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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07/12/21
Pronounced on	05/01/22

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.2715 to 2718 of 2017
and
C.M.P.Nos.15235, 15237, 15239 & 15241 of 2017

M/s United India Insurance Co., Ltd.,
Arni. ...Appellant in all appeals

Vs.

1.D.Kumari
2.P.Mohankumar
3.The Divisional Manager,
New India Assurance Co. Ltd.,
Vellore. ...Respondents in CMA No.2715 of 2017

1.S.Durairaj
2.S.Malliga
3.S.Babu
4.S.Parvathi
5.S.Elango
6.S.Renuga
7.P.Mohankumar
8.The Divisional Manager,
New India Assurance Co. Ltd.,
Vellore.
9.D.Kumari ...Respondents in CMA No.2716 of 2017

1.Venkatesan @ Venkatesa Perumal
2.P.Mohankumar
3.The Divisional Manager,
New India Assurance Co. Ltd.,
Vellore.
4.D.Kumari ...Respondents in CMA No.2717 of 2017

1.R.Mani
2.P.Mohankumar
3.The Divisional Manager,
New India Assurance Co. Ltd.,
Vellore.
4.D.Kumari ...Respondents in CMA No.2718 of 2017



COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act 1988 against the Common Judgment and Decree in MCOP Nos.250, 251, 252 and 371 of 2001 respectively dated 01.08.2013, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Cheyyar.

For CMA No.2715 of 2017;

For Appellant : Mr.B.Raghavan

For Respondents : Mr.K.G.Senthilkumar(for R1)
Mr.S.Dhakshanamoorthy(for R3)
No appearance for R2

For CMA No.2716 of 2017;

For Appellant : Mr.B.Raghavan

For Respondents : Mr.K.G.Senthilkumar (for R1 to R6)
Mr.S.Dhakshanamoorthy (for R8)
No appearance for R7

For CMA No.2717 of 2017;

For Appellant : Mr.B.Raghavan

For Respondents : Mr.K.G.Senthilkumar (for R1)
Mr.S.Dhakshanamoorthy (for R3)
No appearance for R2
R4 Died

For CMA No.2718 of 2017;

For Appellant : Mr.B.Raghavan

For Respondents : Mr.K.G.Senthilkumar (for R1)
Mr.S.Dhakshanamoorthy (for R3)
No appearance for R2
R4 Died

COMMON JUDGMENT

V.SIVAGNANAM, J.

These appeals arise out of the common award passed by the Motor Accident Claims Tribunal, Subordinate Court, Cheyyar in MCOP Nos.250, 251, 252 and 371 of 2001 respectively dated 01.08.2013.

2. The case of the claimants is that on 28.03.2001 at 07.45



hours, the claimant in MCOP No.371 of 2001, Mani drove a car bearing Reg.No.TN-25-Y-9999 on M.B.T road, Sumaithangi Erikarai near Pagaveli Koot Road. In the said Car, D.Kumari, who is the owner of the car and the claimant in MCOP No.251 of 2001, R.Venkatesan, who is the claimant in MCOP No.252 of 2001, and one Saraswathiammal, who is the deceased in MCOP No.250 of 2001, were travelled. At that time, an Eicher Cantrrer Van bearing Reg.No.TN-39-Q-6117 driven by its driver in a rash and negligent manner, dashed against the car and then dashed against another Tanker Lorry bearing Reg.No.TN-45-E-0907. In the accident, the driver Mani, owner D.Kumari and R.Venkatesan sustained injuries and the said Saraswathiammal died. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the van, the injured and the legal heirs of the deceased Saraswathiammal laid petitions claiming compensation of Rs.20,00,000/-, Rs.25,00,000/-, Rs.2,09,67,000/- and Rs.25,00,000/- respectively.

