of 2016

&

CMP.Nos.20436, 20437, 20438 & 20439 of 2016

C.M.A.No.2818 of 2016

United India Insurance Company Ltd.,
D.O.13, 2nd Floor,
23 Union Co Operative Insurance Building,
Sir PM Road,, Fort, Mumbai 400 001,
D.O.No.134, Greams Road, Chennai - 6

... Appellant

vs.

1.B.Babu
2.Parvathy
3.B.Jeevanandam
4.M/s.Indian Vehicle Carriers Pvt. Ltd,
No.101, Unique Tower,
Near Kamat's Club, S.V.Road,
Goregaon (West) Mumbai Dist,
Greater Mumbai, Maharashtra - 400 062.
5.S.Sangamithirai
6.National Insurance Co. Limited,
Policy Issuing office cum D.O.Div-IV,
2nd floor, 169, Anna Salai, Chennai

... Respondents

C.M.A.No.2819 of 2016

United India Insurance Company Ltd.,
D.O.13, 2nd Floor,
23 Union Co Operative Insurance Building,
Sir PM Road,, Fort, Mumbai 400 001,
D.O.No.134, Greams Road, Chennai - 6

... Appellant

vs.

1.Vijaya
2.Minor. Kiruthika
Rep. by first respondent
3.C.Chabndrabai

4.M/s.Indian Vehicle Carriers Pvt. Ltd,
No.101, Unique Tower,
Near Kamat's Club, S.V.Road,
Goregaon (West) Mumbai Dist,
Greater Mumbai, Maharashtra - 400 062.

5.S.Sangamithirai

6.National Insurance Co. Limited,
Policy Issuing office cum D.O.Div-IV,
2nd floor, 169, Anna Salai, Chennai

... Respondents

CMA.No.2820 of 2016

United India Insurance Company Ltd.,
D.O.13, 2nd Floor,
23 Union Co Operative Insurance Building,
Sir PM Road,, Fort, Mumbai 400 001,
D.O.No.134, Greams Road, Chennai - 6

... Appellant

vs.

1.L.D.Shanmugam (Deceased)
(Recorded as per the order of
this Court dated 30.06.2017
in CMP.No.9888 of 2017 in
CMP.Nos.20436 to 20439 of
2019)

2.L.S.Shanthi

3.L.S.Muthukumarasamy

4.M/s.Indian Vehicle Carriers Pvt. Ltd,
No.101, Unique Tower,
Near Kamat's Club, S.V.Road,
Goregaon (West) Mumbai Dist,
Greater Mumbai, Maharashtra - 400 062.

5.S.Sangamithirai

6.National Insurance Co. Limited,
Policy Issuing office cum D.O.Div-IV,
2nd floor, 169, Anna Salai, Chennai

... Respondents

CMA.No.2821 of 2016

United India Insurance Company Ltd.,
D.O.13, 2nd Floor,
23 Union Co Operative Insurance Building,
Sir PM Road,, Fort, Mumbai 400 001,
D.O.No.134, Greams Road, Chennai - 6

... Appellant

vs.

- 1.S.Sangamithirai
- 2.A.Aravind Kumar (Minor)
Rep. by first respondent
- 3.Gnaneswari
- 4.M/s.Indian Vehicle Carriers Pvt. Ltd,
No.101, Unique Tower,
Near Kamat's Club, S.V.Road,
Goregaon (West) Mumbai Dist,
Greater Mumbai, Maharashtra - 400 062. ... Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 22.03.2016 made in MCOP.Nos.78, 79, 199 & 1027 of 2010 respectively on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes Court), Chennai.

For Appellant
in all CMAs. : Mr.D.Bhaskaran

For claimants
in all CMAs. : Mrs.R.Bharathi

For Respondent 5 in
CMA.Nos.2818, 2819
& 2820 of 2016 : Mr.F.Terrychellaraja

For Respondent 6 in
CMA.Nos.2818, 2819
& 2820 of 2016 : Mr.S.Arunkumar

COMMON JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

These appeals have been filed by United India insurance Company challenging the common award dated 22.03.2016 passed by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai in MCOP.Nos.78, 79, 199 and 1027 of 2010.

