IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.Nos.2001, 2010 & 2016 of 2019
and
CMP.Nos.7159, 7176 & 7145 of 2019

M/s.New India Assurance Co.,Ltd.,
No.1, Bharathi Road,
Arcot Woodlands Building
Cuddalore ... Appellant in all the Appeals

Vs.

1.A.Raguraman ...1st Respondent in CMA.Nos.2001 & 2016/2019
2. N. Bhuvaneswari ..1st Respondent in CMA.No.2010/2019

3.N.Nagappan ... 3rd Respondent in CMA.Nos.2001 & 2016/2019

Common Prayer: The Civil Miscellaneous Appeals are preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2012 made in MCOP.Nos.2364, 2363 & 2399 of 2009 on the file of the Motor Accident Claims Tribunal/Principal District Court, Cuddalore.

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the judgments and decrees dated 30.04.2012 passed in MCOP.Nos.2364, 2363 & 2399 of 2009 on the file of the Motor Accident Claims Tribunal//Principal District Court, Cuddalore.

2. All these appeals arise out of common award passed by the Tribunal in relation to the same accident. The learned counsel for the parties advanced common argument in these appeals and therefore, they are disposed of by this common judgment.

3. All these three appeals are filed by the respondents 1 and 2 herein / claimants in the claim petitions namely, A.Raguraman and N. Bhuvaneswari. The appellant is aggrieved by the award passed by the

Tribunal in so far as it relates to the direction, directing them to pay a sum of Rs.6,85,100/- in MCOP.No.2363/2009, Rs.12,000/- in MCOP.No.2364/2009 and Rs.3,00,000/- in MCOP.No.2399/2009 as compensation.

4. All the three claim petitions namely M.C.O.P.Nos.2363, 2364 and 2399 of 2009 have been filed by the respective claimants stating that on 14.11.2009 at about 7.30 a.m., when Balasubramanian who is the petitioner in MCOP.No.2361/2009 was driving the 1st respondent's car bearing Regn.No.PY-01-AS-3531 on the left side of the Chidambaram-Cuddalore N.H.Road at Chinna Kumatti, a man suddenly crossed the road. To avoid hitting him, the petitioner turned the car, as a result of which, the car hit against the road side tamarind tree and resulted in the accident. The petitioners namely N.Bhuvaneswari and A.Raghuraman in MCOP.No.2363/2009 and 2364/2009 respectively and one Chandra and one Chasmitha were travelling in the 1st respondent's car at the time of the accident. In the said accident, the claimants namely N.Bhuvaneswari and

A.Raghuraman sustained grievous injuries and multiple fractures all over the body and head and Chasmitha sustained fatal injuries. She was immediately taken to the G.H. Cuddalore but she succumbed to the injuries sustained in the accident. The two claimants are the parents of the deceased Chasmitha who are the legal heirs of the deceased. Therefore, for the above said injuries sustained by them and by her daughter, they have filed the respective claim petitions claiming a sum of Rs.25,00,000/-, Rs.50,000/- and Rs.10,00,000/- as compensation respectively.

5. The appellant/Insurance Company has contended that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case. It has grossly erred in allowing and awarding compensation in a claim petition under Section 166 of the Motor Vehicles Act after holding that the driver of the vehicle was not at fault. It failed to appreciate that petition under Section 166 is based on proof of fault and the driver having been held not to have caused the accident, the claim should fail and liable to be dismissed. It has also failed to appreciate that even a finding of absence

of negligence will not entitle the claimant to compensation. It is also stated that the compensation amount claimed by the claimants is excessive. It failed to appreciate the nature of injuriis and consequences were exaggerated for the purpose of the claim. The various reasons stated by the Tribunal for awarding compensation are wholly unsustainable in law as well as facts and liable to be set aside in the interest of justice. In any event, the total amount claimed as compensation is highly excessive and prayed for allowing of this appeal.

