

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.1422 and 1423 of 2013

1.R.Valarmathi ...1st Appellant in CMA.No.1422 of 2013/
Petitioner

2.S.Ravi ...2nd Appellant in C.M.A.Nos.1422 /2013
and sole Appellant in CMA No.1423/2013 /
Petitioners

..Vs..

1.A.Tamil Mani

2.Royal Sundaram Alliance Insurance Company Limited,
"Sorrento Building",
No.6, 1st Street, Lattice Bridge Road,
Adyar, Chennai - 600 020. ... Respondents in both CMAs/
Respondents

Prayer in CMA.1422 of 2013: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree passed in MCOP No.879 of 2010, dated 26.09.2012, on the file of the MACT/XVII Additional Judge, City Civil Court, Chennai.

Prayer in CMA.1423 of 2013: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree passed in MCOP No.883 of 2010, dated 26.09.2012, on the file of the MACT/XVII Additional Judge, City Civil Court, Chennai.

For Appellants in
both appeals : Mr.A.A.Venkatesan

For Respondents in
both appeals : Mr.M.Krishna Moorthy for R2
No Appearance for R1

COMMON JUDGMENT

(This Appeal has been taken up for hearing through Video Conferencing)

These appeals have been filed by the respective claimants aggrieved by the finding of the Motor Accident Claims Tribunal (XVII Additional Court, Chennai) in its common award dated 26.09.2012, passed in M.C.O.P.Nos.879 and 883 of 2010, that the respective appellants are also responsible for the cause of the accident in the ratio of 40:60 against them. The appellants have also sought for enhancement of compensation under the impugned common award.

2. S.Ravi, who is the appellant in CMA.No.1423 of 2013, sustained injuries, as a result of an accident on 18.10.2009 caused by a vehicle owned by the first respondent and insured with the 2nd respondent. He made a claim in M.C.O.P.No.883 of 2010, before the Motor Accident Claims Tribunal against the respondents seeking compensation. In the same accident, R.Sri Vidhya, died and her legal representatives namely the appellants in CMA.No.1422 of 2013 filed a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.879 of 2010. By a common award dated 26.09.2012, the Motor Accident Claims Tribunal directed the respondents to pay the appellant in CMA.No.1423 of 2013 a compensation of Rs.53,754/- together with interest and cost and also directed the respondents to pay the appellants in CMA.No.1422 of 2013, a compensation of Rs.3,05,000/- together with interest and cost. The details of the compensation awarded to the appellants (Ravi), in CMA.No.1423 of 2013 are as follows:

Heads	Amount (Rs.)
15% disability	30,000/-
Pain and Sufferings	10,000/-
Nutrition	2,000/-
Transportation	2,000/-
Medical Expenses	754/-
Loss of income for 2 months	9,000/-
Total	53,754/-

Compensation awarded by the Tribunal to the appellants (legal representatives of the deceased R.Srividhya) in CMA.No.1422 of 2013 are as follows:

Heads	Amount (Rs.)
Pecuniary Loss	1,50,000/-
Non Pecuniary Loss	75,000/-
Loss of Future Prospectus	75,000/-
Funeral Expenses	5,000/-
Total	3,05,000/-

3. The Tribunal in the impugned common award has however given a finding that there is contributory negligence on the part of the respective appellants also and fixed their contributory negligence at 40%. Therefore, under the impugned award, the Tribunal has directed the 2nd respondent to pay 60% of the assessed compensation amount to the respective appellants.

4. Aggrieved by the said finding and also unsatisfied with the quantum of compensation awarded by the Tribunal, these appeals have been filed by the respective appellants.

5. Before the Tribunal, the appellants have filed fourteen documents which were marked as Exs.P1 to P14 and three witnesses have been examined on their side namely, the appellant in CMA.No.1423 of 2013, the injured claimant as PW.1, the Doctor, who examined him as PW.2 and an eye witness to the accident by name S.Raghupathy as PW.3. On the side of the respondents, no document has been filed, but one witness was examined as RW.1, who is the driver of the insured lorry bearing registration No.TN-21P-1479 at the time of the accident.

6. The appellants were all travelling in a TVS-Moped which was coming behind the insured lorry bearing registration No.TN-21P-1479, which was proceeding in the front. The accident had happened when the TVS Moped, which was coming from behind, dashed against the lorry bearing registration No.TN-21P-1479, which was proceeding in the front, which resulted in the death of R.Sri Vidhya and caused injury to S.Ravi, the appellant in CMA.No.1423/2013.

7. The accident has not been disputed by the respondents. But according to them, as per the evidence of RW.1, the insured lorry was stationery. When the TVS moped was coming from behind, in which the appellant viz., S.Ravi, as well as the deceased R.Sri Vidhya, were travelling, and only due to their fault, the accident had happened. But, however, it is the case of the appellants that the driver of the insured lorry bearing registration No.TN-21P-1479, which was proceeding in front of

the TVS-Moped suddenly applied brakes which resulted in the TVS-Moped dashing against the said lorry, resulting in the death of R.Srividhya and injury to S.Ravi. The FIR, (Ex.P1) has been registered only against the insured lorry and subsequently, a charge sheet has also been filed by the police against the driver of the insured lorry, which has been marked as Ex.P2.

