

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2020

Coram:

The Honourable Mr. Justice M.M.SUNDRESH
and
The Honourable Mr. Justice KRISHNAN RAMASAMY
C.M.A.Nos.2740 of 2017 & 347 to 349 of 2018

C.M.A.No.2740 of 2017:

The Divisional Manager,
The New India Assurance Co. Ltd.,
Vellore.

...Appellant/2nd Respondent

Versus

1.M.Asokan	..1 st Respondent/ Petitioner
2.A.Rami	..2 nd Respondent/ Petitioner
3.P.V.Venkatesan	..3 rd Respondent/1 st Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 20.01.2017 made in M.C.O.P.No.133 of 2013 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore.

For Appellant : Mr.N.Anand

For Respondents : Mr.C.Prabakaran(For R1&R2)
Notice Sent service awaited(For R3)

C.M.A.No.347 of 2018:

1.Gayathri
2.Minor Ugana
3.Madeswari
4.A.Balayan @ Jayagopal

...Appellants/ Petitioners

Versus

1.P.V.Venkatesan
2.The Divisional Manager,
New India Assurance Company Ltd.,
No.1, Officers Line,
Vellore.

<https://hcservices.ecourts.gov.in/hcservices/>

...Respondents/ Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.11.2016 made in M.C.O.P.No.117 of 2013 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore.

For Appellants : Mr.C.Prabakaran

For Respondents : Mr.N.Anand(For R2)
No Appearance (For R1)

C.M.A.No.348 of 2018:

1.M.Ashokan
2.A.Rami

...Appellants/ Petitioners

Versus

1.P.V.Venkatesan

2.The Divisional Manager,
New India Assurance Company Ltd.,
Vellore.

...Respondents/ Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 20.01.2017 made in M.C.O.P.No.133 of 2013 on the file of the Motor Accident Claims Tribunal, (I Additional District and Sessions Court) Vellore.

For Appellants : Mr.C.Prabakaran

For Respondents : Mr.N.Anand(For R2)
No Appearance (For R1)

C.M.A.No.349 of 2018:

M.Senthil Kumar

...Appellant/ Petitioner

Versus

1.P.V.Venkatesan

2.The Divisional Manager,
New India Assurance Company Ltd.,
Vellore.

...Respondents/ Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 20.01.2017 made in M.C.O.P.No.267 of 2013 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore.

For Appellant : Mr.C.Prabakaran
For Respondents : Mr.N.Anand(For R2)
No Appearance (For R1)

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

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

The Civil Miscellaneous Appeal in C.M.A.No.2740 of 2017 has been filed by the Insurance Company challenging the liability fixed and quantum of compensation awarded by the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore vide judgment and decree dated 20.01.2017 in M.C.O.P.No.133 of 2013.

The Civil Miscellaneous Appeal in C.M.A.No.347 of 2018 has been filed by the claimants against the quantum of compensation awarded by the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore vide judgment and decree dated 29.11.2016 in M.C.O.P.No.117 of 2013.

The Civil Miscellaneous Appeal in C.M.A.Nos.348 & 349 of 2018 have been filed by the respective claimants against the quantum of compensation awarded by the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore vide judgment and decree dated 20.01.2017 in M.C.O.P.Nos.133 & 267 of 2013 respectively.

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

On 26.06.2013, one Mr.Senthilkumar (Appellant in C.M.A.No.349 of 2018) and his two friends viz., Bharathiraja and Krishnakumar were travelled in a Maruti Esteem car bearing Reg.No.TN-07-AV-0490 from Walajah to Ranipet. The Maruti car was driven by said Krishnakumar. At about 4.00 a.m, while the said Maruti car proceeding near M.J.S.Leather Company, a Mahindra van bearing Registration No.TN-02-B-7525, owned by one Mr.P.V.Venkatesan (R3 in C.M.A.No.2740 of 2017 & R1 in C.M.A.Nos.347 to 349 of 2017) was driven by its driver Mr.Chakkravarthi from opposite direction and dashed against the Maruti car and thereby, the accident occurred. As a result of which, the said Krishnakumar died on the spot and Senthilkumar (Appellant in C.M.A.No.349 of 2018) & Bharathiraja have sustained grievous injuries. So, immediately, they were taken to Government Hospital at Wallajah. Thereafter, the injured Bharathiraja was shifted to CMC Hospital, Vellore and subsequently, he died on 28.06.2013. The injured Senthilkumar was referred to SPARSH Hospital, Bangalore for treatment. The said accident was reported to Ranipet Police and they have registered a case in Crime No.329 of 2013 u/s. 279, 337 & 304(A) IPC.

