



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1207 to 1210 of 2008
and M.P.Nos.1,1,1,1 of 2008

National Insurance Co. Ltd.
Divisional Office, L.R.N.Complex
Salem, Saradha college road
Salem. ... Appellant/Insurer of Lorry in
all CMAs.

Vs.

- 1.Lalabai Gopinath Chavan
 - 2.Gopinath Dadoba Chavan ...1st and 2nd Respondents/Claimants
 - 3.Srimathi V.Gomathi ...3rd Respondent/Owner of Lorry
 - 4.United India Insurance Co. Ltd.
Divisional Office
No.1, Peramanur main road
Salem-7. ... 4th Respondent/Insurer of Car
 - 5.S.Ankush ... 5th Respondent/Owner of Car
in C.M.A.No.1207 of 2008
-
- 1.Vijayakumar Balaso Bhujpal ... 1st Respondent/Claimant in
C.M.A.No.1208 of 2008
 - 2.Srimathi V.Gomathi
 - 3.United India Insurance Company Ltd.,
Division Office, No.1, Peramanur Main Road,
Salem-7.
 - 4.Ankush ...Respondents 2 to 4/Respondents 1 to 3
-
- 1.Manickam @ Dada Sahib ... 1st Respondent/Claimant
in C.M.A.No.1209 of 2008
 - 2.Srimathi V.Gomathi



3.United India Insurance Co. Ltd.
Divisional Office
No.1, Peramanur main road
Salem-7.

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4.S.Ankush

... Respondents 2 to 4 in
CMA No. 1209 of 2008

1.S.Ankush

...1st Respondent/Claimant
in CMA No.1210 of 2008

2.Srimathi V.Gomathi

3.United India Insurance Co. Ltd.
Divisional Office
No.1, Peramanur main road
Salem-7.

... Respondents 2 & 3/Respondents
2 & 3 in C.M.A.No.1210 of 2008

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2007 made in M.C.O.P.Nos.1053 to 1056 of 2004 on the file of Motor Accident Claims Tribunal, I Additional District Court, Salem.

In all CMAs.
For Appellant

: Mrs.R.Sreevidhya

In C.M.A.No.1207 of 2008

For R1, R2 and R5

: Mr.D.Balachandran

For R3

: No appearance

For R4

: Mr.S.Arunkumar

In C.M.A.Nos.1208 & 1209 of 2008

For R1 & R4

: Mr.D.Balachandran

For R2

: No appearance

For R3

: Mr.S.Arunkumar

In C.M.A.No.1210 of 2008

For R1

: Mr.D.Balachandran



For R2 : No appearance

For R3 : Mr.S.Arunkumar

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

This matter is heard through "Video-conferencing".

These Civil Miscellaneous Appeals are filed by the National Insurance Company challenging the award dated 31.01.2007 made in M.C.O.P.Nos.1053 to 1056 of 2004 on the file of Motor Accident Claims Tribunal, I Additional District Court, Salem.

2.All the four 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 respective ranks in the claim petitions.

3.The appellant/Insurance Company is the 4th respondent in M.C.O.P.Nos.1053 to 1055 of 2004 and 3rd respondent in M.C.O.P.No.1056 of 2004 on the file of Motor Accident Claims Tribunal, I Additional District Court, Salem. The claimants in M.C.O.P.No.1053 of 2004 filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of their son viz., Srikanth, who died in the accident that took place on 09.05.2004. The claimants in M.C.O.P.Nos.1054 to 1056 of 2004 filed the said claim petitions claiming Rs.5,00,000/-, Rs.5,00,000/- and Rs.15,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 09.05.2004.

4.According to the claimants, on the date of accident i.e., on 09.05.2004 at 4.30 p.m., while the 3rd respondent (claimant in M.C.O.P.No.1056 of 2004), the driver-cum-owner, was driving the Maruthi car bearing Registration No.KA-23M-4662 insured with the 4th respondent along with the deceased Srikanth and other claimants in M.C.O.P.Nos.1054 and 1055 of 2004 from Salem to Kolapur, near Karimangalam - Dharmapuri Main Road, a lorry bearing Registration No.TN-28C-2100 belonging to the 1st respondent insured with the 2nd respondent, which was coming in the opposite direction driven by its driver in a rash and negligent manner, dashed against the front side of the car and caused the accident. Due to the accident, the deceased Srikanth sustained fatal injuries, died in Government Hospital, Dharmapuri on the same day and the other claimants sustained grievous injuries all over the body. Therefore, the claimants filed the above claim petitions claiming compensation against the respondents.



