IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A. Nos.3281 and 3282 of 2019

Mary Margratia @ Margratia (died)
1. L.Theras Raj
2. Nirmalraj ... Appellants/Petitioners in C.M.A.No.3281 of 2019

1. Rita Devi @ Rita Kumari
2. Manish Kumar Minor
3. Varsha Kumari Minor
4. Rimjhim Kumari Minor
5. Sandhya Kumari Minor
6. Krish Raj Minor
7. Ayush Raj Minor
(Minor appellants 2 to 7 are rep. by their mother and next friend Rita Devi @ Rita Kumari, the first appellant herein)
... Appellants/Petitioners in C.M.A.No.3282 of 2019

Vs.

1. R.Kamaal Basha

2. Reliance General Insurance Co. Ltd., Nungambakkam High Road, Chennai-34.

3. V.Mani

4. Royal Sundaram Alliance Insurance Co. Ltd., No.1, Subramaniyam Building, 2nd Floor, Clum House, Chennai-2.
(3rd and 4th respondents were impleaded as per order in M.P.No.1847 of 2015, dated 16.10.2015)
... Respondents in both the appeals

Civil Miscellaneous Appeal No.3281 of 2019 filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 22.01.2019 made in M.C.O.P.No.3167 of 2012 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

Civil Miscellaneous Appeal No.3282 of 2019 filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 22.01.2019 made in M.C.O.P.No.5511 of 2012 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For appellants
in both the appeals : Mr.K.Suryanarayanan
For respondents
in both the appeals : No appearance for RR-1 and 3
Mr.S.Arun Kumar for R-2
Mr.G.Vasudevan for R-4

COMMON JUDGMENT

(The Common Judgment of the Court was delivered by R.Subbiah, J)

These appeals are heard through video-conferencing.

2. Both these appeals arise out of common order dated 22.01.2019 passed in M.C.O.P.Nos.3167 and 5511 of 2012, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

3. These appeals are filed by the claimants of the respective claim petitions, questioning the finding rendered by the Tribunal in exonerating both the Insurance Companies, namely the second and fourth respondents herein from paying the compensation and directing the first respondent/owner of the Tata Ace vehicle to pay the entire compensation.

4. Since both these appeals arise out of the common order passed by the Tribunal, they are being disposed of by this common judgment.

5. The appellants in C.M.A.No.3281 of 2019 are the parents and brother of the deceased T.John Bosco. The appellants in C.M.A.No.3282 of 2019 are the wife and minor children of the deceased Jamuna Kumar Mistri.

6. It is the case of the claimants before the Tribunal that on 19.05.2012 at about 9 hours, the deceased in both the cases had travelled in the Tata Ace vehicle bearing Registration

No.TN-23-AT-4826, owned by the first respondent and insured with the second respondent-Reliance General Insurance Company Limited. While the said vehicle was proceeding near a curve in Bangalore High Road at Kuthambakkam Road junction, it hit behind a tipper lorry, bearing Registration No.TN-21-H-7564 which was parked on the middle of the Road without any indication, man signal or barrier or red flag. As a result, both the deceased died and hence, these two claim petitions are filed before the Tribunal by the respective legal heirs as observed above.

7. So far as the claim petition in M.C.O.P.No.5511 of 2012 is concerned, the legal heirs of the deceased Jamnua Kumar Mistri have claimed compensation of Rs.40 lakhs and so far as the claim petition in M.C.O.P.No.3167 of 2012 is concerned, the legal heirs of the deceased T.John Bosco have claimed compensation of Rs.15 lakhs.

8. The said claim petitions were resisted by the owner of the Tata Ace vehicle bearing Registration No.TN-23-AT-4826, who is the first respondent herein, by filing counter statements.

9. The second respondent/Reliance General Insurance Company has also filed counter statements in both the claim petitions, stating that both the deceased travelled as unauthorised passengers in the vehicle, viz., Tata Ace bearing Registration No.TN-23-AT-4826, along with four other persons and they are not covered under the Policy by the second respondent/Reliance General Insurance Company Limited. It is further stated that the accident had occurred only due to the rash and negligent act on the part of the tipper lorry bearing Registration No.TN-21-H-7564, which was parked on the middle of the road, and therefore, the second respondent/Reliance General Insurance Company Limited is not liable to pay compensation and prayed for dismissal of the claim petitions.

