IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NOS.3226 TO 3229 & 3232 OF 2019

C.M.A.No.3226 of 2019:

United India Insurance Co. Ltd.,
No.134, Silingi Buildings,
Greams Road, Chennai - 6. ...Appellant

Versus

1.Feono Donnal
2.P.G.Chandra Prabha
3.National Insurance Company Limited,
No.66, Greams Road, Chennai.

(R3 was impleaded vide order dated
05.02.2020 made in C.M.P.No.755 of 2020)
...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.09.2018 made in M.C.O.P.No.1434 of 2013 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant	:	Mr.S.Arun Kumar
For Respondent - 1	:	Mr.V.Mohan Choudary
Respondent - 2	:	No Appearance
Respondent - 3	:	Mr.D.Baskaran

C.M.A.No.3227 of 2019:

United India Insurance Co. Ltd.,
No.134, Silingi Buildings,
Greams Road, Chennai - 6. ...Appellant

Versus

1.R.Krishnamurthy
2.A.Meena
3.R.Thirupurasundari
4.P.G.Chandra Prabha
5.National Insurance Company Limited,
No.66, Greams Road, Chennai.

(R5 was impleaded vide order dated 05.02.2020 made in C.M.P.No.753 of 2020) ...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.09.2018 made in M.C.O.P.No.1374 of 2013 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant	:	Mr.S.Arun Kumar
For Respondents - 1 to 3	:	Mr.V.Mohan Choudary
Respondent - 4	:	No Appearance
Respondent - 5	:	Mr.D.Baskaran

C.M.A.No.3228 of 2019:

United India Insurance Co. Ltd.,
No.134, Silingi Buildings,
Greams Road, Chennai - 6.
...Appellant

Versus

1. Feono Donnal
2. P.G.Chandra Prabha
3. National Insurance Company Limited,
No.66, Greams Road, Chennai.

(R3 was impleaded vide order dated 05.02.2020 made in C.M.P.No.754 of 2020)
...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.09.2018 made in M.C.O.P.No.1373 of 2013 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant	:	Mr.S.Arun Kumar
For Respondent - 1	:	Mr.V.Mohan Choudary
Respondent - 2	:	No Appearance
Respondent - 3	:	Mr.D.Baskaran

C.M.A.No.3229 of 2019:
United India Insurance Co. Ltd.,
No.134, Silingi Buildings,
Greams Road, Chennai - 6. ...Appellant

Versus

1. Feono Donnal
2. P.G.Chandra Prabha
3. National Insurance Company Limited,
   No.66, Greams Road, Chennai.

(R3 was impleaded vide order dated 05.02.2020 made in C.M.P.No.756 of 2020)

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.09.2018 made in M.C.O.P.No.1310 of 2013 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant	:	Mr.S.Arun Kumar
For Respondent - 1	:	Mr.V.Mohan Choudary
Respondent - 2	:	No Appearance
Respondent - 3	:	Mr.D.Baskaran

C.M.A.No.3232 of 2019:
United India Insurance Co. Ltd.,
No.134, Silingi Buildings,
Greams Road, Chennai - 6. ...Appellant

Versus

1.Feono Donnal
2.P.G.Chandra Prabha ...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.09.2018 made in M.C.O.P.No.1428 of 2013 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant	:	Mr.S.Arun Kumar
For Respondent - 1	:	Mr.V.Mohan Choudary
Respondent - 2	:	Not ready in notice

COMMON JUDGMENT

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J.,)

The Civil Miscellaneous Appeals in C.M.A.Nos.3226 to 3229 & 3232 of 2019 have been filed by the Insurance Company against the judgment and decree dated 18.09.2018 passed by the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai in M.C.O.P.Nos.1434, 1374, 1373, 1310 & 1428 of 2013 respectively.

