BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	27.03.2023
Pronounced on	05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.1511, 1724 of 2013 and 607 of 2015
and
M.P(MD) No.2 of 2015 in C.M.A(MD) No.607 of 2015

C.M.A.(MD) No.1511 of 2013:

The Oriental Insurance Company Limited,
Represented by its Branch Manager,
DDJ Building, Opp. Vadasery Bus Stand,
Nagercoil, Agasteeswaram Taluk,
Kanyakumari District. ....Appellant/ 2nd Respondent

Vs.

1. Rhinoj John Immanuel

2. Reeves Paul .... 1st and 2nd Respondents/
1st and 2nd Petitioners

3. Stephen Jose .... 3rd Respondent/ 1st Respondent
(3rd Respondent remained ex-parte
before the lower Court)

4. The New India Assurance Company Ltd.,
Represented by its Branch Manager,
Pillar Gate, Opp Stadium,
Nagercoil, Agasteeswaram Taluk,
Kanyakumari District. ... 4th Respondent/3rd respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.199 of 2011, dated 19.04.2013, on the file of the Motor Accidents Claims Tribunal cum District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.P.Prabhakaran
for R1 and R2

: Mr.G.Prabhurajadurai – for R4
: No appearance – for R3

C.M.A.(MD) No.1724 of 2013:

The Oriental Insurance Company Limited,
Represented by its Branch Manager,
DDJ Building, Opp. Vadasery Bus Stand,
Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District. ....Appellant/ 2nd Respondent

Vs.

1. Rhinoj John Immanuel

2. Reeves Paul .... 1st and 2nd Respondents/ 1st and 2nd Petitioners

3. Stephen Jose .... 3rd Respondent/ 1st Respondent
(3rd Respondent remained ex-parte before the lower Court)

4. The New India Assurance Company Ltd.,
Represented by its Branch Manager,
Pillar Gate, Opp Stadium,
Nagercoil, Agasteeswaram Taluk,
Kanyakumari District. ... 4th Respondent/3rd respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.88 of 2011, dated 03.07.2013, on the file of the Motor Accidents Claims Tribunal Judge, (Special Court for Forest Offence Cases) Nagercoil.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.P.Prabhakaran for R1 and R2

: Mr.G.Prabhurajadurai – for R4
: No appearance – for R3

C.M.A.(MD) No.607 of 2015:

The New India Assurance Company Ltd.,
Represented by its Branch Manager,
Pillar Gate, Opp Stadium,
Nagercoil, Agasteeswaram Taluk,
Kanyakumari District. ....Appellant/ 3rd Respondent

Vs.

1. Kala

2. Arunkumar (Minor)

3. Dharunkumar (Minor)

4. Antony Amma
5. Stephen Jose .... Respondents /Petitioners

6. The Oriental Insurance Company Limited,
Represented by its Branch Manager,
DDJ Building, Opp. Vadasery Bus Stand,
Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

7. Rhinoj John Emmanuel

8. Reevas Paul ... Respondents 6 to 8 / Respondents 1, 2, 4 and 5

(The minor respondents 2 and 3 are represented by their Mother and natural guardian first respondent. Hence, notice is not necessary to respondents 2 and 3)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.05.2014 passed in M.C.O.P No.4 of 2012, on the file of the Motor Accidents Claims Tribunal (Special Court for Forest Offense Cases) Nagercoil and set aside the same.

For Appellant : Mr. G.Prabhurajadurai
For Respondents : Mr.F.Deepak
for R1 to R3
: Mr.Palanivelayutham – for R5

: Mr. C.Jawahar Ravindran-for R6
: No appearance – for R7 and R8
: dismissed for default- for R4

COMMONJUDGMENT

All these appeals have been filed challenging the award passed by the Motor Accident Claims Tribunal, Nagercoil in M.C.O.P.Nos.88 of 2011, 199 of 2011 and 4 of 2012. All the three claim petitions were decided independently by three different Presiding Officers. However, the appeals have been tagged together on the ground that all the three claim petitions are arising out of the same accident.

