IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.06.2022**

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. Nos.2154 & 2155 of 2014
and M.P.Nos.1 & 2 of 2014

[CMA.No.2154 of 2014]

M.Sivalingam

... 1st Respondent/Appellant

Vs

1.Mrs.Revathy

... 1st Petitioner/ 1st Respondent

2.A.Harshan (minor)
(Rep. by his mother and guardian and next friend Revathy)

...2nd Petitioner/ 2nd Respondent

3.Manivel

...3rd Petitioner/ 3rd Respondent

4.Bajaj Allianz Insurance Co., Ltd.,
No.27 and 28, Prince Tower College,
Nungambakkam,
Chennai - 600032.

...2nd Respondent/ 4th Respondent

[CMA.No.2155 of 2014]

1.Mrs.Revathy
2.A.Harshan, (Minor rep. by his mother Revathy as guardian and N.F.)
3.K.Manivel

... Appellants/ Petitioners

Vs

1.M.Sivalingam

2.Bajaj Allianz Insurance Co.Ltd.,
27 & 28, Prince Towers, College Road,
Nungambakkam, Chennai 34.

... Respondents/ Respondents

PRAYER in CMA No.2154 of 2014: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 07.03.2013 and made in MCOP NO.16 of 2011 on the file of the Motor Accident Claims Tribunal (III Additional District Court, Poonamallee) and allow the Civil Miscellaneous Appeal.

For Appellant : Mr.S.Mahimai Raj

For Respondents : Mr.K.Suryanarayana [R.1 to R.3]
: Mr.S.Arun Kumar [R.4]

RAYER in CMA No.2155 of 2014: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 07.03.2013 and made in MACTOP NO.16 of 2011 on the file of the Motor Accident Claims Tribunal (III Additional District Court), Poonamallee.

For Appellants : M/s. K.Suryanarayana

For Respondents : Mr.S.Mahimairaj [R.1]
: Mr.S.Arun Kumar [R.2]

COMMON JUDGEMENT

The issue which arises for consideration in the above CMA is whether bitumen transported in the tanker would constitute a hazardous material and consequently a driver who did not have the endorsement to carry a hazardous goods having driven the vehicle would exonerate the insurance company from indemnifying the injured.

2. The two appeals arises from out of a single claim petition, M.C.O.P.No.16 of 2011, therefore, a common judgment is being pronounced. The parties are referred to in the same array as before the lower Court.

3. CMA No.2154 of 2014 is filed by the 1st respondent/ owner of the vehicle challenging the order of the Tribunal directing the 2nd respondent to

satisfy the decree and thereafter recover the entire amount from the 1st respondent/owner of the vehicle (Though the fair order would indicate a pay and recovery, the decreetal order unfortunately does not incorporate the same).

4. CMA No.2155 of 2015 is filed by the claimants seeking an enhancement of the award amount.

A brief resume of the facts of the case is herein below set out for more fully understanding the issue on hand.

5. The claim petition has been filed by the wife, son and father of one Mr.Ambikapathy who was a System Administrator with Param Tech Solutions Pvt. Ltd., said to be earning a monthly salary of Rs.35,000/-.

6. The petitioners would contend that on 23.10.2010 at about 2.10 p.m when the deceased Ambikapathy was riding his motor cycle bearing Registration No.TN 22 AM 4048 and proceeding from Ambattur to Villiwakkam on CTH Road, a Tanker Lorry bearing Registration No.TN 04 AE 6494 coming in the opposite direction and driven in a rash and negligent

manner hit the vehicle in which the deceased was travelling as a result of which the deceased Ambikapathy had sustained fatal injuries. The petitioners had claimed a compensation of Rs.65,00,000/-.

7. The 1st respondent/ owner of the vehicle did not choose to appear and contest the OP before the Tribunal and was therefore set ex parte. The 2nd respondent/ insurance company had filed their counter inter alia denying the allegations contained in the petition and also denying the allegation that the driver of the tanker lorry had driven the same in a rash and negligent manner. They had raised a defence that the driver of the tanker lorry did not possesses a valid and effective driving license at the time of the accident. They had also denied the age and the occupation of the deceased Ambikapathy. Therefore, they sought to have the claim petition dismissed.

8. The Tribunal by its order dated 07.03.2013 was pleased to hold that the accident had occurred only on account of the rash and negligent driving of the driver of the tanker lorry. The Tribunal, after considering the defence raised by the insurance company that the driver of the tanker lorry Devaraj did not possesses a valid license to drive a tanker lorry carrying

hazardous goods and relying upon Ex.R.5 (permit of the offending vehicle) held that the tanker lorry had the national permit to transport oil and petroleum goods only. The Tribunal below relying upon Ex.R.2 (Driving license) of Devaraj marked as Ex.R.2 and Ex.R.8 held that the said Devaraj had a permit to drive a light motor vehicle and a heavy transport vehicle with a badge number but there was no endorsement to drive a heavy transport vehicle carrying hazardous products such as petroleum products. The Tribunal has also considered Ex.R.3, insurance policy where in the column showing the sub type of the vehicle, the vehicle has been described as a 'Bitumen tanker'. Therefore, the Tribunal held that the vehicle had the necessary endorsement/permit for transporting a petroleum and oil products but however, the driver did not possesses a badge for carrying hazardous goods as the said permission has not been endorsed in his driving license and this amounted to a policy violation. The Tribunal held that "Bitumen" is an hazardous product. Therefore, the Tribunal held that the compensation awarded would be paid by the Insurance Company and later recovered from the owner of the Tanker Lorry, the 1st respondent herein.