3.Resisting the claim, the respondent/New India Assurance Company Ltd., and the appellant/United India Insurance Company Ltd., filed their respective counter disputing the manner of accident, age, avocation and income of the deceased and the nature of injuries sustained by the claimants and its liability to pay the compensation. It was also contended that the claim is excessive. Further, in the counter, it has been stated that the accident occurred due to rash and negligent driving of the car, hence, the claimant Mani being tortfeasor, they cannot seek to gain for their own wrong.

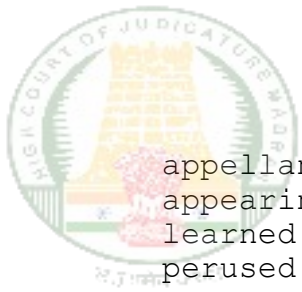
4.To substantiate the case, on the side of the claimants, P.Ws.1 to 7 were examined and Exs.P.1 to Ex.P.49 were marked. On the side of the appellant/Insurance Company, R.W.1 to R.W.5 were examined and Exs.R.1 to R.15 were marked.

5.The Tribunal, after considering the oral and documentary evidence held that the driver of the car, belonging to the claimant Kumari/Mani was responsible for the accident and awarded compensation as follows:-

Claimant in MCOP No.371 of 2001	Rs. 1,83,360/-
Claimant in MCOP No.250 of 2001	Rs. 5,20,000/-
Claimant in MCOP No.251 of 2001	Rs.20,44,000/-
Claimant in MCOP No.252 of 2001	Rs. 3,41,580/-

Assailing the common award, the appellant/United India Insurance Company has filed these appeals.

6.Heard the learned counsel appearing for the



appellant/United India Insurance Company, the learned counsel appearing for the respondent/New India Assurance Co. Ltd., the learned counsel appearing for the respondents/claimants and perused the materials available on record.

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7.The learned counsel appearing for the appellant/United India Insurance Company would submit that in this case, three vehicles were involved. The Tribunal, without appreciating the evidence adduced by the parties, concluded that the driver of the car was responsible for the accident and the insurer of the said car, namely, the appellant herein, is liable to pay compensation. The Tribunal failed to consider the First Information Report which was registered based on the complaint by the claimant/Venkatesan (Ex.R2) and the subsequent final report filed by the police. The claimants, who were travelled in the car, deposed before the Tribunal alleging the negligence entirely upon the van driver. But the Tribunal failed to consider the oral evidence. The Tribunal ought to have fixed the negligence upon the driver of the van and the award should have been passed against the owner and the insurer of the van. He would further submit that in MCOP No.251 of 2001, since the claimant is the owner of the car, she is not entitled to claim compensation against his insurer and hence, MCOP No.251 of 2001 is liable to be dismissed.

8.The learned counsel appearing for the respondent/New India Assurance Insurance Co., Ltd and the learned counsel appearing for the claimants supported the award of the Tribunal and pleaded to dismiss these appeals.

9.We have considered the rival submission of the learned counsel appearing on either side and perused the materials available on records.

10.A perusal of the records indicates that on 28.03.2001 at about 07.45 hours, on M.B.T Road, near Sumaithangi Village on the Erikarai, the accident took place. At time of accident, the car was driven by its driver Mani who is the claimant in MCOP No.371 of 2001. In the said car, D.Kumari the owner of the car and the claimant in MCOP No.251 of 2001, R.Venkatesan, the claimant in MCOP No.252 of 2001 and one Saraswathiammal, the deceased in MCOP No.250 of 2001 were travelled. According to the First Information Report, (Ex.P.32), while the car driver overtaking the tanker lorry, hit against the van and then the tanker lorry and thereby caused the accident. In the accident, the driver Mani, Venkatesan and owner Kumari sustained grievous injuries and Saraswathiammal died. Even though the claimants deposed before the Tribunal that the accident was happened due to the negligence of the driver of the van, all the documents are against them. The Tribunal, considering the First



Information Report (Ex.P.32) and the evidence of R.W.1, R.W.2 and R.W.3 and Motor Vehicles Inspector's Report (Ex.P.30), concluded that the driver of the car was responsible for the accident and fixed the liability upon the car and directed the insurer of the car, the appellant herein, to pay compensation to the claimants.