8. The Criminal Court has also by its Judgment dated 20.07.2010 passed in C.C.No.49 of 2010 which was marked as Ex.P3 has imposed fine on the driver of the insured lorry. However, contrary to the said judgment, the driver of the insured lorry viz., A.Tamilmani, who has been examined as a witness by the respondents (RW.1), has deposed that the said insured lorry was stationery and only due to the rash and negligent driving by the rider of the motor cycle, the accident had happened. RW.1 is not an independent witness as he is the person who drove the insured lorry. The FIR registered against the driver of the insured lorry, who has deposed as RW.1 before the Tribunal, has not been disproved by the respondents by letting in any relevant independent evidence. Further, the Criminal Court in a judgment dated 20.07.2011 passed in C.C.NO.49 of 2010, marked as Ex.P3 has found the driver of the insured lorry guilty of rash and negligent driving and it has also imposed a fine on him. The Tribunal ought to have considered all these aspects before fixing the proportionate contributory negligence on the respective parties involved in the accident.

9. Admittedly, the two wheeler namely TVS-Moped in which, the claimant, who is the appellant in CMA.No.1423 of 2013 as well as the deceased R.Sri Vidhya, was carrying excess persons. It was carrying four persons at the time of accident, whereas, only two persons are legally permissible to travel in the said two wheeler. The Tribunal has taken into consideration this fact and has rightly fixed contributory negligence on the part of the claimants also. However, the proportionate contributory negligence fixed by the Tribunal against the appellants is on the higher side, considering the fact that the two wheeler was coming from behind and the insured lorry was proceeding in the front is a heavy vehicle. In all probability, the contention of the claimants that only due to sudden applying of the brakes by the insured lorry which was proceeding in the front, the accident has happened will have to be believed. When there is a clear finding given by the Criminal Court in C.C.No.49 of 2010, that only due to the rash and negligent driving of the insured lorry by the driver, the accident had happened, the contributory negligence fixed on the part of the respective appellants/claimants is on the higher side. Further, the deceased Sri vidhya was only a pillion rider in the motor cycle cannot be held responsible for the rash and negligent driving by the rider of the motor cycle. The only negligence committed by

the rider of the two wheeler in the instant case is to travel with three persons, instead of the legally permissible limit of two. Apart from this negligence, the rider of the two wheeler or the deceased Sri vidhya cannot have caused any further contributory negligence. When the Criminal Court has clearly established that only due to the fault of the driver of the insured lorry, the accident had happened, that too when the respondents have not been able to disprove the said finding through any independent witnesses or any relevant documentary evidence, the fixing of contributory negligence at 40% on the part of the rider of the motor cycle is on the higher side.

10. This Court is of the considered view that at the most, the persons who were travelling in the two wheeler can be responsible for their contributory negligence only to the extent of 10%. Accordingly, the proportionate contributory negligence between the driver of the insured lorry and the respective appellants is assessed in the ratio of 90:10, i.e., 90% towards contributory negligence on the driver of the insured lorry and 10% towards contributory negligence on the part of the appellants.

11. The learned counsel for the 2nd respondent/Insurance Company placed reliance on the judgment of the Hon'ble Supreme Court in (2018) 6 SCC 765 in Nishan Singh and others Vs. Oriental Insurance Company.

12. The said decision is not applicable to the facts of this case as no independent witness has been examined on the side of the respondents and they have examined only the driver of the insured lorry, who is not an independent witness. No documentary evidence has also been produced by the respondents before the Tribunal to support the finding of the Tribunal. The Tribunal without any basis has erroneously fixed the contributory negligence of the respective appellants at 40%. Further the Criminal Court judgment dated 20.07.2011, passed in C.C.No.49 of 2020 has conclusively found the driver of the insured lorry to be guilty of rash and negligent driving and has also imposed a fine on him.

13. In the judgment cited by the learned counsel for the 2nd respondent referred to supra, there is no Criminal Court judgment as in the instant case. Further, any compensation claim is adjudicated based on preponderance of probabilities. In the instant case, when there is conclusive evidence to show that the insured lorry was responsible for the cause of accident and then there is no contra evidence to disprove the said evidence, the Tribunal has erroneously assessed the proportionate contributory negligence between the driver of the insured vehicle and the rider of the two wheeler in the ratio of

60:40. This Court is therefore constrained to modify the said finding of the Tribunal by fixing the same in the ratio of 90:10 since the only contributory negligence on the part of the appellants is that the motor cycle namely TVS-Moped was carrying four persons which is more than the permissible limit of two at the time of the accident.