2. On 05.03.2011, at about 04.30 p.m., a Maruthi Car was proceeding from Thirunelveli to Nagercoil from north to south direction. In the said car, one Charles Gnanamuthu @ C.S.R.Gnanamuthu, his wife Geetha Charles and one Violet Justin were the occupants. The said car was driven by one Kumar. When the Car was nearing South Valliyoor Vilakku, one Mahendra Van driven by one Amirtha Singh came in a rash

and negligent manner and dashed against the Maruthi Car. In the said accident, the owner of the Maruthi Car viz., Charles Gnanamuthu and his wife of Geetha Charles had passed away. The driver of the Mahendra Van viz., Amirtha Singh had also passed away. The Maruthi Car was insured with New India Assurance Company Limited. The Mahendra Van was owned by one Stephen Jose and it was insured with Oriental Insurance Company Limited.

3. The sons of the said Charles Gnanamuthu have filed M.C.O.P.No.88 of 2011 under Section 166 of the Motor Vehicles Act seeking compensation for the death of their Mother viz., Geetha Charles. The same claimants have filed M.C.O.P.No.199 of 2011 claiming compensation for the death of their father viz., Charles Gnanamuthu. The legal heirs of the driver of the Maruthi Car have filed M.C.O.P.No.4 of 2012 seeking compensation.

4. In M.C.O.P.No.88 of 2011, the Tribunal arrived at a finding that the accident has taken place only due to the rash and negligent driving of the driver of the Mahendra Van and proceeded to award the

compensation of Rs.2,76,000/- (Rupees Two Lakhs Seventy Six Thousand only) for the death of Geetha Charles who was the occupant of the Maruthi Car. The Insurance Company of Mahendra Van viz., Oriental Insurance Company was made only liable to pay the said compensation. In M.C.O.P.No.199 of 2011, the Tribunal arrived at a finding that the accident has taken place due to the rash and negligent driving of the driver of the Mahendra Van and proceeded to award a compensation of Rs.4,30,000/- (Rupees Four Lakhs Thirty Thousand only) for the death of Charles Gnanamuthu. The Oriental Insurance Company was directed to pay the compensation.

5. In M.C.O.P.No.4 of 2012 was filed under Section 163-A of the Motor Vehicles Act. The Tribunal found that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Maruthi Car. However, in view of the fact that the claim petition was filed under Section 163-A of the Act, the Tribunal proceeded to fix the liability on the part of the Insurance Company of the Maruthi Car viz., New India Insurance Company Limited and passed an award of Rs.6,60,000/- (Rupees Six Lakhs Sixty Thousand only).

6. The Oriental Insurance Company has filed C.M.A.(MD)Nos. 1511 of 2013 and 1724 of 2013, challenging the awards made in M.C.O.P.Nos. 88 of 2011 and 199 of 2011 primarily on the ground of negligence and liability. C.M.A.(MD) No.607 of 2015 has been filed by the New India Insurance Company challenging the award made in M.C.O.P.No.4 of 2012 primarily on the ground of negligence and quantum.

7. The learned counsel appearing for the appellant in C.M.A(MD) No. 1511 of 2013 and C.M.A(MD) No.1724 of 2013 has contended that the rough sketch marked as Ex.P5 will clearly indicate that the accident has happened only due to the rash and negligent driving on the part of the driver of the Maruthi Car. The FIR has been lodged by one of the occupants of the Mahendra Van which would disclose that the accident has taken place only due to the negligent driving on the part of the driver of the Maruthi Car. In fact, in M.C.O.P.No.4 of 2012, the Tribunal has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Maruthi Car.

Therefore, the Tribunal was not right in arriving at a finding that the accident had taken place due to the rash and negligent driving on the part of the driver of the Mahendra Van. He further contended that no eyewitness was examined on the side of the claimants to establish the fact that the accident had taken place due to the rash and negligent driving on the part of the driver of the Mahendra Van.

8. The learned counsel appearing for the appellant had further contended that a rough sketch was prepared by the police officials which is marked as Ex.P.5 in M.C.O.P.No. 199 of 2011. The Rough Sketch will clearly indicate that the car which is expected to stick to the eastern lane had crossed over to the western lane and the accident has taken place in the western lane of the road. Therefore, it is clear that the finding arrived at by the Tribunal is not legally sustainable. He further contended that the quantum of the compensation is also on the higher side in both the appeals. Hence, he prayed for allowing the appeals.