5.The 1st respondent, owner of the lorry remained exparte before the Tribunal.

6.The 2nd respondent/Insurance Company insurer of the lorry filed separate counter statements denying the averments made by the claimants and stated that there was a curve on Dharmapuri - Karimangalam Main Road. While the 3rd respondent, the driver of the Maruthi car was proceeding from South to North direction, lost his control, when he was proceeding near the curve. At the same time, the driver of the lorry who was proceeding from North to South direction on the left side of the road, on noticing the car coming in the wrong side, applied brake and stopped the lorry on the left side of the road. The driver of the car lost his control and dashed on the front side of the lorry. Therefore, the driver of the lorry belonging to the 1st respondent is not responsible for the accident. The accident has occurred only due to rash and negligent driving by the 3rd respondent, the driver of the car. Therefore, the driver of the car alone is responsible for the accident. The owner and insurer of Maruthi car were not made as parties and hence, the claim petitions are bad for non-joinder of necessary parties. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the claimants. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the deceased in MCOP No.1053 of 2004 and age, avocation, injuries and treatment taken by the other claimants in M.C.O.P.Nos.1054 to 1056 of 2004. In any event, the compensation claimed by the claimants are excessive and prayed for dismissal of the claim petitions.

7.The 3rd respondent (claimant in M.C.O.P.No.1056 of 2004) owner of the car filed separate counter statements in M.C.O.P.Nos.1053 to 1055 of 2004 and stated that as per the order of the Tribunal, the owner and insurer of Maruthi car were impleaded as parties to the claim petitions and arrayed as respondents 3 and 4 respectively. The driver of the lorry belonging to the 1st respondent alone is responsible for the accident and therefore, the 2nd respondent being insurer of the said lorry is liable to pay compensation to the claimants. If the Tribunal fixes contributory negligence on the part of both the drivers of lorry and car, the 4th respondent/Insurance Company is liable to pay compensation to the claimants on behalf of the 3rd respondent.

8.The 4th respondent/Insurance Company (3rd respondent in M.C.O.P.No.1056 of 2004) insurer of the car filed separate counter statements and stated that the 3rd respondent, the driver of the car is not responsible for the accident. The accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent. The Police have



registered a case only against the driver of the lorry. The 4th respondent is only a formal party. The 4th respondent/Insurance Company has also denied the age, avocation and income of the deceased in MCOP No.1053 of 2004 and age, avocation, injuries and treatment taken by the other claimants in M.C.O.P.Nos.1054 to 1056 of 2004. In any event, the compensation claimed by the claimants are excessive and prayed for dismissal of the claim petitions.

9.Before the Tribunal, the 3rd respondent (claimant in M.C.O.P.No.1056 of 2004) examined himself as P.W.1, the 2nd claimant in M.C.O.P.No.1053 of 2004, father of the deceased Srikanth, examined himself as P.W.2, claimants in M.C.O.P.Nos.1054 and 1055 of 2004 examined themselves as P.W.3 and P.W.4, Dr.Selvaraj was examined as P.W.5 and one Ramakrishnan was examined as P.W.6 and marked 29 documents as Exs.P1 to P29. The respondents 2 and 4/Insurance Companies did not let in any oral evidence. The 2nd respondent/Insurance Company marked rough sketch as Ex.R1.

10.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the driver of the lorry belonging to the 1st respondent as well as the 3rd respondent, driver of the car, fixed 50 : 50 contributory negligence on the part of drivers of both the vehicles, awarded a sum of Rs.4,58,000/-, Rs.1,22,500/-, Rs.79,000/- and Rs.2,43,000/- as compensation to the claimants in M.C.O.P.Nos.1053 to 1056 of 2004, directed the 1st respondent, owner of the lorry as well as the 2nd respondent being insurer of the lorry to jointly and severally pay 50% of the compensation to the claimants in M.C.O.P.Nos.1053 to 1056 of 2004, directed the 3rd respondent, owner of the car and 4th respondent being insurer of the car to jointly and severally pay another 50% of the compensation to the claimants in M.C.O.P.Nos.1053 to 1055 of 2004 and directed the 4th respondent/Insurance Company (3rd respondent in M.C.O.P.No.1056 of 2004) being insurer of the car to pay another 50% of the compensation to the claimant in M.C.O.P.No.1056 of 2004.

11.Against the said common award dated 31.01.2007 made in M.C.O.P.Nos.1053 to 1056 of 2004, the 4th respondent/Insurance Company has come out with the present four appeals challenging 50% liability fixed on them as well as the quantum of compensation awarded by the Tribunal.

