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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.115 to 118 of 2017
and C.M.P.Nos.887 to 890 of 2017

The Divisional Manager,
Oriental Insurance Co. Ltd.,
No.23-B, Arunagiri Complex,
Bye-pass Road, Hosur- 635 109

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

Vs.

C.M.A.No.115/2017

1.Selvarani
2.K.Jagadeesan
3.K.Padmapriya
4.Rathinammal ... Respondents 1 to 4/Petitioners 1 to 4
5.Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Regional Office, Dharmapuri 636 701.

6.S.Subramaniam

7.M/s.Dharmapuri District Co-Op.
Milk Producers Union Ltd.,
Kanagamutlu Post,
Krishnagiri Taluk and District.

8.National Insurance Co. Ltd.,
rep. By its Branch Manager,
Anuradha Complex, III Floor,
Opposite To Raja Theatre,
Bangalore Road,
Krishnagiri 635 001.

... Respondents 5 to 8/
Respondents 1,2,4 & 5

(R6 was set exparte in lower Court and
hence notice may be dispensed with)

C.M.A.No.116/2017

1.Bagyalakshmi
2.Venkatesan



3.Anand

4.Kalaidas

... Respondents 1 to 4/Petitioners 1 to 4

5.Managing Director,

Tamilnadu State Transport Corporation Ltd.,

Regional Office, Dharmapuri 636 701.

6.S.Subramaniam

7.M/s.Dharmapuri District Co-Op.

Milk Producers Union Ltd.,

Kanagamutlu Post,

Krishnagiri Taluk and District.

8.National Insurance Co. Ltd.,

rep. By its Branch Manager,

Anuradha Complex, III Floor,

Opposite To Raja Theatre,

Bangalore Road, Krishnagiri 635 001.

... Respondents 5 to

8/Respondents 1,2,4 & 5

(R6 was set exparte in lower Court and
hence notice may be dispensed with)

C.M.A.No.117/2017

1.S.Kalpana

2.Sreemathi

3.Minor Navneetha Krishnan @ Navneethan

4.Govindammal

...Respondents 1 to 4/Petitioners 1 to 4

(Minor R3 rep. By his mother
and next friend, 1st respondent)

5.Managing Director,

Tamilnadu State Transport Corporation Ltd.,

Regional Office, Dharmapuri 636 701.

6.S.Subramaniam

7.M/s.Dharmapuri District Co-Op.

Milk Producers Union Ltd.,

Kanagamutlu Post,

Krishnagiri Taluk and District.

8.National Insurance Co. Ltd.,

rep. By its Branch Manager,

Anuradha Complex, III Floor,

Opposite To Raja Theatre,

Bangalore Road, Krishnagiri 635 001.

... Respondents 5 to 8/Respondents

1,2,4 & 5



(R6 was set exparte in lower Court and hence notice may be dispensed with)

C.M.A.No.118/2017

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- 1.Ramya
- 2.Minor Vennila
- 3.Minor Santhosh
- 4.Minor Nila
(minor respondents 2 to 4 rep. By their next friend and mother, 1st respondent)
- 5.Mani
- 6.Sennammal ... Respondents 1 to 6/Petitioner
- 7.Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Regional Office, Dharmapuri 636 701.
- 8.S.Subramaniam
- 9.M/s.Dharmapuri District Co-Op.
Milk Producers Union Ltd.,
Kanagamutlu Post,
Krishnagiri Taluk and District.
- 10.National Insurance Co. Ltd.,
rep. By its Branch Manager,
Anuradha Complex, III Floor,
Opposite To Raja Theatre,
Bangalore Road, Krishnagiri 635 001.
... Respondents 7 to 10/Respondents 1,2,4 & 5

(R8 was set exparte in lower Court and hence notice may be dispensed with)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common award dated 18.01.2016 made in M.C.O.P.Nos.796, 851, 929 & 938 of 2013 on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant: Ms.C.Harini
for Mr.N.Vijayaraghavan (in all appeals)
(In C.M.A.Nos.115 to 117/2017)

For R1 to R4: Mr.K.Prasanna
for Mr.Mukund R.Pandiyan



For R5 : Mr.D.Venkatachalam
For R8 : Ms.R.Sreevidhya
RR6,7 :No Appearance

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(In C.M.A.No.118/2017)

For R1 to R6 : Mr.K.Prasanna
for Mr.Mukund R.Pandiyar

For R7 : Mr.D.Venkatachalam

For R10 : Ms.R.Sreevidhya
RR8,9 :No Appearance

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

These Civil Miscellaneous Appeals are filed against the common award dated 18.01.2016 made in M.C.O.P.Nos.796, 851, 929 & 938 of 2013 on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.All the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petitions.