11. Though the learned counsel for the appellant heavily relied upon the First Information Report registered through the complaint given by the claimant/Venkatesan and another First Information Report (Ex.P.32), on perusal of the records would show that both the First Information Reports were given at the same time. From the charge sheet (Ex.P.35) filed by the Investigating Officer, it was found that the driver of the van was responsible for the accident and the charges were framed against him under Sections 279, 304A and 338 IPC. But on a complaint, the case was again re-investigated by the Deputy Superintendent of Police. The Investigating Officer Tmt.Nagajothi was examined before the Tribunal and she deposed that the Sub-Inspector of Police, Caverypakkam Police Station registered two First Information Reports in the same crime numbers and a departmental action is initiated against the said Sub-Inspector of Police. After investigation, it reveals that the driver of the car/Mani was responsible for the accident. Therefore, amended charge sheet was filed before the District Munsif-cum-Judicial Magistrate No.1, Valaja, wherein it has been stated that the driver of car was responsible for the accident. In support of the arguments of the learned counsel appearing for the appellant/Insurance Company, there is no materials on records. Therefore, we are of the view that as decided by the Tribunal, the driver of the car is responsible for the accident.

12. With regard to the liability, it is seen that the liability of the Insurance Company in MCOP Nos.250 and 252 of 2001 are not disputed by the learned counsel for the appellant. With regard to MCOP No.371 of 2001, the contention of the appellant is that the claimant is the driver of the car. Since the driver of the car/Mani met with an accident and thereby suffered injuries during the course of his employment, he is entitled to claim compensation under the Workmen Compensation Act. The insurer has statutory duty to cover the liability of the owner of the vehicle to settle the compensation. Therefore, the award in favour of the claimants by the Tribunal is legally sustainable.

13. The learned counsel for the appellant would state that in MCOP No.251 of 2001, the owner of the vehicle has not been arrayed as respondent. The claimant Kumari is the owner of the vehicle, she could not be both the claimant and the respondent.



If there is no award against the insured, there will be no liability for the insurer to make any payment as compensation as settled in New India Assurance Company Limited vs. Selvarajaram reported in 1997(2) MLJ 11= 1992 ACJ 547 (Mad).

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14. Admittedly, the claimant/Kumari is the owner of the vehicle, who was travelled in the vehicle at the time of accident. When a workman engages as a driver to drive, he is entitled to claim under Section 140 of the Motor Vehicles Act. The owner is only entitled to personal coverage. As per the policy, the personal coverage is Rs.2,00,000/-, therefore, the owner of the car/Kumari is entitled to personal coverage amount of Rs.2,00,000/- alone. In this regard, the Tribunal's conclusion was not based on law. Therefore, the claimant in MCOP No.251 of 2001 is entitled to get the amount of compensation of personal coverage along with interest. With regard to the quantum in MCOP Nos.250, 252 and 371 of 2001, the appellant Insurance Company has not disputed. Since the driver of the car/Mani met with an accident and thereby suffered injuries during the course of his employment, he is entitled to claim compensation under the Workmen Compensation Act. The insurer has statutory duty to cover the liability of the owner of the vehicle to settle the compensation. Therefore, the award in favour of the claimants by the Tribunal is legally sustainable and they are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is also confirmed.

15. In such view of the matter, C.M.A.No.2715 of 2017 is partly allowed and award amount is reduced to Rs.2,00,000/- from Rs.20,44,000/- and C.M.A.Nos.2716, 2717 and 2718 of 2017 are dismissed. The appellant/Insurance Company is directed to deposit the award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the award amount less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Sub Court,
Cheyyar

2. V.R. Section,
Madras High Court,
Chennai.

+4cc to Mr. K.G. Senthilkumar, Advocate, S.R.No. 548, 549, 550, 551

C.M.A.Nos. 2715 to 2718 of 2017
and
C.M.P.Nos. 15235, 15237, 15239 & 15241 of 2017

RR (CO)
RN (25/04/2022)