2.1 Thereafter, the wife, minor daughter, mother and father of the deceased Krishnakumar had filed a claim petition in M.C.O.P.No.117 of 2013 as against the owner and insurer of the

Mahindra van claiming a sum of Rs.2,00,00,000/- as compensation for the death of Krishnakumar. Similarly, the father and mother of the deceased Bharathiraja had also filed a claim petition in M.C.O.P.No.133 of 2013 as against the owner and insurer of the Mahindra van claiming a sum of 90,00,000/- as compensation for the death of their son Bharathiraja. Also, the injured Senthilkumar had filed a claim petition in M.C.O.P.No.267 of 2013 as against the owner and insurer of the Mahindra van claiming a sum of Rs.20,00,000/- as compensation.

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

4. Before the Tribunal, both the owner and insurer of the Mahindra van have filed their counter statement in M.C.O.P.Nos.117, 133 & 267 of 2013 respectively denying all the averments made by the claimants in the said M.C.O.Ps.

5. When M.C.O.P.No.117 of 2013 came up before the Tribunal, on the side of petitioners/claimants, 3 witnesses were examined viz., P.W.1 to P.W.3 and 13 documents were marked as exhibits viz., Ex.P1 to Ex.P13 and on the side of the respondents, 2 witnesses were examined viz., R.W.1 & R.W.2 and 6 documents were marked as exhibits viz., Ex.R1 to Ex.R6.

6. When M.C.O.P.Nos.133 & 267 of 2013 came up before the Tribunal, on the side of the petitioner(s)/claimant(s), 5 witnesses were examined viz., P.W.1 to P.W.5 and 18 documents were marked as exhibits viz., Ex.P1 to Ex.P18 and on the side of the respondents, 2 witnesses were examined viz., R.W.1 & R.W.2 and 7 documents were marked as exhibits viz., Ex.R1 to Ex.R7. Also, 7 third party documents were marked as exhibits viz., Ex.X1 to Ex.X7.

7. On appreciation of the oral and documentary evidence produced in M.C.O.P.No.117 of 2013, the Tribunal, Vellore fixed 50% contributory negligence on the part of the deceased Krishnakumar, who drove the Maruti car and directed the insurer of the Mahindra van to pay the remaining 50% liability, a sum of Rs.40,60,500/- as compensation to the petitioners/claimants in M.C.O.P.No.117 of 2013. The break-up details of the compensation awarded by the Tribunal are as follows:

(i) Loss of Income	-	Rs.38,23,500/-
(ii) Loss of Consortium	-	Rs. 1,00,000/-
(iii) Loss of Love & Affection	-	Rs. 1,00,000/-
(iv) Loss of Estate	-	Rs. Nil
(v) Medical Expenses	-	Rs. Nil
(vi) Funeral Expenses	-	Rs.
25,000/-		
(vii) Transport Expenses	-	Rs. 10,000/-
(viii) Damages to Cloths and articles	-	Rs. 2,000/-
Total	-	Rs.40,60,500/-

8. Similarly, in M.C.O.P.Nos.133 & 267 of 2013, the Tribunal, Vellore fixed 50% contributory negligence on the driver of the Mahindra van and 50% contributory negligence on the driver of the Maruti car as already decided in M.C.O.P.No.117 of 2013. Since the Tribunal fixed the contributory negligence as 50:50 the liability was also apportioned as 50:50. Accordingly, the Tribunal fixed 50% liability as against the owner and insurer of the Maruti car as well as against the owner and insurer of the Mahindra van. The Tribunal therefore directed the insurer of the Mahindra van to pay a sum of Rs.27,43,100/- as compensation to the petitioners/claimants in M.C.O.P.No.133 of 2013 and a sum of Rs.2,81,400/- as compensation to the petitioner/injured Senthilkumar in M.C.O.P.No.267 of 2013.

