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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 30.09.2021

Judgment Delivered on : 16.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

Civil Miscellaneous Appeal (MD) Nos. 858 to 861 of 2016

and

CMP (MD) Nos. 7993 to 7996 of 2016

The National Insurance Company Limited,
Through its Branch Manager,
Having Office at No. 92,
Devarpuram Road,
2nd Floor, Thoothukudi Taluk,
Thoothukudi District.

... Appellant in all CMAs

vs.

1) Vinitha
2) Lingaraj
3) P.K. Santhanam

... Respondents in CMA.858/16

1) Vinitha
2) Minor Rohith Vinai
[Minor is represented through his mother and
next friend Vinitha, the 1st respondent herein]
3) Lingaraj
4) P.K. Santhanam
5) Amsavalli

... Respondents in CMA.859/16

1) Vinitha
2) Lingaraj
3) P.K. Santhanam

... Respondents in CMA.860/16

1) T.S. Jeyakumar
2) J. Mohan
3) J. Nirmala
4) Lingaraj
5) P.K. Santhanam

... Respondents in CMA.861/16



Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.Nos.411, 415 & 418 of 2013 and 82 of 2014 dated 31.07.2014 on the file of Motor Accidents Claims Tribunal, II Additional District Court, Thoothukudi.

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For Appellant : Mr.D.Sivaraman

For R1 in CMA.858 & 860/16 :
R1 & R2 in CMA.859/16 & :
R1 to R3 in CMA.861/16 : Mr.Robert Chandrakumar
For Mr.Senthil Sankara
Natha Kumar

COMMON JUDGMENT

(Judgment of the Court was made by **V. BHARATHIDASAN, J.**)

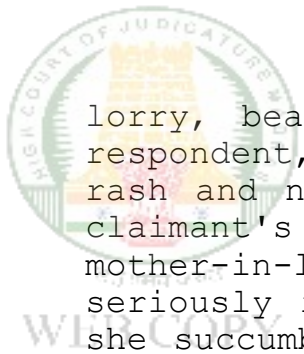
All the four appeals have been filed against the Award passed in M.C.O.P.No.411 of 2013, M.C.O.P.No.415 of 2013, M.C.O.P.No.418 of 2013 and M.C.O.P.No.82 of 2014, dated 31.07.2014, on the file of the Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi.

2. In a road accident took place on 29.06.2012, four persons belonged to same family died and one person sustained injuries. Hence, the four claim petitions have been filed and all the claim petitions were heard together and disposed of by a common Judgment. Challenging the finding on negligence as well as quantum of compensation, the Insurance Company, has filed the four appeals before this Court.

3. For the sake of convenience, the parties are referred to as per the ranking before the Tribunal.

4. In C.M.A(MD)No.858 of 2016, C.M.A(MD)No.859 of 2016, C.M.A(MD)No.860 of 2016 and C.M.A(MD)No.861 of 2016 have been filed respectively against the M.C.O.P.No.411 of 2013, M.C.O.P.No.415 of 2013, M.C.O.P.No.418 of 2013 and M.C.O.P.No.82 of 2014, dated 31.07.2014, on the file of the Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi.

5. The case of the claimants before the Tribunal is that on 29.06.2012, at about 3.00 p.m., P.W.1 / claimant in M.C.O.P.No.411 of 2013 viz., Vinitha, with her husband Rajnikanth; daughter Rethanya; son Rohith Vinai; father-in-law Rajagopal and her Mother-in-law Saroja travelled in a Maruthi Alto car, bearing Registration No.TN-66-B-9100, which was driven by her husband Rajnikanth. They were proceeding towards east to west in Thoothukudi - Palayamkottai Highway, while they were nearing Vaikaikulam Village, a container



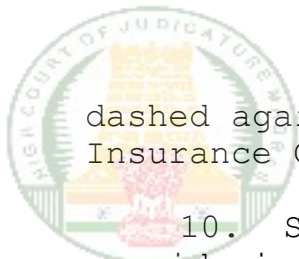
lorry, bearing Registration No.TN-69-AM-1226, belongs to the 2nd respondent, driven by its driver, came in opposite direction, in a rash and negligent manner, dashed against the car, in which, the claimant's husband Rajnikanth, his father-in-law Raja Gopal and mother-in-law Saroja died on the spot. Her daughter Rethanya was seriously injured, she was taken to the hospital, but on the way, she succumbed to the injuries. The claimant also sustained severe head injuries.