2. The brief facts of the case are as follows:

On 05.06.2012, at about 14.00 hours, when one Mr.Donnal was driving the Tata Indigo car bearing Registration No.KA-41-A-6127 and his wife, daughter (Feono Donnal), minor son, mother-in-law were travelling as occupants in the said car proceeding on the Chennai-Salem bye-pass road from Chennai towards Cochin, near Govindaraj rice mill, at that time, a Maruti Swift car bearing Registration No.TN19-A-1779, driven by its driver in a rash and negligent manner on the opposite direction, came on the extreme wrong side of the road and dashed on the said Tata Indigo car, thereby, the said Donnal and the occupants travelled in Tata Indigo car viz., his wife, minor son, daughter and mother-in-law were sustained grievous injuries and were taken to the Government Hospital, Athur for treatment. However, they were died in the Hospital and only Feona Donnal, daughter of the deceased Donnal survived with grievous injuries. Hence, Feona Donnal filed four claim petitions in M.C.O.P.Nos.1310, 1373, 1428 & 1434 of 2013, as against the owner and insurer of the Maruti Swift car. The reliefs sought for by Feona Donnal in the said claim petitions are as follows:

(i) In M.C.O.P.No.1310 of 2013, claiming a sum of Rs.1,60,000/- as compensation for the injuries sustained by her in the accident.

(ii) In M.C.O.P.No.1373 of 2013, claiming a sum of Rs.35,00,000/- as compensation for the death of her mother Dolly.

(iii) In M.C.O.P.No.1428 of 2013, claiming a sum of Rs.35,00,000/- as compensation for the death of her father Donnal.

(iv) In M.C.O.P.No.1434 of 2013, claiming a sum of Rs.10,00,000/- as compensation for the death of her younger brother George Donnal.

2.1 Similarly, one Mrs.Daisy @ Usha, occupant sitting in the rear side of the Tata Indigo car was also died in the accident. Hence, her dependents viz., her husband and daughters filed a claim petition in M.C.O.P.No.1374 of 2013 as against the owner and insurer of the Maruti Swift car claiming a sum of Rs.10,00,000/- as compensation for the death of Mrs.Daisy @ Usha.

3. The above Appeals are taken up for final disposal together since they arise out of the same accident.

4. Ms.P.G.Chandra Prabha (owner of the Maruti Swift car) remained ex-parte before the Tribunal.

5. The insurer of the Maruti Swift car filed the counter statement in the aforesaid M.C.O.Ps denying all the averments made by the claimants therein.

6. Before the Tribunal, on the side of petitioners/ claimants, 2 witnesses were examined viz., P.W.1 & P.W.2 and 46 documents were marked as exhibits viz., Ex.P1 to Ex.P46 and on the side of the respondents, 2 witnesses were examined viz., R.W.1 & R.W.2 and 11 documents were marked as exhibits viz., Ex.R1 to Ex.R11.

7. On appreciation of the materials placed before it, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the Tata Indigo car as well as the driver of the Maruti Swift car and directed the insurer of the Maruti Swift car to pay the compensation to the claimants at first instance with a liberty to recover the same from the owner of the Maruti Swift car without filing any petition after deducting the 50% contributory negligence committed by the deceased Donnal in M.C.O.P.No.1428 of 2013. The Tribunal partly-allowed the Claim Petitions and awarded compensation of Rs.69,100/- in M.C.O.P.No.1310 of 2013; Rs.19,28,900/- in M.C.O.P.No.1373 of 2013; Rs.9,00,950 in M.C.O.P.No.1428 of 2013; Rs.12,90,000/- in M.C.O.P.No.1434 of 2013 and Rs.5,75,000/- in M.C.O.P.No.1374 of 2013. The break-up details of the compensation awarded by the Tribunal in the aforesaid Claim Petitions are as follows:

M.C.O.P.No.1310 of 2013:

(i) Pain and Sufferings	-	Rs.20,000/-
(ii) Extra Nourishment & Transport	-	Rs.10,000/-
(iii) Disability 10% x 3000	-	Rs.30,000/-
(iv) Towards Attender Charges (2 days x Rs.300/-)	-	Rs. 600/-
(v) Medical Expenses	-	Rs. 8,426/-
Total	-	Rs.69,026/-

Rounded Off : Rs.69,100/-

M.C.O.P.No.1373 of 2013:

(i) Loss of Dependency	-	Rs.18,53,833.38/-
(ii) Loss of Love & Affection	-	Rs. 40,000.00/-
(iii) Loss of Estate	-	Rs. 15,000.00/-
(iv) Transport Expenditure (Ambulance)	-	Rs. 5,000.00/-
(v) Funeral Expenses	-	Rs. 15,000.00/-
Total	-	Rs.19,28,833.28
Rounded Off	:	Rs.19,28,900/-

M.C.O.P.No.1428 of 2013:

(i) Towards Loss of Dependency	-Rs.17,26,833.42
(ii) Towards Loss of Love & Affection	-Rs. 40,000.00
(iii) Loss of Estate	-Rs. 15,000.00
(iv) Transport Expenditure (Ambulance)	-Rs. 5,000.00
(v) Funeral Expenses	-Rs. 15,000.00
Total compensation is fixed at	-Rs.18,01,833.42
Less : 50% contributory negligence committed by the deceased Donnal	-Rs. 9,00,916.71
Rounded Off :	Rs.9,00,950/-

M.C.O.P.No.1434 of 2013:

(i) Loss of Dependency	-	Rs.12,15,000.00
(ii) Loss of Love & Affection	-	Rs. 40,000.00
(iii) Loss of Estate	-	Rs. 15,000.00
(iv) Transport Expenditure (Ambulance)	-	Rs. 5,000.00
(v) Funeral Expenses	-	Rs. 15,000.00
Total	-	Rs.12,90,000.00/-

M.C.O.P.No.1374 of 2013:

(i) Loss of Dependency	-	Rs.4,20,000.00
(ii) Loss of Love & Affection	-	Rs. 80,000.00
(iii) Loss of Consortium	-	Rs. 40,000.00
(iv) Loss of Estate	-	Rs. 15,000.00
(v) Transport Expenditure (Ambulance)	-	Rs. 5,000.00
(vi) Funeral Expenses	-	Rs. 15,000.00
Total	-	Rs.5,75,000.00

Against the fixation of liability and the quantum of compensation awarded by the Tribunal, the appellant Insurance Company filed the present Appeals before this Court.

8. It is clearly evident from Ex.R9, MVI Report of Maruti Swift car that the driver of the Maruti Swift car has not produced his driving license, in order to show that he was possessing a valid driving license at the time of accident. It is also seen that Ex.R11 is the legal notice sent to the owner of the Maruti Swift car to produce the driving license of the Maruti Swift Car. However, even after the receipt of said legal notice, the owner of the Maruti Swift car did not produce the driving license of the Maruti Swift car. The witnesses P.W.1 & P.W.2 deposed in their evidence that the accident occurred due to the rash and negligent driving of the driver of the Maruti Swift car, whereas, R.W.2 deposed that the accident occurred due to the rash and negligent act of the driver of Tata Indigo car. Also Ex.R8, Final Report of the Police clearly shows that the accident occurred due to the rash and negligent driving of the driver of the Tata Indigo car since he has crossed the median of the road while over taking and therefore his contribution to the accident is fixed at 50% and also the driver of the Maruti Swift car is also responsible for the accident occurred because if he was very alert and vigilant on driving and slowed down the speed of the vehicle, he might have avoided the accident.

9. On the very same date of accident, Feona Donnal, daughter of the deceased Donnal has given a complaint to the Athur Police regarding the said accident. On the basis of the said complaint, FIR has been registered against the deceased Donnal under Section 279, 337, 304(A) of I.P.C. The said complaint and FIR were marked as Ex.R1 & Ex.R5 respectively. Further, Mr.Gopi, Assistant, RTO, South (South West) was examined as R.W.1 and he deposed that their office has not issue any driving license to the driver of the Maruti Swift car. In order to prove the said statement, a letter was given by R.W.1

and the same was marked as Ex.R2.

10. It is to be noted that the insurer of the Tata Indigo car was not impleaded as a necessary party in the present case. Therefore, the appellant Insurance Company (insurer of the Maruti Swift car) has filed the Applications in C.M.P.Nos.755, 753, 754 & 756 of 2020 in C.M.A.Nos.3226 to 3229 of 2019 respectively before this Court to implead the insurer of the Tata Indigo car viz., National Insurance Company Ltd., as one of the respondents in C.M.A.Nos.3226 to 3229 of 2019 and the said Applications were allowed by the Division Bench of this Court vide order dated 05.02.2020.