9. As regards the quantum of compensation the Tribunal has taken into account Ex.P.5 (WIN Technology Salary Certificate) to show that a retainer of Rs.10,000/- was being paid to the deceased. This document by itself will not show that the petitioners were actually earning the above sum. Therefore, a notional income of Rs.12,000/- was fixed, deducting 1/3rd towards his personal expenses the monthly notional income was calculated at a sum of Rs.8,000/-. Ultimately, a compensation of Rs.16,62,000/- was awarded. Aggrieved by the fact that the Tribunal below has directed to pay and recovery, the 1st respondent/owner of the tanker lorry is the appellant before this Court.

10. Mr. Mahimai Raj learned counsel appearing on behalf of the appellant in CMA No.2154 of 2014, that is; the owner of the vehicle submitted that by an order dated 24.01.2018 in the above appeals this Court had remanded the matter back to the Tribunal to permit the parties to let in evidence to show that the bitumen which was transported in the lorry was not a hazardous product so as to enable the Court to come to the conclusion as to whether the 1st respondent has violated any of the policy conditions.

This Court had directed findings on the 2 issues which is extracted herein below:-

> *(i) Whether the material transported in the lorry bearing Registration No.TN 04 AE 6494 on the date of accident was a hazardous material or not?*
>
> *(ii) Whether 'bitumen' is a hazardous material which warrants the driver of the offending vehicle to obtain an endorsement in his driving licence from the office of the Regional Transport Authority concerned?*

11. Pursuant to this order he would contend that the parties had let in evidence and a report given by the Indian Institute of Technology, Madras was marked through R.W.8, Dr.M.Murali Krishnan of IIT Madras. He would draw the attention of this Court to the report issued by the Bharath Petroleum Corporation Limited as well as Indian Oil Corporation that the bitumen grade VG 10 and VG 30 is a non-dangerous petroleum/heavy petroleum and is non-hazardous. He would also draw the attention of this Court to the report forwarded by the IIT Madras to this Court dated 26.10.2018 wherein the Institute has opined that bitumen VG 10 is not a hazardous material if necessary care regarding its pumping, transportation

and storage is maintained as also the safety precautions. He would submit that R.W.8, the expert in his cross examination has admitted that it is not a hazardous product. He would also draw the attention of the Court to the insurance policy which has been marked as Ex.R.3 where the vehicle for which the 2nd respondent/insurance company has provided insurance cover has been described as a bitumen tanker. Therefore, he would contend that the finding of the Tribunal that the bitumen is a hazardous product is totally erroneous and consequently the order directing pay and recovery has to be set aside.

12. Per contra, Mr.S.Arun Kumar learned counsel appearing for the insurance company would submit that even as per the report of the IIT Madras, the product would remain non hazardous till such time as the safety measures are adopted. In case the safety measures are not adopted then the product would definitely becomes a hazardous product and therefore it is imperative that the person who is transporting the product has to have the necessary endorsement to transport hazardous products. Therefore, he would contend that the order of the Tribunal does not require any reversal with regard to its finding that the bitumen was a hazardous product.

13. As regards the CMA 2155 of 2014, Mr.K.Suryanarayan, learned counsel appearing on behalf of the claimants/petitioners would submit that the Tribunal has totally erred in adopting a monthly income of just Rs.12,000/- and the Tribunal ought to have fixed a monthly notional income of Rs.15,000/- and he further contended that the Tribunal has not granted any amount towards future prospects which has to be necessarily granted and that apart, only a sum of Rs.15,000/- has been granted towards loss of love and affection and a mere sum of Rs.5,000/- towards loss of consortium. He would therefore, submit that the award has to be enhanced.

14. Heard the learned counsels on both sides.

15. The issue that engages the attention of this Court is whether Bitumen is a hazardous product and if so whether the person who is transporting the same should have an endorsement for carrying such hazardous products. In the instant case, this Court had directed the experts namely the IIT Madras to submit their report as to whether bitumen is a hazardous product. Report has indeed been received not only from the IIT,

Madras but and also from the Petroleum Companies all of which state that bitumen is not a hazardous product. The report given by the IIT, Madras would state that it is not a hazardous material if care is taken with regard to its pumping, transportation and storage maintaining the safety precautions. Therefore, it is only if the safety measures are not adopted then it would be considered as a hazardous product. No where in the cross examination the insurance company has elicited any admission that the vehicle which was transporting bitumen did not adopt the requisite safety procedures. On the contrary, a perusal of Ex.R.3 policy would indicate that the insurance company has extended its cover to the vehicle which is described as a bitumen tanker.

