IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1250 of 2009 and C.M.A. No.1678 of 2013
and
C.M.P. No.1 of 2011

In CMA No.1250 of 2009
National Insurance Co. Ltd.
Head Office, No.3,
Middleton Vidhi,
Kolkatta - 700 071 ..Appellant/3rd Respondent

Versus

1.P. Mylathal W/o. Late Palanisamy,

2.P. Saritha D/o. Late Palanisamy,

3.P. Geetha @ Geethamani
D/o.Late. Palanisamy ...1 to 3 Respondents/Petitioners

4. Bazaj Allianz General Insurance Co. Ltd.
Ge Plaza Airport Road,
Yerawad , Pune - 411 006

5. T. Rajendran S/o. Thirumalisamy,

6. Rukkumani W/o. Late Pappusamy

7. Pappusamy ..4 to 7 Respondents/1, 2, 4, 5 Respondents

In CMA No.1678 of 2013

P. Mylathal W/o. Late Palanisamy, ... Appellant/Petitioner

Versus

1. Bazaj Allianz General Insurance Co. Ltd.
Ge Plaza Airport Road, Yerawad , Pune - 411 0060

2.T. Rajendran S/o. Thirumalisamy,

3. National Insurance Co. Ltd.
(Insurer of the Hunda Activa Vehicle)
Head Office, No.3,
Middleton Vidhi,
Kolkatta - 700 071 ..Respondents/Respondents

Prayer in CMA No.1250 of 2009:
Civil Miscellaneous Appeal filed against the order and decree dated 24.11.2008 made in M.C.O.P.No.44 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Coimbatore.

Prayer in CMA No.1678 of 2013:
Civil Miscellaneous Appeal filed against the order and decree dated 05.12.2007 made in M.C.O.P.No.318 of 2006 on the file of the Motor Accident Claims Tribunal cum I Additional Sub-Court, Coimbatore.

For Appellant	:	Mr.S. Arunkumar
For Respondents1-3	:	Mr.Ma.Pa. Thangavel
For Respondent4	:	Mr. J. Michael Visuvasam
For Respondent5	:	No appearance
6,7	:	Not ready in notice

(In C.M.A No.1250 of 2009)

For Appellant	:	Mr.Ma.Pa. Thangavel
For Respondent1	:	Mr. J. Michael Visuvasam
For Respondent3	:	Mr.S. Arunkumar
R2 - Ex-parte		

(In C.M.A No.1678 of 2013)

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

The Insurance company has filed the appeal in C.M.A.No.1250 of 2009 against the Judgment and order 24.11.2008 made in M.C.O.P.No.44 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Coimbatore questioning its liability and the claimant has filed the appeal in C.M.A.No.1678 of 2013 against the order and decree dated 05.12.2007 made in M.C.O.P.No.318 of 2006 on the file of the Motor Accident Claims Tribunal cum I Additional Sub-Court, Coimbatore seeking for compensation.

2. Since these appeals are connected and arise out of one and the same accident, both appeals are disposed of by this Common Judgment.

3.The facts of the case briefly are as follows:
On 21.08.2005, at about 9.00 p.m, Bazaj CT 100 bearing registration No.TN 38 3049 driven by the deceased Palanisamy along with his wife as pillion rider on Coimbatore Road, near Vimal Jyothi Hospital and a Honda Activa bearing registration No.TN 38 3049 belonging to Mr.T. Rajendran was driven by Mr.Padmanaban were collided with each other due to driving of both riders in a rash and negligent manner thereby rider of