6. Alleging that the accident had taken place due to rash and negligent driving of the driver of the container lorry, the claim petitions have been filed. The husband of deceased Saroja, has filed a claim petition in M.C.O.P.No.82 of 2014, claiming a compensation of Rs.20,00,000/-, for the death of her wife. The claimant / P.W.1, has filed a claim petition in M.C.O.P.No.411 of 2013, claiming a compensation of Rs.10,00,000/-, for the death of her daughter Rethanya; M.C.O.P.No.415 of 2013 has been filed claiming a compensation of Rs.4,00,00,000/-, for the death of her husband Rajnikanth and M.C.O.P.No.418 of 2013 has been filed by P.W.1 / Vinitha, claiming a compensation of Rs.20,00,000/-, for the injuries sustained by her.

7. The claim petitions have been contested by the Insurance Company on the ground that the accident was not taken place due to rash and negligent act of the driver of the container lorry. It is further stated that, at the time of accident, the Maruthi Alto Car, driven by the deceased Rajinikanth, came in a rash and negligent manner, hit against a cow, and the driver lost his control, thereafter, hit a Taurus Lorry, bearing Registration No.TN-04-AB-2828, which came in the opposite direction, thereafter dashed against the 2nd respondent container lorry, which was coming slowly in the opposite direction. Hence, there is no negligence on the part of the driver of the container lorry and it is only due to rash and negligent driving of the driver of Maruthi Alto car, the accident had occurred and no negligence can be fixed on the driver of the lorry. Apart from that, the Insurance Company also disputed the monthly income of the deceased, and the claim made by the claimants, highly exorbitant.

8. In order to prove this case, before the Tribunal, the claimants examined 4 witnesses and marked 25 documents. On the side of the respondent, the Investigating Officer of the 3rd respondent Insurance Company was examined as R.W.1; driver of the lorry was examined as R.W.2 and the Divisional Manager of the Insurance Company was examined as R.W.3 and also marked 7 exhibits.

9. The Tribunal, considering all those materials, has come to a conclusion that the accident had taken place due to rash and negligent driving of the driver of the container lorry, and also held that the Insurance Company failed to establish the contention



dashed against the offending vehicle, and fixed the liability on the Insurance Company to pay the compensation.

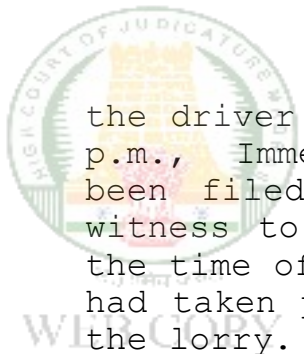
10. So far as the quantum of compensation is concerned, considering the evidence available on record, the trial Court awarded a sum of Rs.2,20,000/- in M.C.O.P.No.411 of 2013, for the death of the minor daughter Rethanya; in M.C.O.P.No.415 of 2013, relating to the death of husband of P.W.1, considering the monthly income of the deceased and other materials awarded a sum of Rs.52,68,820/-; in M.C.O.P.No.418 of 2013, regarding the injuries sustained by P.W.1, the Tribunal awarded a sum of Rs.6,55,520/-; in M.C.O.P.No.82 of 2014, for the death of Saroja, the Tribunal awarded Rs.2,13,000/- as compensation to her husband.

11. Now, challenging the same, the present appeals have been filed by the Insurance Company.

12. Mr.D.Sivaraman, the learned counsel appearing for the appellant Insurance Company would vehemently contend that the accident had taken place due to rash and negligent driving of the deceased Rajinikanth. Even though, FIR said to have filed by one Annamalai Rajan, he was not examined before the Tribunal. That apart, immediately after the accident, the Insurance Company ordered a private investigation, the investigation report also filed as Ex.R1, and the Investigation Officer also examined as R.W.1 which clearly states that it is only the driver of the car came in a rash and negligent manner and hit a cow, which was crossing the road and lost the control, then, the car hit a container lorry, which came in the opposite direction, only thereafter, it hit the 2nd respondent vehicle, which was stopped after notifying the occurrence. That apart, the rough sketch filed as Ex.P3, also clearly reveals that in a four-lane road, one side has been closed for maintenance and the entire vehicles have been diverted only in a part of the road. Hence, there is no chance for the offending vehicle came in a rash and negligent manner. The learned counsel also submitted that even though in a criminal case, the driver was convicted, in a Revision Petition filed by the driver, this Court has acquitted him. That part, the driver of the lorry was also examined by the Insurance Company and he has clearly stated the manner in which the accident had taken place. However, the Tribunal only relied upon the evidence of P.W.1, which is a doubtful witness, fixed the negligence on the driver of the lorry.