12.The learned counsel appearing for the 4th respondent, insurer of the car contended that the Tribunal erred in fixing negligence equally on the part of both the drivers of the lorry and car, when there is no oral and documentary evidence let in



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by the respondents 1 and 2. The Tribunal failed to see that the claimants including P.W.1, the driver of the car have deposed that the accident has occurred only due to rash and negligent driving by the driver of the lorry. F.I.R. was registered only against the driver of the lorry and the Police laid charge sheet against the driver of the lorry. The driver of the lorry was not examined to prove the negligence on the part of the driver of the car. In the absence of any contra evidence to the evidence of P.W.1, the driver of the car, the Tribunal erroneously fixed negligence equally on the part of the driver of the car/P.W.1 as well as the driver of the lorry.

12(a). The learned counsel appearing for the 4th respondent further contended that in M.C.O.P.No.1053 of 2004 (C.M.A.No.1207 of 2008), the Tribunal ought to have taken age of the parents of the deceased to apply multiplier instead of age of the deceased. In C.M.A.Nos.1208 and 1209 of 2008, the Tribunal erred in awarding compensation for loss of earning power and disability separately. The Tribunal ought not to have adopted multiplier method mechanically as per the judgment of the Division Bench of this Court reported in 2005 1 TNMAC 87 Division Bench (United India Insurance Company vs. Veluchamy).

12(b) The learned counsel appearing for the 4th respondent further contended that the 3rd respondent (claimant in M.C.O.P.No.1056 of 2004 and 1st respondent in C.M.A.No.1210 of 2008) is the driver of the car who is the tort-feasor and hence, the 4th respondent/Insurance Company, insurer of the car is not liable to pay compensation. The Tribunal failed to consider that the claimant in MCOP No.1056 of 2004 is owner of the car and he was driving the car at the time of accident. The Tribunal failed to consider the evidence of the claimant that the accident has occurred only due to rash and negligent driving by the driver of the lorry. In any event, the Tribunal having held that the claimant is equally responsible for the accident, erred in directing the 4th respondent, insurer of the car to pay 50% of the compensation to the claimant, who is the tort-feasor. The Tribunal failed to consider that the claimant is the owner of the car and he is not a third party. He cannot be a claimant as well as recipient. The Tribunal failed to see that the policy of insurance issued under Section 147 of the Motor Vehicles Act does not cover the risk of owner of the vehicle and gratuitous passenger. Hence, the 4th respondent is not liable to pay any compensation to the claimant in M.C.O.P.No.1056 of 2004 (1st respondent in C.M.A.No.1210 of 2008) and prayed for setting aside the award of the Tribunal fixing 50% liability on the part of the 4th respondent and allowing all the four appeals.

13. Per contra, the learned counsel appearing for the claimants contended that the accident has occurred only due to



rash and negligent driving by the driver of the lorry belonging to the 1st respondent. The claimants in MCOP Nos.1054 to 1056 of 2004 (C.M.A.Nos.1208 to 1210 of 2008) examined themselves as P.W.1, P.W.3 and P.W.4 respectively and proved their contention. The respondents did not let in any contra evidence, especially they did not examine the driver of the lorry. The Tribunal, relying on Ex.R1 rough sketch, erroneously held that the driver of the car was also responsible for the accident and fixed 50% contributory negligence on the part of driver of the car. The Tribunal ought to have fixed entire negligence on the part of the driver of the lorry. The Tribunal considering the evidence of P.W.5/Doctor, age, avocation, income, disability and nature of injuries, awarded compensation for the death of Srikanth to the claimants in M.C.O.P.No.1053 of 2004 (C.M.A.No.1207 of 2008) and for the injuries sustained by the claimants in M.C.O.P.Nos.1054 to 1056 of 2004 (C.M.A.Nos.1208 to 1210 of 2008). The total compensation awarded by the Tribunal are not excessive and prayed for dismissal of all the four appeals.

14. The learned counsel appearing for the 2nd respondent/Insurance Company insurer of the lorry contended that the accident has occurred in the place where there was a curve in the road, the accident has occurred when the car came to the right side of the road and dashed against the lorry which was coming in the opposite direction on the left side of the road. The entire negligence has to be fixed on the part of the driver of the car. The 2nd respondent has proved the same by marking Ex.R1/rough sketch through P.W.1, which clearly shows that the accident has occurred only due to rash and negligent driving by the driver of the car. The Tribunal without properly appreciating Ex.R1, erroneously fixed 50% negligence on the part of the driver of the lorry and directed the 2nd respondent, insurer of the lorry to pay 50% of the compensation awarded by the Tribunal and prayed for setting aside 50% negligence on the part of the driver of the lorry and liability on the 2nd respondent/Insurance Company and for dismissal of all the appeals.