both vehicles i.e.Palaniswamy and Padmanaban were died due to fatal injuries. At the same time, pillion rider P. Mayilathal W/o. deceased Palaniswamy also sustained grievous injuries in the said road accident. In view of the injuries sustained in the accident, the appellant in CMA No.1678 of 2013 filed claim petition separately in M.C.O.P. No.318 of 2006 on the file of the Motor Accident Claims Tribunal cum I Additional Sub-Court, Coimbatore claiming for compensation of Rs.3,00,000/- (Three Lakh Only) as against the Insurance Companies and owner of the Honda Activa Vehicle. The same was dismissed by the Tribunal on the ground of non-payment of Additional premium in the Bajaj CT 100 vehicle and rash and negligent driving of her deceased husband as well as no liability on the side of the driver of the Honda Activa. In view of the dismissal of claim petition, the wife of the deceased has filed C.M.A.No.1678 of 2013 against the award passed thereon. Further, due to the death of her husband deceased Palaniswamy in the same accident, she filed a claim petition along with her two daughters in M.C.O.P.No.44 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Coimbatore seeking for compensation of Rs.10,00,000/-(Rupees Ten Lakh Only) by and which they were awarded compensation of Rs.3,99,000/- directing the National Insurance Company who is the insurer of the Honda Activa belongs to one Mr.T. Rajendran, to pay 50% compensation of Rs.1,99,500/- to the claimants/legal heirs of the deceased Palaniswamy on the basis of the composite negligence on the part of both riders of the both vehicle. Being aggrieved over the award, the National Insurance Company has filed the present appeal in C.M.A. No.1250 of 2009 questioning the liability fixed on it.

4. Heard the learned counsel for both parties in both appeals and perused the entire oral and documentary evidence.

In C.M.A. No.1250 of 2009:

5.On perusal of the award in M.C.O.P.No.44 of 2006, the Tribunal has rightly come to the conclusion with regard to the factum and manner of the accident that aforesaid accident has been occurred due to rash and negligent driving of the riders of both vehicles taking into consideration damages of both vehicles equally since they have dashed each other straight away after losing control themselves. Hence, the Tribunal held that the accident occurred due to the composite negligence of drivers of both vehicles and it could not be said that the accident occurred solely due to the negligence of the deceased Palaniswamy. Hence, the Tribunal has fixed liability on the basis of the composite negligence on either side driver. Accordingly, the Tribunal has determined the compensation of Rs.3,99,000/- in the ratio of 50:50, wherein the deceased Palanisamy is liable to an extent of 50% of Rs.1,99,500/-, since he was a tort-feasor for the accident, after deducting it from total compensation, the balance 50% of Rs.1,99,500/- is to be paid along with interest @ 7.5% by the Insurer of the Honda Activa since it existence of valid policy under the Insurer of the National Insurance Co. Ltd., after exonerating the Bajaj Allianz General Insurance Co. Ltd., from the liability in view of the terms and condition of its policy.

6. This Court is of the considered view that the Tribunal has rightly come to the conclusion fixing the composite liability on both riders of the vehicles after having considered facts and circumstances of the case and perused entire oral and documentary evidence.

7. However, it is seen from the records that the said accident had happened when the deceased Palanisamy and his wife were going to give Marriage Invitation for their daughter to their relatives and the deceased Palanisamy was said to be as a Building Contractor drawing monthly income of Rs.10,000/- per month maintaining his family with two daughters.

8. Taking into consideration of the facts and circumstances of the case and submission made by the learned counsel for the claimants, this Court is inclined to increase the deceased Palaniswamy's monthly income as Rs.4,500/- p.m. instead of Rs.3,000/- as fixed by the Tribunal. As per Supreme Court Judgment reported in 217(2)TNMAC 609, future prospects @25% is added with the monthly income thereby Rs.5,625/- would come. Out of this amount, he would have spent 1/4 towards his personal expenses and 3/4 towards his family maintenance. Considering the above, his monthly income arrives as Rs.4,219/- towards his family maintenance after deducting 1/4 towards personal expenses. Thus, Annual income arrives at Rs.4,219 X 12 =50,628/- After applying multiplier of 15, loss of life dependency comes to Rs.7,59,420/-. Further, the compensation was awarded under other heads including loss of life dependency as under:

Loss of life dependency	:7,59,420.00
Loss of consortium	: 40,000.00
Loss of Estate	: 15,000.00
Funeral Expenses	: 15,000.00
Total	8,29,420.00

Totally, the amount is arrived at Rs.8,29,420/- as total compensation to be payable to the legal heirs of the deceased. However, the deceased Palanisamy was tort-feasor for the said accident, who is liable for 50% contributory negligent of Rs.4,14,710/- out of total compensation and at the same time, as per the submission of the learned counsel for the respondents 1to3 in CMA No.1250 of 2009, the deceased Palanisamy had paid premium for the vehicle insurance policy pertaining to his Motor Cycle, i.e. Bajaj CT 100 motor cycle, the insurer of Bajaj CT 100 is liable to pay compensation of Rs.1,00,000/- as against the personal accident claim for the fatal accident of the policy holder and the balance 50% of Rs.4,14,710/-, the insurer of the Honda Active, ie. National Insurance Comapny is liable to pay a sum of Rs.4,14,710/- as compensation to the legal heirs of the deceased. Hence, the appellant in CMA No.1250 of 2009/Insurance company is directed to deposit their share amount to the credit of M.C.O.P. No.44 of 2006 within a period of four weeks from the date of receipt of copy of this Judgment as stated above. On such deposit, the respondents 1/wife of the deceased is alone entitled to withdraw the modified award amount by filing formal petition as her daughters are already got married.

In C.M.A. No.1678 of 2013:

9. In view of the above observation, there is no dispute in the factum of the accident and the manner of the accident being rash and negligence of the driving of both driver. Being so, the billion rider of the Bazaj CT 100, wife of the deceased Palaniswamy sustained grievous injuries in the aforesaid road accident and was admitted in the CMCH, Coimbatore where she was undergoing treatment from 21.08.2005 to 30.08.2005 and further she was taking further special treatment in Dhakshin Trauma Centre and was issued 10% permanent disability certificate by the Doctor whereas she is entitled to get the compensation as per the details given below;

SL. No.	Particulars	Amount (in Rs.)
1	Disability of 10% at Rs.3000/- to the petitioner/appellant herein	30,000.00
2	Loss of Income	6,000.00
3	Transport Expenses	2000.00
4	Extra Nourishment	3000.00
5	Damages to Cloth and articles	1000.00
6	Extra Nourishment	5000.00
Total Amount		57,000.00

10.Thus, the compensation of Rs.57,000/- (Rupees Fifty Seven Thousand Only) is awarded to the claimant/appellant herein in C.M.A. No.1678 of 2013 with interest @7.5% p.a. from the date of petition till the date of deposit of award amount. Since the both rider of the Motor cycles are responsible for the accident, the 1st respondent/Insurance Company and 3rd respondent/Insurance company shall bear the compensation equally i.e. 50:50. Accordingly, the both insurance company is directed to deposit their share to the credit of M.C.O.P.

No.318 of 2006 within a period of four weeks from the date of receipt of copy of this Judgment. On such deposit, the claimant/appellant is entitled to withdraw the same after filing the formal application before the Triubunal.

11. In the result, the appeal in CMA No.1250 of 2009 is dismissed and the appeal in CMA No.1678 of 2013 is partly allowed. Accordingly, the impugned award passed by the Tribunal in M.C.O.P. No.44 of 2006 is modified and in M.C.O.P. No.318 of 2006 is set aside hereby. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

lbm

Copy to:

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court, Coimbatore.

2.The Motor Accident Claims Tribunal,
cum I Additional Sub-Court, Coimbatore.

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

+1cc to Mr.Ma.Pa. Thangavel, Advocate SR.No.7835

+1cc to Mr.S. Arunkumar, Advocate SR.No.7806

+1cc to Mr.J. Michael Visuvasam, Advocate SR.No.7513

C.M.A.No.1250 of 2009 and C.M.A. No.1678 of 2013
and
C.M.P. No.1 of 2011

PPA(CO)
GMY(09/09/2021)