3.The appellant-Insurance Company is the 3rd respondent in M.C.O.P.Nos.796, 851, 929 & 938 of 2013 on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri. The claimants filed the said claim petitions, claiming a sum of Rs.35,00,000/-, Rs.30,00,000/-, Rs.25,00,000/- and Rs.25,00,000/- as compensation for the death of K.Kasinathan, G.Raja, K.M.Sekar and M.Krishnan who died in the accident that took place on 14.02.2013. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by all the drivers of the vehicles involved in the accident and fixed 40% negligence on the part of the driver of the 1st respondent-Transport Corporation bus, 30% negligence on the part of the driver of the SRS private bus belonging to the 2nd respondent and 30% negligence on the part of the driver of the Aavin tanker lorry belonging to the 4th respondent. The Tribunal granted a sum of Rs.18,62,000/-, Rs.24,43,000/-, Rs.13,38,000/- and Rs.18,63,000/- as compensation to the claimants respectively and directed the 1st respondent to pay 40% of the award amount, respondents 2 and 3 to jointly and severally pay 30% of the award amount and respondents 4 and 5 to jointly and severally pay 30% of the award amount granted to the claimants.



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4.Challenging the said common award dated 18.01.2016 made in M.C.O.P.Nos.796, 851, 929 & 938 of 2013, the 3rd respondent-Insurance Company/appellant has come out with the present appeals.

5.The learned counsel appearing for the 3rd respondent-Insurance Company/appellant contended that the Tribunal erred in fixing 30% contributory negligence on the part of the driver of the SRS private bus belonging to the 2nd respondent and insured with the 3rd respondent-Insurance Company/appellant. The Tribunal failed to see that FIR was lodged only against the driver of Aavin milk tanker lorry belonging to the 4th respondent and accident occurred only due to rash and negligent driving by the driver of the Aavin tanker lorry which was insured with the 5th respondent. The Tribunal failed to consider the fact that the Aavin tanker lorry coming in the opposite direction driven in a rash and negligent manner dashed against the bus belonging to the 1st respondent-Transport Corporation and then dashed against the SRS private bus belonging to the 2nd respondent and the Tribunal failed to properly appreciate the evidence of R.W.1, an Official from 3rd respondent-Insurance Company/appellant in proper perspective. The Tribunal has erroneously fixed excess amounts as monthly income of the deceased in all the claim petitions. The Tribunal failed to see that the deceased in claim petition in M.C.O.P.No.796 of 2013 was a retired Army personnel and family pension will be given to his wife and there is no loss of income. The 3rd respondent-Insurance Company/appellant further contended that the total compensation awarded by the Tribunal in all the claim petitions are excessive and prayed for setting aside the award of the Tribunal.

6.Per contra, the learned counsel appearing for the claimants contended that the accident occurred only due to rash and negligent driving by the driver of the two buses belonging to the respondents 1 and 2 as well as the driver of the tanker lorry belonging to the 4th respondent. The Tribunal has considered the pleadings, oral and documentary evidence and has rightly fixed negligence on all the three drivers and liability on the respondents 1, 3 and 5 which is in order. The Tribunal considering the oral and documentary evidence, fixed income of the deceased which is not excessive. The total compensation awarded by the Tribunal also is not excessive and prayed for dismissal of all the appeals.

7.Mr.D.Venkatachalam, learned counsel appearing for the 1st respondent and Ms.R.Sreevidhya, learned counsel appearing for



the 5th respondent separately contended that the accident occurred only due to the rash and negligent driving by the driver of the other vehicle and the Tribunal erroneously fixed negligence on the part of the driver of the bus belonging to the 1st respondent and tanker lorry belonging to the 4th respondent. The amount fixed by the Tribunal is excessive and prayed for dismissal of the appeals against the respondents 1 and 5.

8. Heard the learned counsel appearing for the 3rd respondent-Insurance Company/appellant as well as the claimants, respondents 1 and 5 and perused the materials available on record.

