IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 15.02.2021

Judgment Pronounced on : 29.04.2021

CORAM

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

C.M.A. Nos. 4118, 4121 of 2019 and 625 of 2020
and
C.M.P.Nos. 23245 and 23237 of 2019

CMA No. 4118 of 2019

Oriental Insurance Co.Ltd,
Oriental House, II Floor,
New No.216, Old No.116, Prakasam Salai,
Broadway, Chennai – 600 108 .. Appellant / 4th Respondent

Versus

1.Muthulakshmi
W/o.Late Maharaja
2.Mathumitha (Minor)
D/o.Late Maharaja
3.Mathan (Minor)
S/o.Late Maharaja
(Minor respondents 2 and 3 are represented by
their mother Muthulakshmi, 1st respondent herein)
4.Aboorva Gani
W/o.Sudalaimani ... Respondents 1 to 4 / Petitioners 1 to 3
5.R.V.N.Kannan
S/o.R.V.Narayanan
6.Cholamandalam Ms.General
Insurance Co.Ltd, Dare House
2nd Floor, No.1, N.S.C.Bose Road,
Chennai-600 001.
7.N.Sudha
W/o.Nagarajan ..Respondents 5 to 7 / Respondents 1 to 3

CMA No. 4121 of 2019

Oriental Insurance Co. Ltd,
Oriental House, II Floor,
New No.216, Old No.116, Prakasam Salai,
Broadway, Chennai – 600 108 .. Appellant / 4th Respondent in Lower Court

Versus

1.Kalaiselvi
W/o.Late Mani @ Ayyappan
2.Sharmila (Minor)
D/o.Late Mani @ Ayyappan
3.Bala Harikrishnan (Minor)
S/o.Late Mani @ Ayyappan
(Minor respondents 2 and 3 are rep by their mother Kalaiselvi, 1st respondent herein)
4.Sivagami
W/o.Jayaraman ... Respondents 1 to 4 / Petitioners 1 to 4
5.R.V.N.Kannan
S/o.R.V.Kannan ... 5th Respondent / 1st Respondent
6.Cholamandalam Ms.General
Insurance Co., Ltd., Dare House,
2nd Floor, No,1, N.S.C.Bose Road,
Chennai-600 001. ... 6th Respondent / 2nd Respondent
7.Sudha
W/o.Nagarajan .. 7th Respondent / 3rd Respondent

C.M.A.No.625 of 2020:

1.Kalaiselvi
W/o.Late Mani @ Ayyappan
2.Sharmila (Minor)
D/o.Late Mani @ Ayyappan
3.Bala Harikrishnan (Minor)
S/o.Late Mani @ Ayyappan
(Minor appellants 2 and 3 are rep by their mother Kalaiselvi, 1st appellant herein)
4.Sivagami
W/o.Jayaraman .. Appellants / Claimants in Lower Court

Versus

1.R.V.N.Kannan
S/o.R.V.Narayanan

2.Cholamandalam Ms.General
Insurance Co., Ltd., Dare House,
2nd Floor, No,1, N.S.C.Bose Road,
Chennai-600 001.

3.N.Sudha
W/o.Nagarajan

4.Oriental Insurance Co.Ltd,
Oriental House, II Floor,
New No.216, Old No.116, Prakasam Salai,
Broadway, Chennai – 600 108. .. Respondents 1 to 4 /
Respondents 1 to 4

Common Prayer in C.M.A.Nos.4118 and 4121 of 2019: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the order and decree dated 05.09.2018 in M.C.O.P.Nos.1936 and 388 of 2008 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

Prayer in C.M.A.No.625 of 2020: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.09.2018 in M.C.O.P.No.388 of 2008 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

C.M.A.Nos.4118 and 4121 of 2019

For Appellant (In both C.M.As)	::	Mr.D.Baskaran
For R1 to R4	::	Mrs.Ramya V.Rao
For R6	::	Mr.M.B.Raghavan

C.M.A.No.625 of 2020

For appellants	::	Mrs. Ramya V.Rao
For R2	::	Mr.M.B.Raghavan
For R4	::	Mr.D.Baskaran

COMMON JUDGMENT

SATHI KUMAR SUKUMARA KURUP,J.