15. Though notice has been served on the 1st respondent, owner of the lorry and her name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

16. Heard the learned counsel appearing for the 4th respondent/Insurance Company as well as the learned counsel appearing for the claimants and the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.



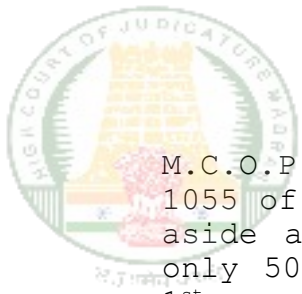
17. From the materials on record, it is seen that it is the contention of the claimants that driver of the lorry belonging to the 1st respondent drove the same in a rash and negligent manner and dashed against the car driven by the 3rd respondent (claimant in M.C.O.P.No.1056 of 2004). To substantiate their contention, the claimants in M.C.O.P.Nos.1054 to 1056 of 2004 examined themselves as P.W.1, P.W.3 and P.W.4. They also marked as Ex.P1 - F.I.R., which was registered against the driver of the lorry. On the other hand, it is the contention of the 2nd respondent, insurer of the lorry that the driver of the car came to the right side in the curve, dashed against the lorry and hence entire negligence is on the part of the driver of the car. To substantiate their contention, the 2nd respondent did not examine the driver of the lorry or any eye-witness. But they marked Ex.R1/rough sketch through P.W.1. The correctness of rough sketch was not disputed by the claimants and the 4th respondent and the same was marked without any objection during cross-examination of P.W.1. The Tribunal verified Ex.R1, found that the accident has occurred on the right side of the road and held that the driver of the car came to the wrong side of the road and if the driver of the lorry had driven the same in a moderate speed, he would have stopped the lorry and avoided the accident. The accident was head on collision between two vehicles. The Tribunal considering the above materials, has held that both the drivers of the lorry and car were equally negligent and contributed to the accident, fixed 50% contributory negligence on both the drivers of the lorry as well as car and fixed liability on the respondents 2 and 4, being the insurer of the lorry and car respectively. There is no error in the said finding of the Tribunal warranting interference by this Court.

18. As far as the quantum of compensation granted by the Tribunal in respect of C.M.A.No.1207 of 2008 (M.C.O.P.No.1053 of 2004) is concerned, the claimants are the legal heirs of the deceased Srikanth. They contended that the deceased was doing silver business and was earning a sum of Rs.13,000/- per month. They failed to substantiate the said contention. In the absence of material evidence with regard to avocation and income, the Tribunal fixed notional income of the deceased at Rs.3,000/-. The said amount is not excessive. As per Ex.P29/post-mortem certificate, age of the deceased was 29 years at the time of accident. The Tribunal applied multiplier '18', deducted 1/3rd towards personal expenses and awarded compensation towards loss of dependency as per II Schedule, which is not excessive. The total compensation is not excessive warranting interference by this Court. In view of the above, C.M.A.No.1207 of 2008 stands dismissed.



19. As far as the quantum of compensation granted by the Tribunal in respect of C.M.A.Nos.1208 and 1209 of 2008 (M.C.O.P.Nos.1054 and 1055 of 2004) are concerned, the claimants have filed claim petitions claiming Rs.5,00,000/- each as compensation for the injuries sustained by them in the accident. They contended that they were silver merchants and were earning Rs.10,000/- per month. They failed to substantiate the said contention. The Tribunal in the absence of material evidence with regard to avocation and income, fixed the notional income of the claimants at Rs.3,000/- each. Both the claimants have examined P.W.5/Doctor who deposed about the nature of injuries sustained by the claimants and certified that both the claimants suffered 25% disability each and marked the disability certificates as Exs.P23 and P26 respectively. P.W.5/Doctor has also deposed that due to disability, both the claimants cannot walk and stand for a long time. The Tribunal considering the nature of injuries, disability, evidence of P.W.5/Doctor and nature of business, fixed 15% disability for the claimant in M.C.O.P.No.1054 of 2004 and 10% disability for the claimant in M.C.O.P.No.1055 of 2004 to award compensation for the loss of earning power. The Tribunal taking into consideration the age of the claimants, adopted multiplier method and awarded compensation. The Courts have power to grant compensation for disability and loss of earning power separately depending on the avocation, nature of injuries, disability and facts of the case. The Tribunal considering the nature of injuries, disability and nature of work done by the claimants, awarded compensation separately for both loss of earning power and disability. The total compensation awarded by the Tribunal are not excessive. There is no error in the award of the Tribunal warranting interference by this Court. In view of the above, C.M.A.Nos.1208 and 1209 of 2008 stand dismissed.