9. The break-up details of the compensation awarded by the Tribunal in M.C.O.P.No.133 of 2013 are as follows:

(i) Loss of Income	-	Rs.26,06,100/-
(ii) Loss of Consortium	-	Rs. Nil
(iii) Loss of Love & Affection	-	Rs. 1,00,000/-
(iv) Loss of estate	-	Rs. Nil
(v) Medical Expenses	-	Rs. Nil
(vi) Funeral Expenses	-	Rs. 25,000/-
(vii) Transport Expenses	-	Rs. 10,000/-
(viii) Damages to cloths and articles	-	Rs. 2,000/-
Total	-	Rs.27,43,100/-

10. The break-up details of the compensation awarded by the Tribunal in M.C.O.P.No.267 of 2013 are as follows:

(i) Medical Expenses	-	Rs.3,08,100/-
(ii) Loss of Income for Disability	-	Rs. Nil
(iii) Loss of Income during treatment	-	Rs.51,000/-
(iv) Transportation Expenses	-	Rs.10,000/-
(v) Extra Nourishment	-	Rs.20,000/-
(vi) Attender Charge	-	Rs.10,000/-
(vii) Damages to cloth and articles	-	Rs.2,000/-
(viii) Loss of future earnings Capacity	-	Rs.86,700/-
(ix) Loss of Amenities	-	Rs.25,000/-
(x) Loss of Pain and Suffering	-	Rs.25,000/-
(xi) Future Medical Expenses	-	Rs.25,000/-
Total Compensation	-	Rs.5,62,800/-

Liability:

11. The learned counsel appearing for the claimant(s)/ respondents in C.M.A.No.2740 of 2017 & appellants in C.M.A.Nos.347 to 349 of 2018 would contend that in the present case, when the Mahindra van made an attempt to overtake a Lorry with high speed, it dashed against the Maruti car and thereby, the accident occurred. The driver of the Mahindra van is the person who invited the said accident since the accident occurred due to his rash and negligent driving. Hence, there was no

negligence on the part of the driver of the Maruti car. The Tribunal also held that the accident occurred due to the 50% contributory negligence on the part of the driver of the Mahindra van, however, it erroneously fixed 50% contributory negligence on the driver of the Maruti car. He would also contend that the FIR was registered against the driver of the Mahindra van who drove the van in a rash and negligent manner and dashed against the Maruti car.

11.1 The learned counsel for claimant(s) would submit that M.C.O.P.Nos.133 & 267 of 2013, the injured Senthilkumar was examined as P.W.2 & one Mr.Balaji, Production Manager in MJS company was examined as P.W.4 and in M.C.O.P.No.117 of 2013, the injured Senthilkumar was examined as P.W.3. While deposition in M.C.O.P.Nos.133 & 267 of 2013 as well as in M.C.O.P.No.117 of 2013, the injured Senthilkumar deposed that the accident occurred due to the rash and negligent driving of the driver of the Mahindra van. P.W.4, Balaji had also deposed that when the driver of the Mahindra van tried to overtake a Lorry in a rash and negligent manner with high speed, hit the Maruti car and thereby, the accident occurred.