All these three appeals are filed assailing the common award dated 05.09.2018 passed in M.C.O.P. Nos. 1936 and 388 of 2008 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

2. Before the Tribunal, two claim petitions were filed and they are MCOP Nos. 1936 and 388 of 2008. These claim petitions were filed by the legal heirs of deceased Maharaja and Mani @ Ayyappan respectively seeking compensation of Rs.10 lakhs and Rs.15 lakhs respectively for their death in a road accident that had taken place on 05.12.2007. The Tribunal awarded a sum of Rs.21,27,800/- and Rs.20,56,250/- respectively in the claim petitions. Aggrieved by the same, Oriental Insurance Company Limited has filed CMA Nos. 4118 and 4121 of 2019.

3. The other appeal in CMA No. 625 of 2020 is filed by the legal heirs of the deceased Mani @ Ayyappan, who are the claimants in MCOP No. 388 of 2008, seeking enhancement of compensation amount.

4. Since all these appeals arise out of the same accident and award, they are taken up together and disposed of by this common judgment.

5. The parties are referred to as per their ranks in the claim petition for the sake of convenience.

6. For the purpose of disposal of these claim petitions, the origin and genesis of the averments made in the claim petitions is required to be appreciated.

7. According to the claimants, on 05.12.2007, at about 8.20 hours, Mani @ Ayyappan (deceased in M.C.O.P.No.388 of 2008) was driving the Tempo Traveller Van bearing Registration No.TN-22-AV-1641 along with Maharaja (deceased in M.C.O.P.No.1936 of 2008) as a spare driver on Trichy-Chennai Main Road (NH 45). When the vehicle was proceeding at Nadungur Bus Stop, near PK Agaram Cross Street, Siruganur, Trichy a lorry bearing Registration No.TN-58-K-4147 was coming in the opposite direction in a rash and negligent manner and hit the Tempo Traveller. Due

to the said impact, both Maharaja and Mani @ Ayappan sustained fatal injuries and they died on the way to hospital. This has given rise to the filing of the two claim petitions before the Tribunal by their legal heirs, seeking compensation.

8. Cholamandalam Ms. General Insurance Company Limited, second respondent in MCOP No. 388 of 2008 and insurer of the lorry has a filed counter statement denying all the averments made in the claim petition, inter alia stated that claimants have not established that the accident had occurred due to rash and negligent act of the lorry driver, rather, it was occurred only due to the rash and negligent act of the driver of the Tempo Traveller who was driving it in a rash and negligent manner in the opposite direction. The Insurance Company also disputed the age, income and other particulars furnished in the claim petition and prayed for it's dismissal.

9. Oriental Insurance Company Limited, the fourth respondent in MCOP No. 388 of 2008 and insurer of the Tempo Traveller has also filed a counter statement denying the averments made in the claim petition. It is stated that the claimants have not filed any material documents to show that the driver of the Tempo Traveller vehicle was having valid driving licence at the time of accident. It is also stated that the accident had not occurred due to rash and negligent act of the Tempo Traveller driver but due to the negligent act of the lorry driver drove the vehicle in a rash and negligent manner on the wrong side of the road.

10. Before the Tribunal, common evidence was let in both the Claim Petitions. The first claimant in MCOP No. 388 of 2008 examined herself as PW1. An eye witness to the accident by name Murugan was examined as PW2. Muthulakshmi, the first claimant in MCOP No. 1936 of 2008 examined herself as PW3 while the employer of the deceased Mani @ Ayyappan, was examined as PW4. The claimants have marked thirteen documents as Exs. P1 to P3 to substantiate their claim. On behalf of the respondents, RW1 to 4 were examined and Exs. R1 to R11 were marked.

11. The Tribunal, considering the pleadings as well as oral and documentary evidence held that the accident occurred due to negligence on the part of the driver of the lorry, insured with Cholamandalam MS General Insurance Co Ltd., as well as the Tempo Traveller insured with Oriental Insurance Co., Limited.

Therefore, the Tribunal fixed 25% negligence on the part of the driver of the lorry and 75% on the driver of the Tempo Traveller driven by the deceased Mani @ Ayyappan in this case.

12. Aggrieved by the award passed by the Tribunal, Oriental Insurance Company Limited, insurer of the Tempo Traveller Van, have filed CMA Nos. 4118 and 4121 of 2019 questioning the fixation of percentage of negligence as well as quantum of compensation awarded by the Tribunal. The other appeal in CMA No. 625 of 2020 was filed by the claimants in CMA No. 388 of 2020 questioning the fixation of percentage of negligence on the part of the deceased - driver of the Tempo Traveller as well as the quantum of compensation awarded.