20. As far as the liability fixed on the 3rd respondent/Insurance Company in M.C.O.P.No.1056 of 2004 (C.M.A.No.1210 of 2008) and 4th respondent in M.C.O.P.Nos.1053 to 1055 of 2004 and quantum of compensation awarded by the Tribunal is concerned, the claimant in M.C.O.P.No.1056 of 2004 is the owner of the car. He has filed claim petition against the 1st respondent, owner of the lorry, 2nd respondent, insurer of the lorry and 3rd respondent, insurer of the car in M.C.O.P.No.1056 of 2004. In the claim petition, the claimant has stated that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent. The Tribunal considering the materials placed before it, rejected the said contention and held that the claimant has also contributed 50% negligence. A person cannot be a claimant as well as a recipient. In view of the same, the award of the Tribunal directing the 3rd respondent/Insurance Company in



M.C.O.P.No.1056 of 2004 (4th respondent in M.C.O.P.Nos.1053 to 1055 of 2004) to pay 50% of the compensation is liable to be set aside and it is hereby set aside. The claimant is entitled to only 50% of the compensation granted by the Tribunal from the 1st respondent, owner of the lorry and the 2nd respondent/Insurance Company insurer of the lorry. The total compensation granted by the Tribunal in M.C.O.P.No.1056 of 2004 is not excessive and therefore, the same is hereby confirmed. In view of the above, C.M.A.No.1210 of 2008 stands allowed.

21. In the result,

(i) C.M.A.Nos.1207 to 1209 of 2008 stand dismissed. C.M.A.No.1210 of 2008 stands allowed setting aside the portion of the award directing the 4th respondent/Insurance Company (3rd respondent in M.C.O.P.No.1056 of 2004) to pay 50% of the compensation to the claimant. The compensation of Rs.4,58,000/-, Rs.1,22,500/-, Rs.79,000/- and Rs.2,43,000/- awarded by the Tribunal along with interest and costs are confirmed.

(ii) In M.C.O.P.Nos.1053 to 1055 of 2004 (C.M.A.Nos.1207 to 1209 of 2008), both the 1st respondent, owner of the lorry as well as the 2nd respondent, insurer of the lorry are jointly and severally directed to deposit Rs.2,29,000/-, Rs.61,250/- and Rs.39,500/- being 50% of the compensation and both the 3rd respondent, owner of the car as well as the 4th respondent/Insurance Company, insurer of the car are jointly and severally directed to deposit Rs.2,29,000/-, Rs.61,250/- and Rs.39,500/- being 50% of the compensation 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.

(iii) In M.C.O.P.No.1056 of 2004 (C.M.A.No.1210 of 2008), the claimant is entitled to only 50% of the compensation. Both the 1st respondent, owner of the lorry as well as the 2nd respondent/Insurance Company, insurer of the lorry are jointly and severally directed to deposit Rs.1,21,500/- being 50% of the compensation 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.

(iv) On such deposit, the claimants in M.C.O.P.No.1053 of 2004 (C.M.A.No.1207 of 2008) are permitted to withdraw their respective share of the award amount as per the apportionment made by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn.

(v) The claimants in M.C.O.P.Nos.1054 and 1055 of 2004 (C.M.A.Nos.1208 and 1209 of 2008) are permitted to withdraw



their respective compensation awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn.

(vi) The claimant in M.C.O.P.No.1056 of 2004 (C.M.A.No.1210 of 2008) is permitted to withdraw 50% of the compensation i.e. Rs.1,21,500/- along with interest and costs, less the amount if any, already withdrawn. The 4th respondent/Insurance Company (3rd respondent in M.C.O.P.No.1056 of 2004) is permitted to withdraw the amount lying in the deposit to the credit of M.C.O.P.No.1056 of 2004 on the file of Motor Accident Claims Tribunal, I Additional District Court, Salem, if 50% of the compensation has already been deposited by them. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Kj

To

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Salem.

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

+1cc to M/s.S.Arunkumar, Advocate Sr.37627
+1cc to M/s.R.Sreevidhya, Advocate Sr.37988

C.M.A.Nos.1207 to 1210 of 2008
and M.P.Nos.1,1,1,1 of 2008

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