C.M.A.No.3232 of 2019:

11. As far as C.M.A.No.3232 of 2019 is concerned, Mr.S.Arun Kumar, learned counsel for the appellant/Insurance Company Ltd., would submit that the Insurance Company is mainly contesting against the liability fixed by the Tribunal.

12. Considering the facts and circumstances of the case, we are of the opinion that the Tribunal rightly fixed 50% contributory negligence on the driver of the Tata Indigo car and 50% contributory negligence on the driver of the Maruti Swift car since the accident occurred not only due to the rash and negligent driving of the driver of the Maruti Swift car but also due to the rash and negligent driving of the driver of the Tata Indigo car. We do not find any infirmity in the order passed by the Tribunal.

C.M.A.Nos.3227 to 3229 of 2019:

13. The learned counsel for the appellant/Insurance Company submitted that in C.M.A.Nos.3227 to 3229 of 2019, the Insurance Company is mainly challenging the liability fixed by the Tribunal and formally questioning the quantum of compensation awarded by the Tribunal.

14. Mr.D.Baskaran, learned counsel appearing for the National Insurance Company Ltd., fairly submitted that the National Insurance Co. Ltd., has to verify the Insurance Policy of the driver of the Tata Indigo car. He also submitted that if this Court fixes any liability on the insurer of the Tata Indigo car, then the compensation will be settled only after the verification of the policy since in the present case, the Tribunal fixed the contributory negligence equally on the driver of the Maruti Swift car as well as on the driver of the Tata Indigo car in the ratio 50:50.

15. As far as negligence is concerned, we confirm the finding of the Tribunal. So far as liability is concerned, we are of the opinion that the Tribunal wrongly directed the

insurer of the Maruti Swift car to pay the entire award amount and recover the same from the owner of the Maruti Swift car since the Tribunal itself held that the accident occurred due to the rash and negligent driving of the driver of the Maruti Swift car as well as the driver of the Tata Indigo car and also fixed the contributory negligence on the driver of the Maruti Swift car as well as on on the driver of the Tata Indigo car in the ratio 50:50. The Tribunal might have passed the said order in the mechanical manner without any application of mind. Therefore, we fix the liability equally on the insurer of the Maruti Swift car as well as on the insurer of the Tata Indigo car in the ratio 50:50 and the insurer of the Maruti Swift car as well as the insurer of the Tata Indigo car are directed to pay 50% of the compensation respectively to the claimants. Further, the National Insurance Company (insurer of the Tata Indigo car) is directed to complete the verification of the Insurance Policy as quickly as possible, within a period of four weeks from the date of receipt of a copy of this order.

C.M.A.No.3226 of 2019:

16. The learned counsel for the appellant/Insurance Company fairly submitted that in C.M.A.No.3226 of 2019, the Insurance Company is challenging the quantum of compensation awarded by the Tribunal in M.C.O.P.No.1434 of 2013, wherein, the deceased was only 14 years old minor and her sister (Feona Donnal) is the claimant. He would contend that while determining the Loss of dependency, the Tribunal rightly applied the multiplier '18' as held by the Honourable Supreme Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (6) SCC 121, however, it wrongly fixed a sum of Rs.7,500/- as notional income of the deceased which is on the higher side and therefore, the same may be re-fixed as Rs.6,000/- per month. He would further contend that the Tribunal ought to have added 40% of the income towards future prospects of the deceased but it added 50% towards the future prospects of the deceased. He has also filed a Calculation Memo which reads as follows:

(i) Loss of Income Rs.6,000/- (inclusive Future Prospects) x 1/2 x 12 x 15	-Rs.5,40,000/-
(ii) Loss of Love & Affection	-Rs. 50,000/-
(iii) Loss of Estate	-Rs. 15,000/-
(iv) Funeral Expenses	-Rs. 15,000/-
Total	- Rs.6,20,000/-