13. It is pertinent to mention that Cholamandalam MS General Insurance Co Ltd., Insurer of the Lorry, has not filed any appeal as against the award passed by the Tribunal.

14. According to the learned counsel for the appellant/Insurance Company, the Tribunal failed to appreciate the evidence in proper perspective. The lorry bearing Regn No.TN-58-K-4147 and Tempo Traveller Van bearing Registration No.TN-22-AV-1641 collided head on. Further, at the time of accident, the road widening work was in progress and therefore, the width of the road has reduced to a considerable extent and the traffic was made one way. In other words, half of the road was blocked to facilitate the on-going road widening work. While so, the driver of the lorry without noticing the Tempo Traveller Van coming in the opposite direction driven it in a rash and negligent manner and collided with the lorry, which resulted in both of the drivers sustaining fatal injuries. Further, a first information report was filed against the driver of the lorry in Crime NO. 637 of 2007 on the file of Sirukanur Police Station. This would abundantly establish that it was the driver of the lorry who was negligent in driving the vehicle. Further, the driver of the lorry let in evidence only supporting the cause of the Insurance Company. The claim made by the insurer of the lorry that there is no negligence on the part of the lorry driver cannot be accepted. In any event, when there was a head on collision among two vehicles, it is just and proper to fix the negligence equally on both the vehicles and the percentage of negligence fixed by the Tribunal is not in consonance with law.

15. Mrs. Ramya Rao, learned counsel for the appellant in CMA No. 625 of 2020 and claimants in MCOP No. 388 of 2008 would

submit that when there is head on collision between two vehicles, the percentage of negligence has to be fixed equally among the two vehicles. However, the Tribunal wrongly fixed 75% negligence on the Tempo Traveller Van driven by the deceased Mani @ Ayyappan and 25% on the negligence driver of the Lorry. The Tribunal also did not consider the fact that the First Information Report was filed against the driver of the lorry and not against the driver of Tempo Traveller. Subsequently, after investigation, the Investigation Officer filed the charge sheet against the driver of the lorry. The Tribunal also simply brushed aside the deposition of P.W.2, an eye witness to the accident while fixing the percentage of negligence. Therefore, taking note of the evidence made available, the Tribunal ought to have fixed the entire negligence on the driver of the lorry. This is more so that the driver of the Tempo Traveller died immediately on the contrary the driver of the lorry did not sustain any injury. It is also a fact that the driver of the lorry has not offered any explanation for not giving any complaint against the driver of the Tempo Traveller if it is his case that the driver of the Tempo Traveller was at fault. In fact, as per Ex.P2, spot sketch, the driver of the van was proceeding in the right direction viz., in the diverted path whereas the driver of the lorry came on the right side of the road and hit against the van. In fact, the Sub-Inspector of Police has written a letter under Ex.R7 addressed to the District Collector in which it was clearly stated that the vehicles were permitted to proceed only on one way but the driver of the lorry had proceeded in a rash and negligent manner which led to the accident. However, the Tribunal failed to take note of Ex.P2 and Ex.R7 while fixing the percentage of negligence. Therefore, the learned counsel for the appellant in CMA No. 625 of 2020 prayed for fixing the percentage of negligence equally among insurance companies of the two vehicles.

16. Mr. M.B. Raghavan, learned counsel for the Cholamandalam MS General Insurance Company Limited had objected to the submissions of the learned counsel for the appellant/Insurance Company as well as the appellant in CMA No. 625 of 2020. It is his contention that merely because the first information report was registered against the driver of the lorry, it will not be the basis for fixing the entire negligence on the part of the driver of the lorry. It is further submitted that a charge sheet filed was filed against the driver of the

lorry before the learned Judicial Magistrate, Elaikudi and ultimately, the driver of the lorry was acquitted of the offences complained of. In such circumstances, it cannot be said that the driver of the lorry is the tort-feasor and has contributed to the accident in entirety. Taking note of the above, the Tribunal rightly fixed the percentage of liability at 25% on the part of the driver of lorry and 75% on the offending Tempo Traveller Van. Such a conclusion has been reached by the Tribunal on appreciation of the oral and documentary evidence and therefore he prayed for dismissal of the three appeals.