11.2 The further contention of the learned counsel is that though the insurer of the Mahindra van contended that all the three persons who travelled in the Maruti car viz., deceased Krishnakumar, deceased Bharathiraja and injured Senthilkumar consumed alcohol and they were under the influence of alcohol at the time of accident, however, in order to substantiate the said contention, no one was examined on behalf of the Insurance Company. Also in the FIR, it was stated that the driver of the Mahindra van drove the van in a rash and negligent manner and dashed against the Maruti car. He would further contend that in the present case, though the Tribunal categorically came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the Mahindra van but it erroneously fixed 50% contributory negligence against the driver of the Maruti car. He would also submit that prior to the accident, all the three persons who travelled in the Maruti car were hale and healthy. He therefore prayed that the 50% contributory negligence fixed against the driver of the Maruti car is liable to be set aside and fix the 100% negligence against the driver of the Mahindra Van.

12. On the other hand, the learned counsel appearing for the respondents in C.M.A.No.347 & 349 of 2018 & appellant in C.M.A.No.2740 of 2017 would contend that in M.C.O.P.No.117 of 2013, the owner of the Mahindra van was examined as R.W.1 and while deposition, he deposed that there was no fault upon the driver of the Mahindra van. R.W.1, owner of the Mahindra van further deposed that the deceased Krishnakumar who drove the Maruti car was under the influence of alcohol at the time of accident and therefore, he drove the car with high speed and dashed against the Mahindra van. Ex.R1, Accident Register of the deceased Senthil Kumar and Ex.R2, Accident Register of the deceased Bharathiraja clearly shows that at the time of accident, they were under the influence of alcohol. The insurer

of the Mahindra van had also contended that all the three persons who travelled in the Maruti car viz., deceased Krishnakumar, deceased Bharathiraja and injured Senthilkumar consumed alcohol were under the influence of alcohol at the time of accident. He would further contend that the driver of the Mahindra van was not possessing the Heavy Motor Vehicle (HMV) license with Badge at the time of accident, whereas, he was only possessing the Light Motor Vehicle (LMV) license. He therefore prayed that the 50% contributory negligence fixed against the driver of the Mahindra van is absolutely erroneous and therefore, the same is liable to be set aside and the such a huge compensation awarded by the Tribunal in the above Claim Petitions may be modified.

13. The learned counsel for the claimant(s) would argue that no evidence was placed by the Insurance Company, before the Tribunal to prove that the deceased Krishnakumar was under the influence of alcohol at the time of accident. Even, the Postmortem Certificates of both the deceased Krishnakumar and deceased Bharathiraja also proved that they died only due to the injuries sustained in the accident and there was nothing mentioned about the consumption of alcohol by the deceased Krishnakumar and deceased Bharathiraja.

13.1 He further argued that it is not necessary to have Heavy Motor Vehicle (HMV) License with Badge for driving a Mahindra van since the same is required only for driving the vehicles having maximum weight of above 7,500 kgs. However, in the present case, the Mahindra van is having weight of below 7,500 kgs. The principle regarding the non-requirement of Badge to drive the vehicle with LMV, for the vehicles having weight upto 7,500 kgs have already been settled in number of cases by the Honourable Supreme Court as well as this Court. Therefore, he would contend that there is no requirement for Badge for the driver to drive the Mahindra Van which is well within 7,500 kgs weight.

14. Heard the learned counsel on both sides and perused the materials available on record.

15. As far as this case is concerned, the said accident was occurred only when the driver of the Mahindra van made an attempt to overtake a Lorry with high speed. Upon perusing the FIR & deposition of the occurrence witnesses viz., injured Senthilkumar and one Mr. Balaji, it is seen that when the driver of the Mahindra van who drove the van in a rash and negligent manner made an attempt to overtake a Lorry with high speed, dashed against the Maruti car and thereby, the accident was occurred. It is also seen that in the said accident, out of three persons who travelled in the Maruti car, Krishnakumar who drove the vehicle died on the spot and the remaining two persons, Senthilkumar and Bharathiraja had sustained grievous injuries. Therefore, both the Bharathiraja and Senthilkumar were admitted in the Hospital, however, on 28.06.2013, the injured Bharathiraja died. Thereafter, the injured Senthilkumar was discharged from the Hospital after taking treatment.

