IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.10.2019

DELIVERED ON: 14.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1029, 1379 to 1383, 829 to 831, 905 and 906 of 2017
and
C.M.P.Nos.5086, 9602, 4233, 9597, 4234, 9598, 4235, 9599, 4468, 9600, 4469 and 9601 of 2017

C.M.A.No.1029 of 2017:

M/s.New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalinga Mudalaya Street
Gugai, Salem-6. ... Appellant/2nd Respondent

Vs

1.Palanisami ... 1st Respondent/Petitioner

2.P.Mani ...2nd Respondent/1st respondent

C.M.A.No.1379 of 2017:

Saraswathy ... Appellant/Claimant

Vs

1.P.Mani

2.The New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalingamudaliar Street
Gugai, Salem-6. ... Respondents/Respondents

C.M.A.No.1380 of 2017:

Palanisamy ... Appellant/Claimant

Vs

1.P.Mani

2.The New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalingamudaliar Street
Gugai, Salem-6. ... Respondents/Respondents

C.M.A.No.1381 of 2017:

Palaniammal ... Appellant/Claimant

Vs

1.P.Mani

2.The New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalingamudaliar Street
Gugai, Salem-6. ... Respondents/Respondents

C.M.A.No.1382 of 2017:

Priya ... Appellant/Claimant

Vs

1.P.Mani

2.The New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalingamudaliar Street
Gugai, Salem-6. ... Respondents/Respondents

C.M.A.No.1383 of 2017:

Govindhi ... Appellant/Claimant

Vs

1.P.Mani

2.The New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalingamudaliar Street
Gugai, Salem-6. ... Respondents

C.M.A.No.829 of 2017:

M/s.New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalinga Mudalaya Street
Gugai, Salem-6. ... Appellant/2nd Respondent

Vs

1.Govindhi ... 1st Respondent/Petitioner

2.P.Mani ...2nd Respondent/1st Respondent

C.M.A.No.830 of 2017:

M/s.New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalinga Mudalaya Street
Gugai, Salem-6. ... Appellant/2nd Respondent

Vs

1.Palaniammal ... 1st Respondent/Petitioner

2.P.Mani ...2nd Respondents/1st Respondent

C.M.A.No.831 of 2017:

M/s.New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalinga Mudalaya Street
Gugai, Salem-6. ... Appellant/2nd Respondent

Vs

1.Priya ... 1st Respondent/Petitioner

2.P.Mani ...2nd Respondent/1st Respondent

C.M.A.No.905 of 2017:

M/s.New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalinga Mudalaya Street
Gugai, Salem-6. ... Appellant/2nd Respondent

Vs

1.Saraswathy ... 1st Respondent/Petitiner

2.P.Mani ...2nd Respondent/1st Respondent

C.M.A.No.906 of 2017:

M/s.New India Assurance Co.Ltd.
No.7, B.K.Building
Ramalinga Mudalaya Street
Gugai, Salem-6. ... Appellant/2nd Respondent

Vs

1.Mari ... 1st Respondent/Petitioner

2.P.Mani ... 2nd Respondent/1st Respondent

C.M.A.No.1029 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1353 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.1379 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1351 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.1380 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1353 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.1381 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1354 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.1382 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1355 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.1383 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1356 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.829 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1356 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.830 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1354 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.831 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1355 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.905 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1351 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

C.M.A.No.906 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.06.2016 made in MCOP No.1352 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

For Appellant in CMA Nos.1029, 829 to 831, 905 and 906 of 2017 and R2 in CMA Nos.1379 to 1383 of 2017 : Mr.J.Chandran/ Insurance Company

For R1 in CMA Nos.1029, 829 to 831, 905 and 906 of 2017 and appellant in CMA Nos.1379 to 1383 of 2017 : Mr.P.Jagadeesan
R1 in CMA Nos.1379/17,1380/17, 1381/17, 1383/17 &
R2 in CMA Nos.1029/17, 829/17, 830/17, 831/17, 905/17 & 906/17
set exparte in Tribunal itself

COMMON JUDGMENT

The facts of the case in brief, are as follows:

On 16.10.2012, at about 05.45 p.m., the deceased Lakshmi and the appellants in C.M.A.Nos.1379 to 1383 of 2017 and the first respondent in C.M.A.No.906 of 2017, were travelling in the

Tempo Traveller 407 vehicle bearing Reg.No.TN-27-S-8871 belonging to the second respondent and insured with the appellant Insurance Company in C.M.A.No.1029 of 2017, in the Yercaud to Kannapadi Road. When the vehicle reached near Sengal Kadu Down 3rd bend, due to the rash and negligent driving of the driver, the tempo capsized. Due to the said impact, the deceased and others sustained grievous injuries. But the deceased died in the hospital due to the injuries sustained by her. The mother of the deceased Lakshmi and the other injured have filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded compensation and the details of the same are as under:

CMA No.	MCOP No.	Amount of compensation (Rs.)
1029 and 1380/2017	1353/2014	14,77,100/-
1379 and 905/2017	1351/2014	5,21,000/-
1381 and 830/2017	1354/2014	1,36,000/-
1382 and 831/2017	1355/2014	42,500/-
1383 and 829/2017	1356/2014	10,61,170/-
906/2017	1352/2014	20,000/-

These amounts have been awarded, with interest at the rate of 7.5% per annum from the respective dates of petitions. The Tribunal has also directed the Insurance Company to pay the compensation to the claimants and thereafter recover from the owner of the vehicle, on the ground of violation of policy conditions by the owner of the vehicle.

2.Challenging the awards passed by the Tribunal, the Insurance Company has come up with CMA Nos.1029, 829 to 831, 905 and 906 of 2017 and the claimants have come up with CMA Nos.1379 to 1383 of 2017.

3.The learned counsel for the Insurance Company has submitted that the driver of the Tempo Traveller van 407 was not possessing the valid driving licence at the time and date of accident. Further, the driver had carried excessive number of passengers in a commercial vehicle and it has been proved by the Yercaud Police while filing First Information Report in Crime No.148/2012 under Sections 279, 337, 338 and 304-A IPC r/w Section 34 of the Motor Vehicles Act. In these circumstances, the Tribunal ought not to have directed the Insurance Company to pay the compensation to the claimants and to recover the same from the owner of the vehicle, but instead exonerated the Insurance Company from payment of compensation fully. On the other hand, it is submitted that the compensation amounts awarded by the Tribunal in these appeals, are excessive and exorbitant.

4.The learned counsel for the claimants in these appeals, has submitted that the Tribunal has considered the materials and evidence in proper perspective and has awarded the just, fair and reasonable compensation in all these cases and hence the same need not be interfered with, by this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.It is seen that the Tribunal has not examined any eye-witness to the accident. It was put forth on behalf of the Insurance Company before the Tribunal that the driver of the tempo van was not possessing the valid driving licence to drive the tempo van. The said van is a commercial vehicle, but since the driver was not having the driving licence and the requisite badge to carry passengers in the commercial vehicle, the Insurance Company is not liable to pay any compensation on the ground of violation of policy conditions by the owner of the vehicle, according to the learned counsel for the appellant Insurance Company. The Junior Assistant of Salem West RTO Office has been examined as R.W.2 before the Tribunal. He deposed before the Tribunal that the driver of the tempo van was issued with a licence on 28.04.2011 to drive only light motor vehicles and the same is valid till 27.04.2031. He further deposed that the driver was not having the requisite badge which is very much required for driving commercial vehicles and produced a copy of the licence before the Tribunal. The official of the Insurance Company has been examined as R.W.3. He deposed before the Tribunal that the policy taken for the vehicle in question is a package policy. Based on these materials and evidence, the Tribunal came to the conclusion that the driver of the tempo van had violated the policy conditions, by not possessing the valid driving licence and the requisite badge. Observing so, while holding that the Insurance Company is liable to pay compensation to the claimants due to the negligence on the part of the driver of the tempo van, the Tribunal has given liberty to the Insurance Company to recover the compensation from the owner of the vehicle.

7.It is seen from the charge sheet of the Yercaud Police that 22 persons who travelled in the tempo van, sustained injuries and in addition, one person who travelled in the tempo van, died. The charge sheet was filed against the driver and owner of the tempo van for permitting more number of persons to travel in the said vehicle. Even though the Tribunal has discussed the issue as regards non-possession of valid driving licence and accepted the contention of the Insurance Company that there was violation of policy conditions, it has not gone into the issue as regards carrying more number of passengers in the vehicle. Charge sheet of the Yercaud Police reveals that the said persons had travelled in the tempo van as Estate coolies. With regard to the issue as to whether these passengers travelled in the vehicle as gratuitous passengers or not, the Tribunal has held that the deposition of the witnesses that they travelled as coolies in the Estate, has been accepted by the parties. Observing so, the Tribunal has ordered for pay and recovery. The Insurance Company has not proved in unequivocal terms that the deceased and the injured have travelled as gratuitous passengers. In these circumstances, this Court is of the considered opinion that the judgment of the Tribunal ordering the Insurance Company to pay the compensation to the claimants and to recover the same from the owner of the vehicle, does not require any interference.