9. The learned counsel appearing for the appellant in C.M.A(MD) No.607 of 2015 had contended that in M.C.O.P.Nos.199 of 2011 and 88 of 2011, the Tribunal has arrived at a specific finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Mahendra Van. Therefore, the Tribunal ought not to have taken a different view in M.C.O.P.No.4 of 2012 to arrive at a finding that the driver of the Maruthi Car is responsible for the accident and therefore, the insurer of the Maruthi Car viz., New India Insurance Company was liable to satisfy the award. He further contended that the rough sketch prepared by the police officials which was marked in criminal proceedings cannot be relied upon when independent oral evidence has been let in before the Tribunal. Hence, he prayed for allowing the appeal exonerating the Insurance Company. He further contended that the quantum of compensation arrived at by the Tribunal is also on the higher side and the same has to be interfered with.

10. The learned counsel appearing for the claimants in all the three appeals have specifically contended that the accident has taken place only due to the rash and negligent driving on the part of the driver of the

Mahendra Van. Therefore, the Tribunal was right in fixing the liability upon the driver of the Mahendra Van. As far as M.C.O.P.No.4 of 2012 filed by the legal heirs of the deceased driver of the Maruthi Car is concerned, the said claim petition has been filed under Section 163-A of the Motor Vehicles Act. Therefore, the Tribunal ought not to have gone into the issue of negligence. Even if any finding has been rendered by the Tribunal relating to negligence, the same will not be binding upon the Tribunal in the other claim petitions, in M.C.O.P.Nos.88 of 2011 and 199 of 2011. Hence, he prayed for dismissing all the three appeals filed by the respective Insurance Companies.

11. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

Negligence:

12. The issue that requires to be adjudicated in the present appeals is to whether the accident has taken place due to the rash and negligence driving on the part of the driver of the Maruthi Car or the Mahendra Van. Admittedly, the accident has taken place at about 04.30 p.m., on

05.03.2011 near South Valliyoor Vilaku, when the car was proceeding from Tirunelveli to Nagercoil in North to South direction. The Mahendra Van was proceeding from Nagercoil to Virudhunagar viz., from south to north direction. The rough sketch prepared by the police officials has been marked as Ex.P.5 on the side of the claimants in M.C.O.P.No.199 of 2011. A perusal of the said rough sketch would clearly indicate that the vehicles proceeding from north to south have to stick to the eastern lane. On the other hand, the vehicles proceeding from south to north have to stick to western lane of the road. In the present case, the Maruthi Car was proceeding from north to south and therefore, it has to stick to the eastern lane. The Mahendra Van was proceeding from south to north and therefore, it has to stick to western lane of the road. The rough sketch clearly discloses that the accident has taken place on the western mud portion of the western lane which is the correct lane for the Mahendra Van. Therefore, it is clear that the Maruthi Car which has proceeded in eastern lane had crossed the central border line and gone into the western lane and the accident has happened.

13. The FIR lodged by one of the occupants of the Mahendra Van would disclose that the accident had taken place due to the rash and negligent driving on the part of the Maruthi Car driver. Son of the deceased, Charles Gnanamuthu, has examined himself as P.W.1 in M.C.O.P.No.199 of 2011 and M.C.O.P.No.88 of 2011. He was not an occupant of the Maruthi Car and therefore, he was not an eyewitness. During the cross examination, he had admitted the correctness of the rough sketch prepared by the police officials. On the side of the owners of the vehicles their respective Insurance Companies, no other eyewitness has been examined. Therefore, this Court is constrained to rely upon the rough sketch that was admitted by the claimants and marked by the claimants. The manner of accident and the admission on the part of the son of the deceased Charless Ganamuthu would clearly indicate that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Maruthi Car viz., M.Kumar.