17. We have considered the submission of the respective counsel for the parties on the question of negligence. Admittedly, the accident occurred at a National Highway where the width of the road will be wider to accommodate more vehicles and to facilitate faster movement. However, on the fateful day, there was road widening work in progress and therefore, the width of the road has become narrow. In such circumstance, the presumption will be the speed of the vehicles will naturally come to a halt. In other words, there is remote possibility for the vehicles to proceed fast. Inspite of the same, the accident had occurred which led to the death of the driver of the Tempo Traveller Van as well as the spare driver who was an occupant of the Van. In this context, a first information report was registered against the driver of the lorry. Admittedly, the criminal prosecution launched against the driver of the lorry ended in acquittal. It is needless to mention that the first information report or the charge sheet against the driver of the lorry will not form the basis for fixing negligence in this case. A first information report or charge sheet can be construed as evidence to support the other evidence to fix negligence. The fact remains that there is a head on collision. In such circumstances, it cannot be gainsaid that the driver of the Tempo Traveller Van alone was negligent or his negligence is greater than that of the driver of the lorry. It cannot be precisely decided as to who contributed more or whose role is attributable in entirety for the accident. In a case of this nature, it would be in the fitness of things that the negligence should be fixed equally among the driver of the offending lorry as well as the deceased driver of the Tempo Traveller Van. Accordingly, we hold that the driver of the lorry as well as the Tempo Traveller Van have equally contributed to the accident and consequently we fix the percentage of negligence equally in the ratio of 50 : 50.

18. Now, turning to the question of quantum, the legal heirs of the deceased Maharaja, who was travelling in the Tempo Traveller Van as a spare driver on the fateful day, have filed MCOP No. 1936 of 2008. It is their claim that the deceased was a driver earning Rs.10,000/- per month. The deceased was 27 years age at the time of accident. However, the Tribunal fixed the monthly salary of the deceased at Rs.9,000/- without any reason. As a Driver, the deceased would have atleast earned Rs.10,000/- per month and reducing the amount any further will not be in the interest of justice. Therefore, we fix the monthly salary of the deceased Maharaja at Rs.10,000/- per month. As the deceased was 27 years at the time of his death, adding 40% of the monthly income of the deceased is desirable for the purpose of working out the compensation towards loss of income. Accordingly, the monthly actual earning of the deceased will be Rs.14,000/- (Rs.10,000 + Rs.4,000). Consequently, the yearly income will be Rs.16,80,000/-. After giving 3/4 deduction towards personal expenses and by applying multiplier '17' the loss of income payable to the claimants will be Rs.21,42,000/-. Therefore, we enhance the sum of Rs.19,27,800/- awarded by the Tribunal towards loss of income to Rs.21,42,000/-. The Tribunal also awarded non-pecuniary compensation under various heads, which in our opinion are fair and reasonable. We see no reason to interfere with the amount awarded thereof. In effect, the claimants in MCOP No. 1936 of 2008 are entitled to a total compensation of Rs.23,42,000.00 as tabulated below:-

Loss of dependency or income	Rs.21,42,000.00
Loss of Estate	Rs. 15,000.00
Funeral Expenses	Rs. 15,000.00
Transportation	Rs. 10,000.00
Loss of Consortium to 1st claimant	Rs. 40,000.00
Loss of love and affection to claimants 2, 3 and 4	Rs. 1,20,000.00
	Rs.23,42,000.00

As far as MCOP No. 388 of 2008 is concerned, it was filed by the legal heirs of the deceased Mani @ Ayyappan. The deceased was driving the Tempo Traveller Van at the time of accident. According to the claimants, the deceased was 40 years old at the time of accident. It is claimed that the deceased was earning Rs.10,000/- per month as salary besides getting Rs.300/- per day as Batta. The claimants have also examined PW4, Babu, Proprietor of Arun Cabs to establish that the deceased was employed as a driver and receiving salary as well as daily batta from PW4. However, the Tribunal fixed Rs.11,000/- as monthly salary of the deceased, added 25% towards future prospectus, deducted 1/4th towards personal expenses to arrive at a sum of Rs.18,56,250/- towards loss of income.