8.In respect of MCOP No.1353 of 2014 (CMA Nos.1029 and 1380 of 2017), the Tribunal has awarded Rs.12,96,000/- towards loss of income, fixing the monthly income of the claimant at Rs.6,000/- as coolie and adopting the multiplier of 18, Rs.1,31,100/- towards medical expenses based on Ex.P11-Medical bills and Rs.50,000/- towards future medical expenses, considering the chronic injuries suffered by him. The Tribunal has correctly fixed the monthly income and adopted the correct multiplier and arrived at Rs.12,96,000/- towards loss of income, taking note of the fact that he suffered 100% disability and has been completely bedridden due to fracture in the spinal cord bone. Further the amounts awarded towards other heads are reasonable. Hence the compensation awarded by the Tribunal at Rs.14,77,100/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

9.In respect of MCOP No.1351 of 2014 (CMA Nos.1379 and 905 of 2017), the Tribunal has awarded Rs.4,86,000/- towards future loss of income, fixing the monthly income of the deceased at Rs.4,500/- as agricultural coolie, deducting 50% of the amount towards her personal expenses and adopting the multiplier of 18, Rs.10,000/- towards loss of love and affection to her daughter and a sum of Rs.25,000/- towards funeral expenses. The Tribunal has correctly fixed the monthly income, adopted the correct multiplier and arrived at Rs.4,86,000/- towards future loss of income. Further the amounts awarded towards other heads are reasonable. Hence the compensation awarded by the Tribunal at Rs.5,21,000/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

10.In respect of MCOP No.1354 of 2014 (CMA Nos.1381 and 830 of 2017), the Tribunal has awarded Rs.80,000/- towards future loss of income fixing 40% disability at the rate of Rs.2,000/- per percentage of disability, Rs.30,000/- towards disability based upon Ex.P26, Rs.1,000/- towards X-ray bill as per Ex.P20 and Rs.15,000/- towards pain and suffering for the 43 days in-patient treatment taken by the injured. The amounts awarded by the Tribunal towards the above heads are very reasonable and hence the compensation awarded by the Tribunal at Rs.1,36,000/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

11.In respect of MCOP No.1355 of 2014 (CMA Nos.1382 and 831 of 2017), the Tribunal has awarded Rs.40,000/- towards future loss of income for 20% disability as per Ex.P22, at the rate of Rs.2,000/- per percentage of disability and Rs.2,500/- towards X-ray bill marked as Ex.P23. The amounts awarded by the Tribunal towards the above heads are very reasonable and hence the compensation awarded by the Tribunal at Rs.42,500/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

12.In respect of MCOP No.1356 of 2014 (CMA Nos.1383 and 829 of 2017), the Tribunal has awarded Rs.9,18,000/- towards future loss of income, fixing the monthly income of the injured at Rs.4,500/- as coolie and adopting the multiplier of 17, Rs.62,570/- towards medical expenses as per Ex.P14-Medical Bills, Rs.50,000/- towards future medical expenses based upon Ex.P16-Treatment book of the injured, taking note of the fact that she suffered spinal cord bone fracture and is completely bedridden. The Tribunal has also awarded a sum of Rs.10,000/- each towards transportation expenses, extra nourishment and attender charges and Rs.600/- towards X-ray bill as per Ex.P25. The Tribunal has correctly fixed the monthly income and adopted the correct multiplier and arrived at Rs.9,18,000/- towards future loss of income, taking note of the fact that she suffered 100% disability and has been completely bedridden due to spinal cord bone fracture. Further the amounts awarded towards other heads are reasonable. Hence the compensation awarded by the Tribunal at Rs.10,61,170/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

13.In respect of MCOP No.1352 of 2014 (CMA No.906 of 2017), the Tribunal has awarded a reasonable compensation of Rs.20,000/- towards the simple injuries suffered by the claimant based upon Ex.P4-Accident Register and hence the compensation awarded by the Tribunal at Rs.20,000/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

14.In the result, the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

15.The Insurance Company is directed to deposit the award amounts with interest, as ordered by the Tribunal, less the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same, on making proper application before the Tribunal. Thereafter, the Insurance Company shall recover the compensation from the owner of the vehicle, in accordance with law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM
To

1.The Motor Accidents Claims Tribunal,
Special District Judge, Salem.

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

+6ccs to Mr.P.Jagadeesan, Advocate SR.94849 to 94854
+1cc to Mr.J.Chandran, Advocate SR.94705

Judgment made in
C.M.A.Nos.1029, 1379 to 1383,
829 to 831, 905 and 906 of 2017
and
C.M.P.Nos.5086, 9602, 4233,
9597, 4234, 9598, 4235, 9599,
4468, 9600, 4469 and 9601 of 2017

RSK(CO)
CB(12/06/2020)