9. From the materials on record, it is seen that FIR was lodged against the driver of the tanker lorry who died in the accident. The complaint was given by the Village Administrative Officer who was not an eye witness. P.W.7 is the only eye witness examined in all the claim petitions. He deposed that he traveled in the Transport Corporation bus belonging to the 1st respondent and according to him, the driver of the bus belonging to the 1st respondent drove the bus in a rash and negligent manner. At that time, the driver of the SRS private bus belonging to the 2nd respondent driven in a rash and negligent manner came behind the Transport Corporation bus and dashed against the back side of the Transport Corporation bus. In view of the said impact, the driver of the Transport Corporation bus lost control and dashed against the Aavin tanker lorry which was coming in opposite direction in a rash and negligent manner. Again the driver of the SRS private bus belonging to the 2nd respondent dashed against the Transport Corporation bus and the said bus capsized. P.W.7 deposed that the driver of the Aavin tanker lorry also drove the vehicle in a rash and negligent manner and dashed against the bus. The 3rd respondent or the 5th respondent have not examined the driver of the bus or any other eye witness to disprove the evidence of P.W.7. The driver of the Aavin tanker lorry died in the accident. R.W.1 is only an official from the Insurance Company and he is not an eye witness. The Tribunal considering the evidence of P.W.7 and contents in the claim petitions wherein it has been pleaded that the drivers of all the 3 vehicles drove the vehicle in a rash and negligent manner and all the vehicles involved in the accident are heavy vehicles, held that all the 3 drivers are responsible for the accident and fixed contributory negligence of 40% on the part of the 1st respondent driver, 30% on the part of the driver of the SRS private bus belonging to the 2nd respondent and 30% on the part of the driver of the Aavin tanker



lorry belonging to the 4th respondent and directed the 1st respondent to pay 40% of the compensation awarded, the respondents 2 and 3 to jointly and severally pay 30% and the respondents 4 and 5 to jointly and severally pay 30% of the compensation granted by the Tribunal in all the claim petitions. There is no error in the said award warranting interference by this Court.

10.As far as the quantum of compensation is concerned, the Tribunal has considered the documents filed in the claim petition in M.C.O.P.Nos.796 and 851 of 2013 with regard to income of the deceased and fixed monthly income of the deceased. In M.C.O.P.No.929 of 2013, the claimants have contended that the deceased was an agriculturist and was selling flower and doing cloth business and was earning a sum of Rs.20,000/- per month and in M.C.O.P.No.938 of 2013, the deceased was a building contract labourer and was earning a sum of Rs.20,000/- per month. The claimants have failed to prove the avocation and income of the deceased in both the said claim petitions. In the absence of material, the Tribunal fixed notional income of the deceased at Rs.7,500 and Rs.8,000/- for both the deceased respectively. The accident is of the year 2013. The monthly income fixed by the tribunal is not excessive. The learned counsel appearing for the 3rd respondent-Insurance Company/appellant contended that the claimants in M.C.O.P.No.796 of 2013 will be getting family pension as the deceased was a retired Army personnel. No evidence was produced before the Tribunal to substantiate their contention. In view of the same, the contention of the 3rd respondent-Insurance Company/appellant is rejected. The total compensation amount awarded by the Tribunal is not excessive.

11.In the result, all the appeals are dismissed and the compensation awarded by the Tribunal at Rs.18,62,000/-, Rs.24,43,000/-, Rs.13,38,000/- and Rs.18,63,000/- along with interest and costs is confirmed. The 1st respondent is directed to pay 40% of the award amount, respondents 2 and 3 are directed to pay 30% of the award amount jointly and severally and respondents 4 and 5 are directed to pay 30% of the award amount jointly and severally to the claimants 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.796, 851, 929 & 938 of 2013. The claimants are permitted to withdraw their shares of the award amount, along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount if



any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor claimants are directed to be deposited in any one of the Nationalized Bank till the minors attain majority. The guardian of the minor claimants are permitted to withdraw interest accrued, once in three months for the welfare of the minor claimants. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

gsa

To

1.The Special District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

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

+4ccs to Mr.N.Vijayaraghavan, Advocate Sr.25902 to 25905
+1cc to Mr.Mukund R.Pandiyan, Advocate Sr.25887
+1cc to Mr.D.Venkatachalam, Advocate Sr.24559

C.M.A.Nos.115 to 118 of 2017
and C.M.P.Nos.887 to 890 of 2017

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srg 13/11/2019