10. The fourth respondent/Royal Sundaram General Insurance Company Limited being the insurer of the tipper lorry, has also filed counter statements in both the claim petitions, stating that the driver of the Tata Ace vehicle alone was responsible for the accident and prayed for dismissal of the claim petitions.

11. The third respondent being the owner of the tipper lorry, remained ex-parte before the Tribunal.

12. In order to prove the claim, on the side of the claimants, the mother of the deceased T.John Bosco was examined as P.W.1 and the wife of the deceased Jamuna Kumar Mistri was examined as P.W.2 and the eye-witness to the occurrence was examined as P.W.3 and Exs.P-1 to P-11 were marked on the side of the claimants. On the side of the respondents before the

Tribunal, R.Ws.1 and 2 were examined and Exs.R-1 to R-5 were marked.

13. The Tribunal, after analysing the entire evidence on record, has come to the conclusion that Ex.R-2 sketch which depicts the place of occurrence, shows that the lorry was parked only on the left side of the Road and that the accident could have been averted had the Tata Ace vehicle been driven by its driver cautiously and thus, the Tribunal held that the accident had occurred only due to the negligence on the part of the driver of the first respondent alone, i.e. the driver of the Tata Ace vehicle.

14. That apart, the Tribunal, by relying upon the evidence of R.W.2, an official from the second respondent-Reliance General Insurance Company Limited, came to the conclusion that the deceased persons were travelling as unauthorised passengers in the Tata Ace vehicle and therefore, the claimants are entitled to get compensation only from the owner of the Tata Ace vehicle, namely the first respondent herein. Thus, the Tribunal had exonerated both the Insurance Companies from paying the compensation amount. After coming to such a conclusion, the Tribunal has passed an award with the following break-up details of the compensation amount:

(i) M.C.O.P.No.5511 of 2012 (pertaining to C.M.A.No.3282 of 2019):

Sl.No.	Head under which the amount was awarded by the Tribunal	Amount awarded (in Rs.)
1	Loss of income	24,19,200
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of love and affection to claimants 2 to 7	50,000
5	Loss of consortium to first claimant	40,000
	Total (total mistake done by the Tribunal. Actual amount is Rs.25,39,200 instead of Rs.27,89,900	27,89,200 rounded off to Rs.27,90,000 with interest at 7.5%

(ii) M.C.O.P.No.3167 of 2012: (pertaining to C.M.A.No.3281 of 2019)

Sl.No.	Head under which the amount was awarded by the Tribunal	Amount awarded (in Rs.)
1	Loss of income	10,00,000
2	Loss of estate	15,000
3	Funeral expenses	15,000
	Tota	10,30,000 with interest at 7.5%

15. Now, the present appeals have been filed questioning the finding rendered by the Tribunal in exonerating both the Insurance Companies from paying the compensation amounts. The learned counsel appearing for the appellants/claimants submitted that the accident had occurred only due to the parking to the tipper lorry on the middle of the road. To substantiate this contention, the learned counsel appearing for the appellants/claimants invited the attention of this Court to the charge-sheet marked as Ex.P-1, which shows that the Police, after investigation, laid the final report showing the driver of the tipper lorry as well as the driver of the Tata Ace vehicle as accused persons. In the said final report, it has been clearly stated that the driver of the Tipper lorry had parked on the middle of the road and the driver of the Tata Ace vehicle had dashed against the said lorry. Under such circumstances, the Tribunal, by fixing the liability on the part of the driver of both the vehicles, ought to have directed the respective Insurance Companies to pay the compensation by fixing contributory negligence on the part of both the drivers of the vehicles.

16. Countering the above submissions, the learned counsel appearing for the second respondent/Reliance General Insurance Company Limited submitted that so far as the second respondent is concerned, the deceased persons have travelled only as unauthorised passengers and that is why the Tribunal has directed the first respondent/owner of the Tata Ace vehicle to pay the compensation amount and absolutely, there is no infirmity in the said finding of the Tribunal, and hence, he prayed for dismissal of the respective appeal of the claimants.