14. Insofar as, the quantum of compensation awarded by the Tribunal is concerned, the same is a just compensation in view of the following reasons: The accident happened in the year 2009; The claimant in MCOP.883 of 2010, who is the appellant in CMA.No.1423 of 2013 was a Mason at the time of the accident; The deceased Srividhya was seven years old and was studying 2nd standard at the time of the accident; The appellants in CMA.No.1422 of 2013 are the legal representatives of the deceased Srividhya. The Tribunal has fixed the monthly income of the appellant in CMA.No.1423 of 2013 as Rs.4,500/-. The Tribunal has awarded Rs.53,754/- as compensation to the appellant in CMA.No.1423 of 2013, who is the injured claimant and Rs.3,05,000/- as compensation to the appellants in CMA.No.1422 of 2013, who are the legal representatives of the deceased Srividhya, a minor girl. While, awarding the compensation for the death of the minor girl, the Tribunal has rightly followed the judgment of the Hon'ble Supreme Court in the case of R.K.Malik Vs. Kiran Paul and others reported in 2009 (1) TNMAC 593.

15. After giving due consideration for the quantum of compensation awarded by the Tribunal to the respective claimants, this Court does not find any infirmity in the assessment of compensation made by the Tribunal in the impugned award. The only infirmity of the Tribunal, as indicated earlier, is with regard to the proportionate contributory negligence between the driver of the insured lorry and the persons travelling in the two wheeler. As observed earlier, the contributory negligence of the appellants is reduced to 10% instead of 40% fixed by the Tribunal. Accordingly, the 2nd respondent is directed to pay compensation of Rs.2,74,500/- (which is 90% of Rs.3,05,000/-) to the appellants in CMA.No.1422 of 2013 and pay Rs.48,379/- (90% of Rs.53,754/-) to the appellant in CMA.No.1423 of 2013 together with interest at 7.5% per annum from the date of claim till the date of deposit.
Conclusion:

16. In the result, these Appeals are partly allowed. The respondents are jointly and severally liable to pay the modified award amount after deducting the amount already deposited if any together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.Nos.879 and 883 of 2010 within a period of four weeks

from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellants/claimants are permitted to withdraw their respective shares of award amount as per the apportionment made by the Tribunal along with accrued interest by filing appropriate applications. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

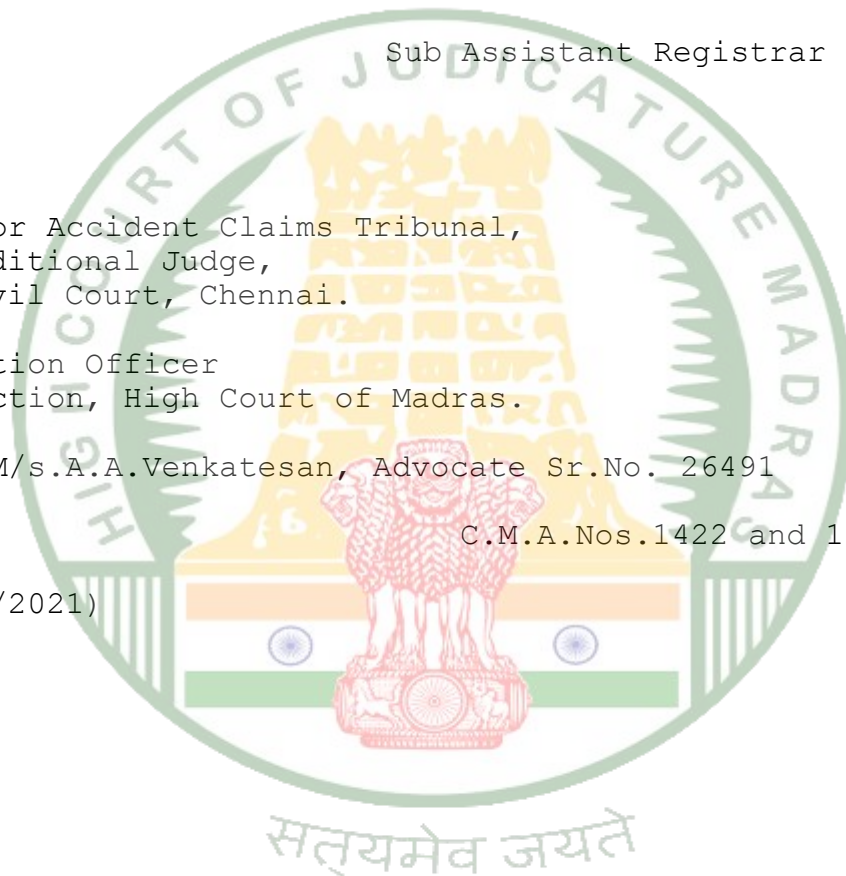
1.The Motor Accident Claims Tribunal,
XVII Additional Judge,
City Civil Court, Chennai.

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

+1 cc to M/s.A.A.Venkatesan, Advocate Sr.No. 26491

C.M.A.Nos.1422 and 1423 of 2013

LN(CO)
RMP(29/03/2021)



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