16. Considering the fact that the tanker by itself is a bitumen tanker it would definitely possess all the requisite safety measures for transporting the product. Therefore, once the product is not a hazardous one it would suffice to consider if the driver of the vehicle had the necessary license to drive a Heavy Transport Vehicle. The driver of the 1st respondent's tanker possessed such an endorsement is evident from a perusal of Ex.R.2 & Ex.R.8 which are (Ex.R.2 - RTI reply given by Information Officer, RTO, Perambalur to

4th Respondent, Ex.R.8 - Driving License particular of Devarasu). Therefore the order of the Tribunal directing pay and recovery has to be set aside. Consequently, CMA 2154 of 2014 is allowed and the insurance company is directed to pay the compensation without recovering it from the 1st respondent.

17. As regards the enhancement, the Tribunal below has taken into consideration the oral evidence of the P.W.2 and P.W.3 and Ex.P.4, Ex.P.5 and Ex.P.10 and Ex.P.11 to fix an income of Rs.12,000/- per month. This could be enhanced to Rs.12,500/- since the deceased was admittedly working with an IT Company and would have at least earn a sum of Rs.12,500/- as a monthly income. Therefore, the monthly income is re-fixed at Rs.12,500/-. The deceased was aged about 34 years at the time of his death, however, the Tribunal has not awarded any amount towards future prospects. Taking into account his age 40% should be added towards future prospects. Therefore, the notional monthly income would be a sum of Rs.17,500/- of this 1/3rd has to be deducted towards personal expenses and ultimately a sum of Rs.11,670/- would be available to the family as monthly income. The relevant multiplier is ‘17’, therefore, the amount under the head

of loss of income would be Rs.11,670 x 12 x 17 = Rs.23,80,680/- and therefore, the amount under the head of loss of dependency would be enhanced to a sum of Rs.23,80,680/-. The 1st petitioner is entitled to a loss of consortium of Rs.40,000/-. Therefore, the amount granted is enhanced from Rs.5,000/- to Rs.40,000/-. It is not known if the 3rd respondent is alive since even at the time of the filing of the petition he was aged about 70 years, therefore the amount under the head of loss of love and affection is granted only to the 2nd respondent as against the Rs.15,000/- earlier granted. The amount under the head of funeral expenses is enhanced to a sum of Rs.15,000/- as against the Rs.10,000/- and a further sum of Rs.15,000/- is added to the head of loss of estate which was not granted by the Tribunal. The revised award would be as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	16,32,000/-	23,80,680/-	Enhanced
2.	Funeral Expenses	10,000/-	15,000/-	Enhanced
3.	Loss of love and affection	15,000/-	40,000/-	Enhanced
4.	Loss of Consortium	5,000/-	40,000/-	Enhanced
5.	loss of estate	NIL	15,000/-	Granted
	TOTAL	**16,62,000/-**	**24,90,680/-**	**Enhanced by Rs.8,28,680/-**

18. Consequently, both the Civil Miscellaneous Appeals are allowed and the award of the Tribunal be and hereby is enhanced to a sum of Rs.**24,90,680** /- from Rs.**16,62,000/-** together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other aspects the award of the Tribunal is confirmed. The 2nd respondent/insurance company [in CMA.No.2155 of 2014] is directed to deposit the said amount (Rs.**24,90,680**/-) to the credit of M.C.O.P.No.16 of 2011 on the file of the Motor Accident Claims Tribunal, (II Additional District Judge), Poonamallee together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, appellants/petitioners 1 & 3 [in CMA.No.2155 of 2014] are permitted to withdraw their respective shares as apportioned by the Tribunal below. Since the 2nd appellant/petitioner [in CMA.No.2155 of 2014] being a minor in M.A.C.T.O.P.No.16 of 2011, his respective share of award amount as apportioned by the Tribunal shall be deposited in an interest bearing fixed deposit in any Nationalized bank till he attains majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn

by the guardian/mother once in 6 months directly from the bank. If the minor has attained the age of majority, it is open to him to file formal petition before the Tribunal to get his shares of apportionment. The claimants shall pay the Court fee for the enhanced amount, if payable. The Tribunal shall not disburse of the amount till such time as the certified copy showing proof of entire payment of Court fee has been produced. No costs. Consequently, connected Miscellaneous Petitions are closed.

28.06.2022

Index : Yes/No
Internet: Yes/No
Speaking / Non-Speaking
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To

1. The Motor Accident Claims Tribunal,
   (III Additional District Court, Poonamallee)

2.The Section Office,
V.R.Section,
High Court, Madras.

P.T. ASHA, J,

shr

C.M.A. Nos.2154 & 2155 of 2014
and M.P.Nos.1 & 2 of 2014

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