



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.07.2021

Judgment Delivered on : 06.10.2021

Coram :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A. Nos. 3059, 3060 and 3061 of 2014

CMA No. 3059 of 2014

The Branch Manager

M/s. Oriental Insurance Co., Ltd.,

The Branch Office

Hosur, Krishnagiri District

..Appellant/4th Respondent

Versus

1. N. Pulithevan

2. P. Palaniammal

...Respondents 1 & 2/Petitioners 1 & 2

3. The Managing Director

M/s. K.P.N. Tours & Travels Pvt Ltd.,

No.20/1, Swamy Complex

A.V. Road, Kalasipalayam

Bangalore

4. The New India Assurance Co., Ltd.,

rep. by its Senior Divisional Manager

Divisional Office

Bagalur Road, Hosur

5. K. Babu

.. 3 to 5 Respondents/
Respondents 1 to 3

CMA No. 3060 of 2014

The Branch Manager

M/s. Oriental Insurance Co., Ltd.,

The Branch Office

Hosur, Krishnagiri District

.. Appellant/4th Defendant

Versus



1. Kumar
 2. Minor Geethanjali
 3. Ajith Kumar @ Thanigai Balakrishnan (Minor)
- ...1 to 3 Respondents/1 to 3 Petitioners

4. The Managing Director
M/s. K.P.N. Tours & Travels Pvt Ltd.,
No.20/1, Swamy Complex
A.V. Road, Kalasipalayam
Bangalore

5. The New India Assurance Co., Ltd.,
rep. by its Senior Divisional Manager
Divisional Office
Bagalur Road, Hosur

6 K. Babu .. 4 to 6 Respondents/
Respondents 1 to 3

CMA No. 3061 of 2014

The Branch Manager
M/s. Oriental Insurance Co., Ltd.,
The Branch Office
Hosur, Krishnagiri District .. Appellant/4th Respondent

Versus

1. Kumar ... 1st Respondent/Petitioner

2. The Managing Director
M/s. K.P.N. Tours & Travels Pvt Ltd.,
No.20/1, Swamy Complex
A.V. Road, Kalasipalayam
Bangalore ... Respondent/1st Respondent

3. The New India Assurance Co., Ltd.,
rep. by its Senior Divisional Manager
Divisional Office
Bagalur Road, Hosur

4. K. Babu .. Respondents/Respondents 2 and 3

CMA No. 3059 of 2014:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.03.2012 passed in MCOP No. 617 of 2006 on the file of Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri



CMA No. 3059 of 2014:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.03.2012 passed in MCOP No. 882 of 2006 on the file of Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri

CMA No. 3061 of 2014:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.03.2012 passed in MCOP No. 883 of 2006 on the file of Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri

For Appellant :Mr. N. Vijayaraghavan
in all the appeals

For Respondents :Mr. Mukund & Pandiyan for RR1 and 2
in all the appeals

Ms. Sree Vidhya
for R4 in CMA No. 3059 of 2014
for R5 in CMA No. 3060 of 2014
for R3 in CMA No. 3061 of 2014

COMMON JUDGMENT

All these three appeals are filed by M/s. Oriental Insurance Company Limited, Hosur, Krishnagiri District. The appellant is the insurer of Maxi Cab vehicle bearing Registration No. TN-23-B-5234 which met with the accident on the fateful day on 27.10.2005. The appellant questions the validity and correctness of the common order dated 08.03.2012 passed in MCOP Nos. 617 882 and 883 of 2006 on the file of Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri in so far as it relates to fixing 40% liability on them as insurer of the Maxi Cab vehicle. According to the appellant, the entire liability ought to have been fixed by the Tribunal on the insurer of the bus namely New India Assurance Company Limited and fixing 40% liability towards the appellant is improper.

2. Before the Tribunal, three claim petitions were filed and they are MCOP No. 617, 882 and 883 of 2006. All these claim petitions were taken up for hearing together and disposed of by the Tribunal by a common order dated 12.07.2006.