16. As rightly contended by the counsel for the claimant (s), it is a settled proposition of law that a driver who is holding Light Motor Vehicle (LMV) license can drive the vehicles having maximum weight of 7,500 kgs. Admittedly, in the present case, the weight of Mahindra van is below 7,500 kgs. Therefore, this Court is of the view that there is no bar for the driver of the Mahindra van to drive the said van with LMV license.

17. From the deposition of the occurrence witnesses and also from a perusal of the FIR, it is crystal clear that the only reason behind the accident is the rash and negligent driving of the driver of the Mahindra van. In the absence of any controverting evidence or controverting deposition of eyewitness, the Tribunal would have fixed 100% contributory negligence on the driver of the Mahindra van. However, the Tribunal failed to do so. Though the Tribunal very well knew the fact that the accident was occurred only when the driver of the Mahindra van made an attempt to overtake a Lorry, however, it fixed 50% contributory negligence against the driver of the Maruti car instead of fixing the entire negligence against the driver of the Mahindra van.

18. In our point of view that there is no justified reason for fixing 50% contributory negligence against the driver of the Maruti car. It is to be noted that no evidence was placed before the Tribunal to prove that the deceased Krishnakumar who drove the Maruti car and his friends deceased Bharathiraja & Senthilkumar were under the influence of alcohol at the time of accident. When such being the case, the Tribunal had fastened 50% contributory negligence against the driver of the Maruti car in a mechanical manner without any application of mind. The fact remains that the rash and negligent driving of the driver of the Mahindra van was the sole reason for the accident. Therefore, we are of the considered view that it would be appropriate to fix 100% negligence on the shoulder of the driver of the Mahindra van and set aside the 50% contributory negligence erroneously fastened against the driver of the Maruti car, by the Tribunal.

19. Therefore, while fixing 100% negligence on the driver of the Mahindra Van, this Court fix the entire liability against the owner as well as the insurer of the Mahindra Van. Since the Mahindra van was insured with the insurer the insurer is liable to pay the entire compensation to the claimants.

Quantum:

20. Though in all the appeals, the appellants have raised the issue of quantum of compensation determined by the Tribunal, the learned counsel appearing for the appellants in all the appeals fairly submitted that they are mainly questioning about the contributory negligence fixed by the Tribunal and they have only raised their formal objection against the fixation of the quantum of compensation fixed by the Tribunal. Further, they have also submitted that the quantum of compensation awarded by the Tribunal is just and fair and the same may be confirmed.

21. We have also gone through the award passed by the Tribunal. Though the Tribunal has awarded higher amount of compensation on the conventional heads, considering the fixation of the Loss of Income, this Court also satisfied with the quantum of compensation awarded by the Tribunal. Accordingly, this Court confirms the quantum of compensation as awarded by the Tribunal.

22. In the result,

(i) C.M.A.No.2740 of 2017 is dismissed and C.M.A.Nos.347 to 349 of 2018 are partly allowed.

(ii) As far as liability is concerned, this Court fixed 100% negligence on the driver of the Mahindra Van and entire liability against the insurer of the Mahindra Van.

(iii) So far as the quantum of compensation is concerned, this Court directs the New India Insurance Company (Appellant in C.M.A.No.2740 of 2017 & R2 in C.M.A.Nos.347 to 349 of 2018) to deposit the entire award amount, 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.117, 133 & 267 of 2013 within a period of six 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 in M.C.O.P.Nos.117, 133 & 267 of 2013, as per the ratio of apportionment ordered by the Tribunal, through RTGS, within a period of three weeks thereafter.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

mrr

To

1.The I Additional District and Sessions Court,
Motor Accident Claims Tribunal,Vellore.

2.The Public Prosecutor,
High Court, Chennai.

Copy to:

The Section Officer,

VR Section, High Court,Madras.

+lcc to Mr.N.Anand, Advocate SR.No. 12558

+4ccs to Mr.C.prakasam, Advocate SR.No. 11466,11467,11465,11464
C.M.A.Nos.2740 of 2017
& 347 to 349 of 2018

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