Brief facts leading to the filing of the instant appeals:

2. All these appeals have been filed challenging (a) the finding of 100% negligence on the insured Tata Trailer and (b) the quantum of compensation assessed by the Tribunal. The appellant insurance company is the insurer of the Tata Trailer bearing registration No.MH15-BJ-9114 and National Insurance Co. Limited is the insurer of the Zen car bearing registration No.TN20-BX-0204. The Tata Trailer is owned by M/s.Indian Vehicle Carriers Pvt. Ltd, Maharashtra, the fourth respondent in all the

CMAs. and the Zen car is owned by S.Sangamithirai, the fifth respondent in CMA.Nos 2818, 2819 & 2820 of 2016 and the first respondent in CMA.No.2821 of 2016.

3. Due to the accident that took place on 03.09.2009 in the Bangalore-Chennai Road, at Vedal, Opposite to Bharath Petrol Bank, between the Zen car and the Tata Trailer, the driver and the occupants of the Zen car died. The dependents of the respective deceased preferred separate claims before the Motor Accident Claims Tribunal in MCOP.Nos.78, 79, 199 & 1027 of 2010.

4. The Motor Accident Claims Tribunal has passed the following common award:

MCOP.No.	Amount awarded (Rs.)	Awarded against
78 of 2010	Rs.3,30,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation	Appellant
79 of 2010	Rs.9,89,600/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation	Appellant
199 of 2010	Rs.5,44,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation	Appellant
1027 of 2010	Rs.41,87,520/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation	Appellant

5. Aggrieved by the common award dated 22.03.2016, these appeals have been filed by the insurance company which has insured the Tata Trailer.

6. Heard Mr.D.Bhaskaran, learned counsel appearing for the Appellant insurance company, Mrs.R.Bharathi, learned counsel appearing for the claimants in all the appeals, Mr.F.Terry ChellaRaja, learned counsel appearing for the fifth respondent in CMA.Nos.2818, 2819 & 2820 of 2016 and the first respondent in CMA.No.2821 of 2016 who is the owner of the car and Mr.S.Arun Kumar, learned counsel appearing for the sixth respondent in CMA.Nos.2818, 2819 & 2820 of 2016 who is the insurer of the car. During the pendency of these appeals, the first respondent (L.D.Shanmugam) in CMA.No.2820 of 2016 died and the factum of his death was recorded by this court by its order dated 30.06.2017. L.S.Shanti and L.S.Muthukumarasamy who are the children of L.D.Shanmugam (deceased) have already been arrayed as parties.

7. According to the Appellant, the insurer of the Zen car viz., National Insurance Company Limited is alone liable to pay the compensation. According to the Appellant, the Zen car which was coming from behind hit the Tata Trailer, which is insured with the appellant, at the back and hence, the Appellant insurance company is not liable to pay the compensation as the driver of the Tata Trailer was not at fault. Being a national highway, according to the Appellant, it can be presumed that only due to the overspeeding of the Zen car which was coming from behind, the accident had happened. According to the Appellant, even as per Ex.P8-FIR only the driver of the Zen car was at fault.

8. The learned counsel for the Appellant drew the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of Nishan Singh and others vs. Oriental Insurance Co. Ltd. and others reported in 2018 (1) TN MAC 745 (SC) and submitted that a distance of 10 to 15 feet between two vehicles in a highway is not a safe distance. According to him, it is the case of the claimants that the driver of the Zen car had maintained the distance of 10 to 15 feet with that of the Tata Trailer will clearly go to show that the driver of the Zen car is at fault and he was solely responsible for the cause of the accident.

9. However, the learned counsel for the claimants in all these appeals drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of Bimla Devi and Others vs. Himachal Road, Transport Corporation and others reported in 2009 (1) TN MAC 700 (SC) and submitted that strict proof of accident is not necessary for a compensation claim and

it is sufficient for the claimants to establish their case on the touchstone of preponderance of probability. According to him, in the case on hand, the claimants have satisfied the test of preponderance of probability and hence, the appellant is liable to pay compensation to the respective claimants .

10. Before the Tribunal, on the side of the claimants, seven witnesses were examined and 16 documents were also filed which were marked as Ex.P1 to Ex.P16. However, on the side of the Appellant/Insurance Company, neither any witness was examined nor any document filed.