13. So far as the quantum of compensation is concerned, the learned counsel for the appellant Insurance Company submitted that in M.C.O.P.No.415 of 2013, the compensation awarded to the deceased is highly exorbitant and without considering the actual income of the deceased, the Tribunal awarded exorbitant amount.

14. The learned counsel for the claimants would contend that the accident had taken place due to rash and negligent driving of



the driver of the lorry. The accident has took place at about 3.00 p.m., Immediately, after that, at about 4.30 p.m., a complaint has been filed by one Annamala Rajan, who is stranger, and an eye-witness to the occurrence, who was travelling in a two wheeler at the time of occurrence, wherein, he clearly stated that the accident had taken place due to rash and negligent driving of the driver of the lorry. That apart, P.W.1, who was also travelling in the car, has clearly stated that the lorry only hit the car. Even though it is contended by the respondent that the car first hit a cow, then, a container lorry, thereafter, it dashed against the offending vehicle, the respondent did not substantiate the claim. The Tribunal, considering all those materials, rightly rejected the investigation report filed by the Insurance Company and fixed the negligence on the driver of the container lorry. So far as quantum of compensation, the Tribunal, considering the salary certificate and other materials available on record, has rightly awarded a fair compensation, which cannot be considered as an higher side.

15. We have heard Mr.D.Sivaraman, the learned counsel appearing for the appellant Insurance Company and Mr.Robert Chandrakumar, learned counsel appearing for the claimants and also perused the records carefully.

16. Insofar as the negligence is concerned, it is the case of the claimant that the deceased Rajinikanth driven the car east to west in Thoothukudi - Palayamkottai main road, wherein, the offending container lorry came in the opposite direction in high speed, in a rash and negligent manner, and dashed against the car. P.W.1 is one of the occupants in the car and she is an eye-witness to the occurrence. According to her, the lorry came in a rash and negligent manner and dashed against the car and she has also denied the fact that the car dashed against the cow, thereafter, hit a Taurus Lorry and finally hit the offending vehicle.

17. In order to substantiate the case, the Insurance Company strongly relied upon the Investigation Report / Ex.R1, and the evidence of Investigation Officer / R.W.1. The Tribunal considered the same and held that the Insurance Company did not conduct the investigation properly. They have only examined the driver of the offending lorry and owner, and no independent witness was examined and he has not been obtained any statement from P.W.1, hence, it could not be relied upon. Further, the evidence of R.W.2, the driver of lorry, is an interested witness, apart from that, there is no independent witnesses were examined by the Insurance Company.

18. It is the contention of the Insurance Company that the car first hit the cow, driver lost the balance, then, hit a container lorry, the registration number of the lorry was also given, only thereafter, it dashed against the offending vehicle. However, the driver of the container lorry was not examined, and except the oral evidence of P.W.2, and his Report Ex.R1, no other material was



available to substantiate the same. Even from Ex.P3 / the rough sketch, which was strongly relied upon by the Appellant Insurance Company, it is seen that the road width shown as 15 feet, as the entire traffic has been diverted in one side of four lane road, in which, there is no possibility that the accident has taken place as stated by the Insurance Company. Even though the driver of lorry said to have acquitted in a criminal case, which is not binding on the Tribunal, thus, it should decide the issue based on the materials available on record. The Tribunal, after considering the entire materials available on record, has rightly comes to a conclusion that the accident has taken place due to rash and negligent driving of the container lorry and we find no infirmity in it. The offending vehicle was insured with the appellant Insurance Company and the Insurance Company is jointly and severally liable to pay the compensation.

19. Coming to the quantum of compensation, in M.C.O.P.No.411 of 2013, the deceased is a 6 years old school child and the Tribunal only awarded a sum of Rs.2,20,000/- for her death and it cannot be considered as excessive.