17. On perusing the order of the Tribunal, we found that

the deceased was just 14 years old at the time of accident. It is also seen that as rightly contended by the appellant's counsel, while awarding the quantum of compensation, the Tribunal fixed a higher sum of Rs.7,500/- as notional income of the deceased and added 50% towards the future prospects of the deceased. Therefore, we are of the opinion that it would be appropriate to fix the notional income of the deceased as Rs.4,200/- per month and add 40% towards future prospects of the deceased since the deceased was a 14 years old minor. Accordingly, the notional income of the deceased is modified as Rs.4,200/- and 40% of the income is added towards the future prospectus of the deceased. Therefore, the Loss of Dependency is modified as follows:

=Rs.4,200/-+Rs.1,680/-(40% of Rs.4,200/-)-Rs.2,940/-x12x 18
= Rs.5,880/- - Rs.2,940/- x 12 x 18 = Rs.6,35,040/-

18. A sum of Rs.12,15,000/- awarded by the Tribunal towards Loss of Dependency in M.C.O.P.No.1434 of 2013 is modified as Rs.6,35,040/- by this Court. The break-up details of the modified compensation awarded by this Court is mentioned hereinbelow:

(i) Loss of Dependency	-	Rs.6,35,040/-
(ii) Loss of Love & Affection	-	Rs. 40,000/-
(iii) Loss of Estate	-	Rs. 15,000/-
(iv) Transport Charges	-	Rs. 5,000/-
(v) Funeral Expenses	-	Rs. 15,000/-
Total	-	Rs.7,10,040/-

19. Since we fixed the liability equally on the insurer of the Maruti Swift car as well as on on the insurer of the Tata Indigo car in the ratio 50:50 it is needless to state that both the Insurance Companies are bound to pay 50% of the re-determined compensation i.e., Rs.3,55,020/- each to the claimant herein.

20. In the result,

(i) C.M.A.No.3232 of 2019 is dismissed.

(ii) C.M.A.Nos.3227 to 3229 of 2019 are partly allowed. As this Court fixed the liability equally on the insurer of the Maruti Swift car as well as on the insurer of the Tata Indigo car in the ratio 50:50, out of the entire compensation awarded by the Tribunal in M.C.O.P.Nos.1374, 1373 & 1310 of 2013 respectively, the United India Insurance Company (insurer of the Maruti Swift car) is directed to pay only 50% of the award amount to the claimants and recover the said amount from the owner of the Maruti Swift car and the National Insurance Company Ltd., (insurer of the Tata Indigo car) is directed to pay the remaining 50% of the award amount to the claimants subject to the verification of the Insurance Policy of the Tata Indigo car as stated above. Both the Insurance Companies are directed to deposit the compensation redetermined by this Court, deduct the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of M.C.O.P.Nos.1374, 1373 & 1310 of 2013 within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the respective bank account of the claimants as per the ratio of apportionment ordered by the Tribunal, through RTGS, within a period of three weeks thereafter.

(iii) C.M.A.No.3226 of 2019 is partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.1434 of 2013 is modified to the extent of re-determining the sum of Rs.12,15,000/- already awarded by the Tribunal towards Loss of Dependency to Rs.6,35,040/-. The insurer of the Maruti Swift car and the insurer of the Tata Indigo car are directed to pay 50% of the re-determined compensation i.e., Rs.3,55,020/- each to the claimant. Both the Insurance Companies are directed to deposit the compensation redetermined by this Court, deduct the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of M.C.O.P.No.1434 of 2013 within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the respective bank account of the claimant as per the ratio of apportionment ordered by the Tribunal, through RTGS, within a period of three weeks thereafter. Necessary Court fee, if any, shall be paid by the claimants herein before receiving the copy of the judgment.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The V Judge,
   Motor Accidents Claims Tribunal,
   Small Causes Court, Chennai.

2. The Public Prosecutor,
   High Court, Chennai.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.15345
+5ccs to Mr.D.Baskaran, Advocate, S.R.No.15284, 15285,
15287 to 15289
+10cc to Mr.M.Asokaa, Advocate, S.R.No.14869, 14870, 14871,
14873, 14872

C.M.A.Nos.3226 to 3229 & 3232 of 2019

AP(CO)
CS/17/03/2020