3. MCOP No. 617 of 2006 was filed by the parents of the deceased Indumathi, who was aged 19 years at the time of



accident. According to the claimants, their daughter Indumathy was studying first year Teacher Training course in Bangalore. On 27.10.2005, when their daughter Indumathi was travelling in Maxi Cab Travels bearing TN 23 B 5234 from Golrur to Krishnagiri. driven by one Babu, the driver of KPN Travels Bus bearing Registration No. KA-21-D-0001 driven by the driver K. Thangaraj in a rash and negligent manner and hit the maxi cab vehicle. In the impact, the deceased sustained grievous injuries and taken to Government Hospital, Krishnagiri, but she died on the same day namely 27.10.2005. For her death, as parents, they have filed the claim petition claiming a sum of Rs.10 lakhs as compensation.

4. The other two claim petitions namely MCOP No. 882 and 883 of 2006 were filed by Kumar on his own behalf and on behalf of the minor children for the death of his wife and his minor child aged 3 years old in the very same accident on 27.10.2005, while they were travelling in the Maxi Cab vehicle. While MCOP No. 882 of 2006 was filed for the death of his wife Santha, claiming a sum of Rs.10 lakhs, MCOP No. 883 of 2006 was filed for the death of his three year old minor girl Arinitha seeking compensation of Rs.5 lakhs.

5. All the claim petitions were contested by the appellant - Oriental Insurance Company Limited as well as the New India Assurance Company Limited before the Tribunal by filing counter statement.

6. Before the Tribunal, on behalf of the claimants, Pws 1 to 4 were examined and Exs. A1 to A10 were marked. On the side of the respondents in the claim petition, neither any witness nor any document marked. The Tribunal, upon examining the oral and documentary evidence, concluded that the accident was caused due to the negligence of the driver of Maxi Cab vehicle as well as the driver of the Bus belonging to M/s. KPN Tours and Travels Private Limited. Therefore, the Tribunal fixed 40% negligence on the driver of Maxi Cab vehicle insured with the appellant and 60% on the driver of KPN bus insured with New India Assurance Company Limited.

MCOP No. 617 of 2006

7. As far as quantum of compensation is concerned, the Tribunal awarded Rs.3,80,000/- as compensation payable to the claimants in MCOP No. 617 of 2006, who are the parents of the deceased Gayathri, aged 19 years. For the purpose of determining the compensation amount, the age of the mother of the deceased was taken into account by the Tribunal. By placing reliance on the decision of the Honourable Supreme Court in Sarla Verma and



others vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298, the Tribunal awarded a sum of Rs.2,25,000/- as Pecuniary damages. Rs.75,000/- was awarded towards non-pecuniary damages. A further sum of Rs.75,000/- was awarded towards future prospects and Rs.5000/- towards funeral expenses. In all a sum of Rs.3,80,000/- was awarded as compensation.

MCOP No. 882 of 2006

8. The deceased in this case is Santha, wife of the first claimant Kumar. According to the claimant, his wife was 35 years at the time of accident and earning Rs.6,000/- per month as a contract labourer in Jelly and Granite quarry. However, the claimant did not produce any documentary evidence to show the income of the deceased. Therefore, the Tribunal had taken a sum of Rs.3,000/- as notional income, deducted 1/3rd income towards personal expenses and applied multiplier 16 to arrived at a sum of Rs.3,84,000/- towards loss of income. That apart Rs.15,000/- was awarded to the first claimant for loss of his wife at a young age. A further sum of Rs.10,000/- was awarded for loss of maternal care to the minors. In all Rs.4,09,000/- was awarded by the Tribunal as compensation.

MCOP No. 883 of 2006

9. This claim petition pertains to death of three year old female daughter of the claimant. The Tribunal awarded Rs.2,25,000/- as pecuniary loss, Rs.75,000/- towards non-pecuniary compensation and another sum of Rs.75,000/- towards future prospectus. That apart a sum of Rs.8,000/- was awarded towards transportation and funeral to arrive at a total sum of Rs.3,83,000/- as compensation.