20. In M.C.O.P.No.415 of 2013 has been filed claiming compensation for the death of Rajinikanth / husband of claimant. The Insurance Company seriously disputed the quantum of compensation awarded by the Tribunal. At the time of accident, he was working as a Sales Manager in a private automobile company and his monthly salary was Rs.26,734/- and he is a income tax assessee. The salary certificate and income tax assessment also filed before this Court. The employer was also examined as P.W.3., who has confirmed the salary and also the bonus paid to the deceased. Considering those materials, the Tribunal awarded the monthly income of the deceased at Rs.3,46,588/-. The age of the deceased, based on the postmortem certificate, the Tribunal fixed at 38 years and considering the fact that he is a permanent employee and he is below 40 years, 50% of the monthly salary has been added for future prospects and arrived at the annual income at Rs.5,19,882/-. There are 3 dependents, the Tribunal deducted 1/3 of annual income towards his personal expenses, and finally fixed the annual income at Rs.3,46,588/- and applying the multiplier of '15' arrived at loss of estate at Rs.51,98,820/- and that apart, awarded a sum of Rs.10,000/-- towards loss of estate; Rs.30,000/- towards loss of consortium and another Rs.30,000/- towards loss of love and affection; and finally arrived at a compensation of Rs.52,68,820/-.

21. Considering the evidence available on record, the monthly income of the deceased has been proved by marking the salary certificate and examining the employer. That apart, the income tax assessment / Ex.P18 also filed and based on those materials, the Tribunal has rightly fixed the annual income of the deceased. As per the Judgment of the Hon'ble Supreme Court in **National Insurance**



Company Ltd., Vs. Pranay Sethi reported in (2017 (16) SCC 680) added 50% of the monthly income towards the future prospects and rightly deducted 1/3 for his personal expenses and arrived at loss of estate to the deceased. Even though all the claimants are entitled for consortium of Rs.40,000/-, the Tribunal only granted a sum of Rs.30,000/- towards the loss of consortium and another Rs.30,000/- towards love and affection. Considering those circumstances, we are of the considered view that the compensation awarded by the Tribunal is a just and fair compensation and it cannot be considered as excessive.

22. In respect of M.C.O.P.No.418 of 2018, the claimant had sustained severe head injuries, the medical report has been filed, the Doctor was also examined and she was admitted in the hospital and taken treatment as inpatient for nearly 37 days. The Tribunal awarded only a sum of Rs.1,38,000/- towards partial permanent disability and granted a sum of Rs.3,57,520/- towards the medical expenses actually incurred by the injured and after granting loss of income at Rs.1,20,000/-, finally awarded a sum of Rs.6,55,520/-, in our view, it is not excessive.

23. So far as M.C.O.P.No.82 of 2014, the deceased was 65 years old at the time of accident. He was home maker. Hence, the notional income was taken as Rs.3000/- per month and annual income would be Rs.36,000/-, after deducting 1/3rd towards her personal expenses, the annual income was taken as Rs.24,000/- and applying the multiplier '7', a sum of Rs.1,68,000/- was granted towards loss of income; Rs.20,000/- (Rs.10,000/- each) towards loss of estate and consortium and finally arrived at a compensation of Rs.2,13,000/-, which is a just and fair compensation.

24. Considering all those materials, we are of the considered view that the Tribunal rightly considering the entire materials available on record, fixed the negligence on the driver of the lorry and also awarded a just and fair compensation and we find no reason to interfere with the same.

25. In the result, we find no merits in the appeals, the appeals are deserve to be dismissed and accordingly dismissed and the Award passed by the Tribunal is confirmed. The appellant Insurance Company is directed to deposit the entire award amount, as ordered by the Tribunal, less the amount already deposited, if any, with accrued interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit is being made, the major claimants are permitted to withdraw their share in the award amount, with proportionate accrued interest and costs, by filing necessary application before the Tribunal. Insofar as the minor claimant / Rohith Vinai in C.M.A.(MD)No.859 of 2016, is concerned, his share in the Award amount is directed to be deposited by the Tribunal, in any one of the Nationalized Bank, in interest bearing deposit, initially for a period of three years,



renewable thereafter, till the minor attains majority. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

MPK

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Judge,
Motor Accidents Claims Tribunal,
II Additional District Court,
Thoothukudi.

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

+4 CC to M/s.S. SENTHIL SANKARA NATHA KUMAR, Advocate (SR-34808, SR-34809, SR-34810, SR-34811, [F] dated 17/11/2021)

CMA (MD) Nos 858 to 861 of 2016

DATED : 16.11.2021

_RD(28.01.2022) 8P 7C