11. Ex.P8-FIR was registered at the behest of the Village Administrative Officer - (PW4) who did not personally witness the accident. The contents of FIR (Ex.P8) has also not been corroborated by any independent witness. Hence, the contents of FIR (Ex.P8) cannot be accepted even though the complaint was given only against the driver of the Zen car. On the other hand, the claimants examined the eye-witness to the accident as PW6 and he has specifically stated in his cross examination that the car was coming 10 to 15 feet behind the Tata Trailer.

12. The statement of the eye-witness as well as the respective claimants that the driver of the Tata Trailer without observing the vehicles coming from behind and without any signal, suddenly applied the brake which resulted in the Zen car coming from behind dashing against the Tata Trailer has to be accepted. No contra evidence has been let in by the Appellant to the eye-witness account of PW6. Before the Tribunal, the driver of the Tata Trailer has also not been examined.

13. From the evidence available on record, it is seen that the Tata Trailer vehicle did not immediately stop at the accident spot, but was secured by the police only at the next tollgate. Further, nothing is elicited during the course of cross-examination of eye-witness PW6 to discredit his evidence. The Tribunal has rightly observed that there is no reason to disbelieve the evidence of PW6 as the same is cogent, clear and convincing.

14. However, as seen from the decision of the Hon'ble Supreme Court in the case of Nishan Singh and others vs. Oriental Insurance Co. Ltd. and others reported in 2018 (1) TN MAC 745 (SC) relied upon by the Appellant insurance company maintaining a distance of 10 to 15 feet between two vehicles in a highway is not a safe distance. Considering the same, the driver of the Zen car has to some extent, be held liable for his contributory negligence for the cause of the accident. If not for his overspeeding, the driver of the Zen car could have avoided the accident by applying the brake as he was coming from

behind and maintaining a distance of 10 to 15 feet between the Tata Trailer and the Zen car. It can be inferred that due to overspeeding by the driver of the Zen car, the accident could not be averted. The Tribunal has not taken note of this important fact while deciding the negligence aspect of the driver of the Zen car. In our considered view, the Tribunal has erroneously found that the entire cause of the accident was the driver of the Tata Trailer. We are of the considered view that to some extent, the driver of the Zen car is also responsible for the cause of the accident and hence, we assess the contributory negligence of the driver of the Zen car at 20% and the driver of the Tata Trailer at 80%.

15. In view of the contributory negligence of 20% on the part of the driver of the Zen car, the insurer of the Zen car namely National Insurance Company Limited, who is the sixth respondent in CMA.Nos.2818, 2819 and 2020 is liable to pay 20% of the award amount to the respective claimants in MCOP.No.78, 79 and 199 of 2010. Insofar as the claim of the claimants in MCOP.No.1027 of 2010 are concerned, the claimants are the dependents of the deceased Vijayakumar who was the driver of the Zen car at the time of the accident. Being the driver of the Zen car who has also been found to be at fault and his contributory negligence has been assessed at 20% for the cause of the accident, 20% of the award amount assessed by the Tribunal is deducted towards his contributory negligence and the balance amount alone is liable to be paid by the Appellant Insurance company to the claimants in MCOP.No.1027 of 2010.

16. We have also examined the details of the compensation awarded to the respective claimants in MCOP.No.78, 79, 199 and 1027 of 2010. The compensation awarded by the Tribunal under various heads is a just compensation and is in accordance with the settled principles of law. The appellant has also not raised any serious dispute with regard to the assessment of the compensation by the Tribunal under various heads.

17. In the result, the common award dated 22.03.2016 passed by the Motor Accident Claims Tribunal is modified in the following manner:

CMA.No.	MCOP. No.	Award Amount	Payable by United India Insurance Company Limited	Payable by National Insurance Company Limited
2818 of 2016	78 of 2010	3,30,000 /-	80%	20%
2819 of 2016	79 of 2010	9.89.600 /-.	80%	20%

CMA.No.	MCOP. No.	Award Amount	Payable by United India Insurance Company Limited	Payable by National Insurance Company Limited
2820 of 2016	199 of 2010	5,44,000 /-	80%	20%
2821 of 2016	1027 of 2010	41,87,52 0/-	80%	Nil

18. Since the first claimant in CMA.No.2820 of 2016 died during the pendency of this appeal and the second and third claimants in CMA.No.2820 of 2016 are his legal representatives, the second and third claimants in CMA.No.2820 of 2016 are now entitled to equal share of the compensation amount.