17. The learned counsel appearing for the fourth respondent/Royal Sundaram Alliance Insurance Company Limited submitted that Ex.R-2 sketch clearly shows that the lorry was parked only on the left side of the road and it is the Tata Ace vehicle that had caused the accident in the morning 9 O'clock and the accident could have been averted had the Tata Ace vehicle been driven in a careful manner. It is further stated that the driver of the Tata Ace vehicle drove it in a rash and negligent manner and moved away from the road and hit the tipper lorry. Therefore, considering these aspects, the Tribunal has correctly exonerated the fourth respondent from paying the compensation. Thus, there is no infirmity in the impugned award of the Tribunal and hence, he prayed for dismissal of the respective appeal of the claimants.

18. Keeping in mind the above submissions made on either side, we have carefully perused the entire materials available on record.

19. On a careful perusal of the impugned award of the Tribunal, more particularly Ex.P-1 charge sheet, as contended by the learned counsel appearing for the appellants/claimants, the charge sheet was filed against both the drivers of the vehicles, namely Tata Ace vehicle and tipper lorry. In the final report, it has been clearly stated that the lorry was parked on the middle of the road. Under such circumstances, we are of the opinion that the Tribunal ought to have fixed the contributory negligence on both the drivers of the vehicles. Instead of doing so, the Tribunal has fixed the entire liability on the part of the driver of the Tata Ace vehicle and exonerated the insurer of the Tata Ace vehicle bearing Registration No.TN-23-AT-4826 on the reasoning that the deceased persons had travelled an unauthorised passengers in the said Tata Ace vehicle. Thus, the Tribunal directed the first respondent being the owner of the Tata Ace Vehicle to pay the compensation amount. Similarly, the Tribunal has exonerated the insurer of the tipper lorry bearing Registration No.TN-21-H-7564, which was parked on the middle of the road, on the reasoning that the said tipper lorry is no way responsible for the accident. But we are of the opinion that, as Ex.P-1 charge sheet was laid against both the drivers, the Tribunal ought to have fixed the liability on the part of both the drivers of the two respective vehicles in causing the accident. Therefore, we set aside the above finding of the Tribunal and consequently, we hold that both the drivers of the vehicles are equally responsible for the accident. At the same time, we are of the view that since the deceased persons travelled as unauthorised passengers, 50% of the amount has to

be paid by the owner of the Tata Ace vehicle and the balance 50% has to be paid by the fourth respondent being the insurer of the tipper lorry bearing Registration No.TN-21-H-7564 and they are accordingly directed to pay the same with proportionate interest.

20. So far as the quantum of compensation awarded by the Tribunal is concerned, we find no infirmity in the same, as the amount awarded appears to be just and proper, as the same was awarded based on the principles laid down by the Supreme Court in various decisions. Therefore, there is no scope for enhancing the compensation at this stage. Hence, we are not inclined to interfere with the quantum of compensation awarded by the Tribunal.

21. Accordingly, while modifying the above award of the Tribunal directing the first respondent to pay 50% of the compensation in both the awards, the balance 50% of the compensation has to be paid by the fourth respondent/Royal Sundaram Alliance Insurance Company, in both the awards, and both of them shall pay their respective compensation in the appeals, with proportionate interest in both the awards.

22. In C.M.A.No.3281 of 2019, the mother of the deceased died and hence, the first and second appellants, being the father and brother of the deceased, are entitled to share the compensation equally between them.

23. As far as the appeal in C.M.A.No.3282 of 2019 is concerned, the first appellant/wife of the deceased, shall withdraw her share. As far as the share of the minor claimants, namely the appellants 2 to 7 herein, their respective shares shall be invested by the Tribunal in any nationalised bank in any interest bearing Fixed Deposit scheme till they attain majority and the interest thereon shall be withdrawn by their mother, the first appellant in C.M.A.No.3282 of 2019, once in three months.

24. In other aspects, the impugned award of the Tribunal is confirmed, including the interest at 7.5% awarded by the Tribunal to be paid from the date of claim petitions till the date of deposit.

25. With the above modification, the appeals are disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The IInd Judge,
Motor Accidents Claims Tribunal,
(II Court of Small Causes), Chennai.

+2cc to Mr.K.Suryanarayanan, Advocate Sr.26627, 26628
+2cc to Mr.N.Vasudevan, Advocate Sr.26772

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