6. Before the trial Court, five witnesses were examined as P.W.1 to P.W.5 and Ex.P1 to Ex.P37 were marked. On behalf of the respondents in the claim petition, neither witness was examined nor document filed.

7. The Tribunal, on appreciation of both oral and documentary evidence, awarded a sum of Rs.6,85,100/-, Rs.12,000/- and Rs.3,00,000/- respectively in favour of the claimants. After awarding the compensation amount of Rs.6,85,100/-, Rs.12000/- and Rs.3,00,000/- respectively, the

Tribunal directed the Insurance Company to pay the compensation to the claimants.

8. Aggrieved against the award of the Tribunal, the appellant/ Insurance Company has filed these present appeals.

9. The learned counsel for the appellant mainly contended that the award passed by the tribunal is erroneous and it is liable to be set aside. According to the learned counsel, the accident had happened solely due tot he reckless and negligent driving of the Bhuvaneswari's brother namely Balasubramanian. No third party vehicle was involved in the accident. He further submitted that the said vehicle was insured with the appellant for the period 17.09.2009 to 16.09.2010 and it is a private car package policy. Under the policy, premium has been collected for personal accident for unnamed passengers to the limit specified in the policy. He further submitted that they denied the age, occupation, monthly income, injuries sustained, period of treatment and expenses incurred. In any event, the

compensation claimed is excessive and exaggerated. They denies that the vehicle bearing Regn.No.PY-AS-3531 was insured with the appellant and that the driver had a valid driving license on the date of accident. So the claimants cannot claim compensation as ordered by the Tribunal. The Tribunal ought to have exonerated the appellant from paying any amount as compensation to the claimants.

10. Heard the learned counsel for the appellant and perused the materials available on record.

11. It is seen from the record that due to the said accident, the claimants had sustained grievous injuries and their daughter sustained fatal injuries. Though the appellant has contended that the accident was due to the rash and negligent driving of the driver of the car, they had not adduced any valid evidence to prove his version. Since there is no contra evidence on the side of the appellant regarding the negligence aspect, the evidences of the PW1 to PW3 are accepted. The claimants have produced the proper

documents as contemplated in the Motor Vehicles Act, such as Ex.P2/MVI report, Ex.P3/copy of insurance policy, Ex.P4/driving license produced by the PW1 which would confirm that the vehicle involved in the accident was having proper valid FC, RC and license at the time of the accident. Moreover, Ex.P2 reveals that the accident was not due to any mechanical defect of the offending vehicle. Since the vehicle was properly insured with the appellant at the time of the accident, the contention of the appellant is not acceptable. As per the Insurance policy package, the occupants of private vehicle also has coverage. In other words, as per the insurance policy package, all the passengers are entitled to compensation. Hence, the driver of the private car is also entitled to compensation. Therefore, the Tribunal has rightly granted the reasonable compensation to the claimants payable by the appellant/Insurance Company and it does not warrants any interference of this court.

12. In the result, these Civil Miscellaneous Appeals are dismissed and the compensation awarded by the Tribunal at Rs.12000/-,

Rs.6,85,100/- and Rs.3,00,000/- respectively, together with interest and costs are hereby confirmed. The appellant-Insurance Company is directed to deposit the compensation amount awarded by the Tribunal along with interest at the rate of 6% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.Nos.2363, 2364 & 2399 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore. On such deposit, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimants through RTGS within a period of two weeks thereafter. No costs. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of MCOP.Nos.2363, 2364 & 2399 of 2009, if the entire award amount has been already deposited by them. No costs. Consequently, the connected miscellaneous petitions are closed.

21.03.2023

Index : Yes/No

Speaking Order/Non-Speaking Order
gv

A.A.NAKKIRAN, J.
gv

To

1.The Motor Accident Claims Tribunal,
/Principal District Court, Cuddalore.

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

C.M.A.Nos.2001, 2010 & 2016 of 2019
and
CMP.Nos.7159, 7176 & 7145 of 2019

21.03.2023