10. The learned counsel appearing for the appellant vehemently contended that the Tribunal erred in fastening 40% liability on them as insurer of Maxi Cab Vehicle. It is his contention that the Tribunal failed to take note of the deposition of PW4, eye witness in the proper perspective, which resulted in miscarriage of justice. He would also contend that the Tribunal, without any basis, has fixed 40% negligence on the part of the driver of the Maxi Cab vehicle when there are clear evidence to the effect that it was the driver of the bus involved in the accident had driven it in a rash and negligent manner. The Tribunal did not take note of the Motor Vehicle Inspectors report, which suggest severe damage to the bus, which would suggest the rash and negligent manner with which the bus was driven on the fateful day. In such circumstance, according to the counsel for the appellant, the Tribunal ought to have exonerated the appellant - Insurance Company from paying any



WEB COPY

was marked as Ex.A1 and first respondent vehicle is insured with the second respondent. Ex.A3 is the copy of the Insurance policy of the first respondent's vehicle. Ex.A4 and A5 are the copies of the MVI reports for the first and third respondent's vehicle respectively. In both the documents i.e., Ex.A4 and A5, it has mentioned that the accident was not happened due to any mechanical defect of the said vehicles. The first respondent's vehicle sustained the following damages:-

"Front wind screen glasses. Show set both side. Head light and indicators. Front bumper, front left door glass, front left fixed glass, dash board damaged. Both side RV mirror from left body sheet one number teared"

16. In Ex.A5 it has mentioned that front left wind screen glass, front left show set, left side body and top body sliding glass, damaged right side body, twisted sliding glass 2 seats damaged. Front right driver door glass damaged rear both wind screen glass damaged.

17. As per the contention of Ex.A1, the first respondent's bus driver drove the vehicle in a rash and negligent manner and hit against the maxi cab. During the year 2005, there is a signal maintained by Krishnagiri Traffic Police and the accident was happened at 5.15 p.m. During that time signals have operated. As per the counter of the second respondent at about 5.15 pm there was road signals it shows that the vehicle came from Hosur-Chennai was allowed to ply but where as the vehicle which was proceeded to Krishnagiri New Bus Stand and other places were stopped. Without noticing the red signal Maxi Cab driver drove the vehicle and dashed against the first respondent's driver. But as per Ex.A4 and A5, both vehicles were damaged. But the entire liability cannot be fixed against the first respondent. Though third and fourth respondents are added as formal party, as per damages sustained by both vehicles, third respondent is also liable to pay to some extent. The accident was happened on the National Highways i.e., under the bridge. PW4 was standing before the Krishnagiri Taluk Police Station. his evidence totally cannot be taken into consideration. Hence, in view of Ex.A4 and A5, the Maxi Cab driver also caused the accident. There is contributory negligence against the first and second



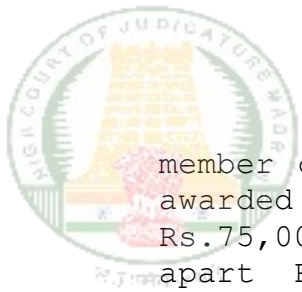
WEB COPY

respondent's vehicle drivers. Hence in view of the above discussion, this Court fixed the negligence on the part of the first and third respondents drivers at the ratio of 60% : 40% respectively. As per Ex.A3, the first respondent's vehicle was insured with the second respondent. Hence, the respondents 1 and 2 are jointly and severally liable to pay the compensation for 60% negligence on the part of the driver of the first respondent. For the third respondent's Maxi Cab vehicle, no Insurance Policy was marked on the side of the petitioners. But the fourth respondent deny that at the time of accident, the said Maxi Cab was not insured with the fourth respondent. Hence, the respondents 3 and 4 are jointly and severally liable to pay the compensation for 40% negligence on the part of the driver of the third respondent. Accordingly, I answer the point Nos. 1 to 3."