Liability:

14. As far as M.C.O.P.No.199 of 2011 is concerned, it has been filed seeking compensation for the death of the owner of the Maruthi Car, who was an occupant of the Car at the time of the accident. In the preceding paragraphs, this Court has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Maruthi Car. Therefore, the legal heirs of the deceased Charles Gnanamuthu would not be entitled to receive compensation from their own Insurance Company. A perusal of the Insurance Policy of the Maruthi Car reveals that it is a package policy and premium has been paid towards Personal Accident Coverage to the owner of the vehicle to the extent of Rs.2,00,000/- (Rupees Two Lakhs only). Therefore, the liability of New India Insurance Company would be limited to the extent of Rs.2,00,000/- (Rupees Two Lakhs only).

15. As far as M.C.O.P.No.88 of 2011 is concerned, the same has been filed by the legal heirs of the deceased occupant of the Maruthi Car. Since the Insurance Policy is a package policy, the New India Insurance

Company, which is the insurer of the Maruthi Car, is liable to pay the compensation.

16. As far as M.C.O.P.No.4 of 2012 is concerned, it has been filed by the legal heirs of the deceased driver of the Maruthi Car. A perusal of the claim petition indicates that it has been filed under Section 163-A of the Motor Vehicles Act. A scanning of the policy indicates that a sum of Rs.25/- has been paid as premium towards payment of compensation to the death/injury of a paid driver. In the present case, though the driver of the Maruthi Car is the tortfeaser, the policy of the said Maruthi Car covers the injury/death of the paid driver. Therefore, the New India Insurance Company is liable to pay the compensation.

Quantum:

17. As far as M.C.O.P.No.88 of 2011/C.M.A 1724 of 2013 is concerned, the deceased was a house wife and the Tribunal has fixed the notional monthly income at Rs.3,000/- (Rupees Three Thousand only) and after deducting 1/3rd towards personal expenses, and the monthly income of Rs.2,000/- (Rupees Two Thousand only) has been arrived at.

The Tribunal, considering the age of the deceased as 60 years, adopted multiplier “9” and a sum of Rs.2,16,000/- (Rupees Sixteen Thousand only) has been awarded towards loss of income. The Tribunal has further awarded a sum of Rs.30,000/- (Thirty Thousand only towards loss of love and affection to both the sons. A sum of Rs.10,000/-(Rupees Ten Thousand only) has been awarded for funeral expenses, a further sum of Rs10,000/- was awarded for transportation charges and another sum of Rs.10,000/- (Rupees Ten Thousand only) has been awarded for loss of estate. Totally, a sum of Rs,2,76,000/- has been awarded as compensation. This Court does not find any reason to interfere with the said quantum of the award.

18. As far as C.M.A(MD) No.607 of 2015 is concerned, the claim petition has been filed under Section 163-A of the Motor Vehicle Act. A perusal of the Motor Vehicle Report, which is marked as Ex.P.4, reveals that the driver had a valid and effective driving license at the time of accident. In the claim petition filed under Section 163-A of the Act, the claimants can claim compensation for the injuries/death even without proving the negligence on the part of the offending vehicle. Therefore,

the Tribunal was not right in going into question of negligence. Admittedly, the accident has taken place out of the usage of the vehicle. A perusal of the policy indicates that premium has been paid for the death/injury of a driver at Rs.25/-. The Tribunal has taken the monthly income at Rs.3,300/- and applied the multiplier of "16" and after deducting 1/4th towards personal expenses, the Tribunal has arrived at a sum of Rs.4,75,200/- (Rupees Four Lakhs Seventy Five Thousand and Two Hundred only) towards loss of income. The Tribunal has further awarded a sum of Rs,25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses, a sum of Rs.10,000/- (Rupees Ten Thousand only) was awarded, for Transport charges, a sum of Rs.1,00,000/- (Rupees One Lakh only) was awarded towards loss of consortium, a sum of Rs.6,000/- (Rupees Six Thousand only) towards damages and cloths. Finally, a sum of Rs.6,60,000/- (Rupees Six Lakhs Sixty Thousand only) was awarded towards compensation.