Conclusion:

19. In view of the above, the Appellant insurance company is directed to deposit 80% of the award amount assessed by the Tribunal in MCOP. Nos. 78, 79, 199 & 1027 of 2010 and the sixth respondent, insurance company in CMA.Nos.2818, 2819 & 2820 of 2016 is directed to deposit the balance 20% of the award amount along with interest and costs, after deducting the amount, if any already deposited to the credit of MCOP.Nos.78, 79, 199 & 1027 of 2010 within a period of four weeks from the date of receipt of a copy of this common judgment. On such deposit being made, the Tribunal is directed to transfer the share of the award amount along with interest to the claimants in CMA.Nos.2818 of 2016, the first and third claimants in CMA.No. 2819 of 2016, the second and third claimants in CMA.No.2820 of 2016 and the first and third claimants in CMA.No.2821 of 2016 through RTGS within a period of four weeks thereafter. Since the second respondent in CMA.No.2819 of 2016 and the second respondent in CMA.No.2821 of 2016 are minors, their share of award amount shall be deposited in any one of the Nationalised Banks, till they attain majority and their respective guardians are permitted to withdraw the interest accrued once in six months. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
(I Additional District Judge) at Tindivanam.

2.The Section Officer,
VR Section, High Court,
Chennai.

+4cc to Mr.V.Velu, Advocate, SR.No.77798, 77797, 77796, 77799.

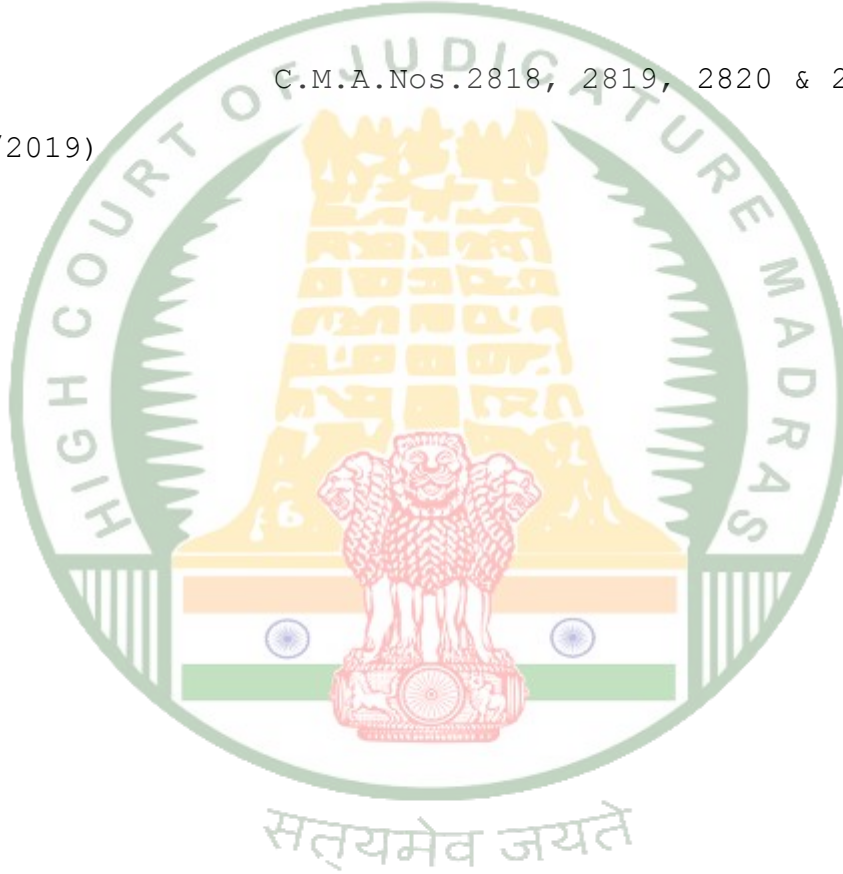
+1cc to Mr.D.Bhaskaran, Advocate, SR.No.77945.

+1cc to Mr.S.Arunkumar, Advocate, SR.No.78206.

C.M.A.Nos.2818, 2819, 2820 & 2821 of 2016

CNR(CO)

CSR(03/01/2019)



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