17. The Tribunal had taken note of the fact that the driver of the Maxi Cab had jumped the signal and he had also contributed to the accident. The intensity of the accident can also be culled out from the Motor Vehicle Inspectors report which suggest that there was damages to the wind screen glass, front left show set, left side body and top body sliding glass, damaged right side body, twisted sliding glass 2 seats damaged, front right driver door glass damaged and rear both wind screen glass damaged. The accident had taken place beneath the bridge in the National Highway where the vehicles tend to speed. The appellant has not denied that the driver of the Maxi Cab had jumped the signal by letting in any evidence. Having regard to all the above, it cannot be gainsaid that the driver of the Maxi Cab has not contributed at all in the accident. This Court also takes note of the fact that the three of the occupants of the Maxi Cab vehicle have lost their precious life in the accident. Therefore, the claim of the appellant Insurer to exonerate them from paying any compensation and to fix the entire compensation on the Insurer of the bus cannot be legally sustained. Accordingly, this Court accept the findings rendered by the Tribunal in proceeding to fix the liability at 40% on the appellant-Insurer and the remaining 60% on the insurer of the bus.

MCOP No. 617 of 2006

18. As far as the quantum of compensation, the deceased in MCOP No. 617 of 2006 is a student pursuing first year Teacher Training Course in Bangalore. She is not an earning



member of the family. Having regard to the above, the Tribunal awarded Rs.2,25,000/- as Pecuniary damages. A further sum of Rs.75,000/- was awarded towards non-pecuniary damages. That apart Rs.75,000/- was awarded towards future prospects and Rs.5000/- towards funeral expenses. Thus, a total sum of Rs.3,80,000/- was awarded as compensation to the parents of the deceased. In the opinion of this Court, the amount awarded by the Tribunal does not calls for interference by this Court and it is just and proper.

MCOP No. 882 of 2006

19. The deceased in this case is Santha, who was aged 35 years at the time of accident. Even though it is claimed that the deceased was earning Rs.6000/- per month in a quarrying unit as a Contract Labourer, there was no evidence produced to substantiate the same. Therefore, the Tribunal proceeded to fix notional income of Rs.3,000/- per month. After deducting 1/3rd towards personal expenses, the Tribunal fixed Rs.2,000/- per month as actual loss of income per month. By applying multiplier 16, the Tribunal awarded Rs.3,84,000/- towards loss of income. A further sum of Rs.15,000/- was awarded to the first claimant, who is the husband of the deceased, for having loss his matrimonial bliss at a young age. A further sum of Rs.10,000/- was awarded for loss of maternal care to the minors. In all Rs.4,09,000/- was awarded by the Tribunal as compensation. The accident occurred in the year 2005 and the compensation awarded by the Tribunal, in my opinion, is reasonable and therefore, this Court is not inclined to interfere with the award passed by the Tribunal.

20. The other Claim Petition namely MCOP No. 883 of 2006 was filed for the death of minor female child aged 3 years. She died along with her mother in the same accident while travelling in the Maxi Cab vehicle. Here again, the deceased is not an earning member. The Tribunal therefore awarded Rs.2,25,000/- as pecuniary loss, Rs.75,000/- towards non-pecuniary compensation, Rs.75,000/- towards future prospectus in addition to Rs.8,000/- towards transportation and funeral expenses. In all a total sum of Rs.3,83,000/- was awarded compensation to the father, who lost his tender child. This Court does not find any error or infirmity in awarding such amount as compensation to the three year old tender child and therefore, the award passed in MCOP No. 883 of 2006 deserves to be confirmed.



21. In the result, all the Civil Miscellaneous Appeals are dismissed. No costs. The appellant-Insurance Company is directed to deposit the entire compensation amount, proportionate to 40% of the negligence fixed on them, to the credit of the respective claim petitions before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw the entire compensation amount with accrued interest. The compensation amount payable to the minor claimants in MCOP No. 882 of 2006 shall continued to remain in deposit and if the minors have attained majority, necessary applications can be filed before the Tribunal to declare them as major and for withdrawal of their share of compensation.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

rsh

To

1. The Motor Accidents Claims Tribunal
Principal District Court, Krishnagiri
2. The Section Officer
V.R. Section,
High Court, Madras

+1cc to M/s.R.Sreevidhya, Advocate SR.52621

+3cc to Mr.Mukund R.Pandiyan, Advocate SR.52731, 52732, 52733

CMA Nos. 3059 to 3061 of 2014

PP(CO)

CB(08/12/2021)