According to the claimants in MCOP No. 388 of 2008, the deceased was in receipt of Rs.300/- per day towards batta and even if it is calculated for 25 days in a month, a sum of Rs.7,500/- can be added towards the monthly income of Rs.8000/-. We find force in such submission of the counsel for the appellants. Therefore, we fix the monthly salary of the deceased at Rs.8000/- per month and add Rs.7,500/- thereof towards payment of batta at the rate of Rs.300/- per day for 25 days. If so, the monthly income of the deceased could be scaled up at Rs.15,500/- per month. If 40% income is added thereof, a further sum of Rs.6,200/- can be added taking the total monthly emolument to Rs.21,700/- and consequently, the yearly income can be fixed at Rs.2,60,400/- (Rs.21,700 X 12). Out of this amount, one-forth has to be deducted towards personal expenses to the tune of Rs.65,100/-. If so, the yearly contribution of amount will be Rs.1,95,300/-. Applying multiplier '15', the total amount towards loss of income payable to the claimants can be determined at Rs.29,29,500/- (Rs.1,95,300 X 15). Thus, the loss of income awarded by the Tribunal at Rs.18,56,250/- is hereby enhanced to Rs.29,29,500/-.That apart, the Tribunal has also awarded non-pecuniary compensation under various heads. In our opinion, the compensation awarded by the Tribunal under other heads are wholly justifiable. Accordingly, we re-fix the compensation amount awarded by the Tribunal from Rs.20,56,250/- to Rs.31,29,500/- as tabulated below:-

Loss of dependency or income	Rs.29,29,500.00
Loss of Consortium to 1st claimant	Rs. 40,000.00
Loss of love and affection to claimants 2, 3 and 4	Rs. 1,20,000.00
Loss of Estate	Rs. 15,000.00
Transportation	Rs. 10,000.00
Funeral Expenses	Rs. 15,000.00
	Rs. 31,29,500.00

In the result,

(i) The common award dated 05.09.2018 passed in MCOP Nos. 1936 and 388 of 2008 on the file of V Judge, Small Causes Court, Chennai is modified and negligence for the accident is fixed on the part of the driver of both the vehicles in question in the ratio of 50 : 50.

(ii) CMA No. 4118 of 2019 is partly allowed by modifying the award dated 05.09.2018 passed in MCOP No. 1936 of 2008 and the compensation amount of Rs.21,27,800,/- is enhanced to Rs.23,42,000/-. Out of the sum of Rs.23,42,000/-, the appellant Insurance Company is directed to pay 50% thereof together with interest and costs, if not already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. If excess amount is deposited, the appellant is permitted to withdraw the same with accrued interest and costs. The remaining 50% of the amount is directed to be paid by the sixth respondent in CMA No. 4118 of 2008 namely Cholamandalam MS General Insurance Company Limited with accrued interest and costs. On such deposit, the claimants 1 to 4 are permitted to withdraw the compensation amount in equal proportion. The compensation amount payable to the minors is directed to be deposited in a nationalised bank till they attain majority. The first claimant is permitted to withdraw interest once in three months for the beneficial interest of the minor claimants.

(iii) CMA No. 4121 of 2019 is partly allowed by modifying the award dated 05.09.2018 passed in MCOP No. 388 of 2008 and the compensation amount of Rs.20,56,250/- is enhanced to Rs.31,29,500/-. Out of this amount 50% is directed to be deposited by the sixth respondent in CMA No. 4121 of 2019 namely Cholamandalam MS General Insurance Company Limited with accrued interest and costs. On such deposit, the claimants 1 to 4 are permitted to withdraw the compensation amount in equal proportion. The compensation amount payable to the minors is directed to be deposited in a nationalised bank till they attain majority. The first claimant is permitted to withdraw interest once in three months for the beneficial interest of the minor claimants. As it was held that the deceased Mani @ Ayyappan, who drove the Tempo Traveller Van has contributed to the accident to the extent of 50%, the appellant insurance company need not deposit any amount to the claimants in MCOP No. 388 of 2008. If any amount is deposited by the appellant to the credit of MCOP No. 388 of 2008, it shall be withdrawn with accrued interest and costs.

(iv) CMA No. 625 of 2020 is partly allowed by modifying the award dated 05.09.2018 passed in MCOP No. 388 of 2008 and enhancing the compensation amount from Rs.20,56,250/- to Rs.31,29,500/-.

(v) No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to M/s.Ramya V.Rao, Advocate, S.R.No.26712

CMA.Nos. 4118, 4121 of 2019
CMA No. 625 of 2020

AK-II(CO)
SB(28/09/2021)