19. A perusal of the award indicates that in paragraph No.16, of the judgment though the Tribunal has arrived at a finding that the loss of income is Rs.4,75,200/- (Rupees Four Lakhs Seventy Five Thousand

and Two Hundred only), however, in paragraph No.19, it is reflected that only a sum of Rs.1,58,000/- (Rupees One Lakh Fifty Eight Thousand only) has been awarded towards loss of income and each one of the claimant would be entitled to only Rs.40,000/- (Rupees Forty Thousand only) towards loss of love and affection thereby, totally a sum of Rs.1,60,000/- (Rupees One Lakh and Sixty Thousand only) alone would be awarded under the said head, however, a sum of Rs.3,00,000/- (Rupees Three Lakhs only) has been awarded by the Tribunal for love and affection. Therefore, this Court is constrained to interfere with the quantum of award under the head of loss of income and for loss of love and affection.

20. Towards loss of income a sum of Rs.4,75,200/- (Rupees Four Lakhs Seventy Five Thousand and Two Hundred only) has to be awarded as arrived at by the Tribunal, in paragraph No.16 of the award. Towards loss of love and affection a sum of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand only) should be awarded to the claimants 2 to 4. A sum of Rs.40,000/- (Rupees Forty Thousand only) is awarded towards loss of consortium to the wife. The Tribunal has erroneously awarded

another sum of Rs.1,00,000/- (Rupees One Lakh only) towards loss of Consortium which is not admissible in law. Therefore, this court modifies the quantum of award as follows:

Loss of Income	: Rs.4,75,200/-
Loss of Consortium to the wife	: Rs. 40,000/-
Loss of Love and Affection to claimants 2 to 4	: Rs.1,20,000/-
Funeral Expenses	: Rs. 25,000/-
Transport Charges	: Rs. 10,000/-
Damages Clothes	: Rs. 6,000/-
Totally	**:Rs. 6,76,200/-**

21. Out of the said total award, the first claimant viz., the wife would be entitled to Rs,3,00,000/- (Rupees Three Lakhs only) the second and third claimants each would be entitled to Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only). The balance amount of Rs.76,200/- (Rupees Seventy Six Thousand and Two Hundred only) shall be paid to the fourth claimant viz., Mother of the deceased.

22. In view of the above said deliberations, (i) C.M.A.(MD) Nos. 1511 and 1724 of 2013 stand allowed, exonerating the appellant/

Insurance Company from the liability to satisfy the award;

(ii) In C.M.A(MD) No.1511 and 1724 of 2013 the liability is fastened upon the fourth respondent in the appeal viz., the New India Insurance Company to satisfy the award;

(iii) In C.M.A(MD) No.1511 of 2013, the quantum of award is fixed at Rs.2,00,000/- (Rupees Two Lakhs only) to be shared by the claimants equally;

(iv) In C.M.A.(MD) No.1724 of 2013, the quantum of award fixed by the Tribunal and the apportionment fixed by the Tribunal in M.C.O.P.No.88 of 2011 stands confirmed;

(v) In C.M.A(MD) No.607 of 2015, the quantum of award is enhanced from Rs.6,00,000/- (Rupees Six Lakhs only) to Rs.6,76,200/- (Rupees Six Lakhs Seventy Six Thousand and Two Hundred only). The first claimant wife shall be entitled to a sum of Rs.3,00,000/- (Rupees Three Lakhs only) the second and third claimants each would be entitled to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) fourth claimant would be entitled to a sum of Rs.76,200/- (Rupees Seventy Six Thousand and Two Hundred only). In respect of the minor claimants/respondents 2 and 3, the amount shall be deposited in a Nationalised Bank till they attain majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months. The award of the Tribunal in M.C.O.P.No.4 of 2012 stands modified to the extent as stated above. The findings given by the Tribunal regarding the liability fixed on the appellant/Insurance Company to satisfy the award is confirmed. C.M.A(MD) No.607 of 2015 is dismissed. The claimants in C.M.A(MD) No.607 of 2015 shall pay the deficit Court fee, if any, before drafting of the decree. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

05.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Motor Accidents Claims Tribunal
   cum District Judge,
   Kanyakumari at Nagercoil.

2. The Motor Accidents Claims Tribunal Judge,
   (Special Court for Forest Offence Cases)
   Nagercoil.

Copy to:

1.The Section Officer,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

R.VIJAYAKUMAR,J.

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Pre-Delivery Judgment in

C.M.A(MD)Nos.1511,1724 of 2013 and 607 of 2015

05.06.2023