



C.M.A(MD)Nos.1209 & 1210 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.04.2023
DELIVERED ON : 01.06.2023
CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.1209 & 1210 of 2017
and
C.M.P(MD)Nos.2043 & 2044 of 2018

C.M.A(MD)No.1209 of 2017:

The Branch Manager,
National Insurance Company Ltd.,
No.96, Thevarpuram Road,
Thoothukudi.

... Appellant/2nd Respondent

Vs.

1.Karpagavalli

... Respondent/1st Petitioner

2.Rajathi

... Respondent/2nd Petitioner

3.M/s.Hitech – Goodwell Training
Centre Pvt Ltd.,
No.343-Triplicane High Road,
Triplicane,
Chennai.

... Respondent/1st Respondent

4.A.Arunachalam

... Respondent/3rd Respondent

5.Sri Jeyavilas Transport Limited,
258, Thiruchuli Road,
Arupukottai,
Virudhunagar District.

... Respondent/4th Respondent



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6.The Branch Manager,
United India Insurance Company Limited,
137 B-BKBV-Complex,
Bandalkudi Road,
Arupukottai.

... Respondent/5th Respondent

7.V.Balakrishnan

... Respondent/6th Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to allow this appeal and set aside the judgment and decree, dated 22.10.2016 passed in M.C.O.P.No.1229 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tirunelveli.

C.M.A(MD)No.1210 of 2017:

The Branch Manager,
National Insurance Company Ltd.,
No.96, Thevarpuram Road,
Thoothukudi.

... Appellant/2nd Respondent

Vs.

1.Karpagavalli

... Respondent/1st Petitioner

2.M/s.Hitech – Goodwell Training
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5. The Branch Manager,
United India Insurance Company Limited,
137 B-BKBV-Complex,
Bandalkudi Road,
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... Respondent/5th Respondent

6. V. Balakrishnan

... Respondent/6th Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to allow this appeal and set aside the judgment and decree, dated 22.10.2016 passed in M.C.O.P.No.1230 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tirunelveli.

In both cases:

For Petitioner	: Mr.A.S.Mathialagan
For R1 & R2	: Mr.K.Rajeshwaran
For R4 & R7	: No Appearance
For R6	: Mr.N.Murugesan

JUDGEMENT

Both the appeals have been filed by national insurance company limited challenging a common award passed by the Motor Accident Claims Tribunal, Tirunelveli in M.C.O.P.No.1229 and 1230 of 2014 primarily on the ground of liability.

2. One Mr.Kanagaraj and his wife Karpagavalli were travelling as passengers in a Tata Safari car at 04.30 a.m on 27.05.2013. While the car was reaching Sivarakottai near Thirumangalam, it dashed on the rear side



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of a parked Ashok Layland lorry. In the said accident, Kanagaraj had passed away and his wife, namely Karpagavalli sustained grievous injuries. Seeking compensation for the death of Kanagaraj, M.C.O.P.No. 1229 of 2014 was filed by his wife Karpagavalli and mother Rajathi. Karpagavalli as injured claimant had filed M.C.O.P.No.1230 of 2014 seeking compensation.

3. According to the claimants in both the cases, the driver of the car had driven the vehicle in a rash and negligent manner and dashed against the rear side of a lorry, which was parked in violation of the traffic regulations. They have further contended that the accident has happened due to the negligence on the part of the driver of the car as well as the lorry. According to the claimants, Kanagaraj was a vegetable vendor and he was earning a sum of Rs.10,000/- per month. The wife Karpagavalli also claimed that she is a vegetable vendor and her monthly income is Rs.10,000/- per month. For the death of Kanagaraj, a sum of Rs.25,00,000/- was sought as compensation by the wife and mother. For the injuries sustained by Karpagavalli, she prayed for a sum of Rs. 5,00,000/- as compensation. The owner and driver of the car and the lorry have remained ex parte.



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4. The insurance company of the car had filed a counter contending that the car is insured with them and the insurance policy is only an Act Policy. Therefore, the policy does not cover the occupants of the private car. They have also questioned the quantum of compensation prayed for by the claimants.

5. The tribunal after considering the oral and documentary evidence on either side, has arrived at a finding that the lorry has been parked in the middle of a four way road without any parking lights. Therefore, the driver of the lorry was also responsible for the said accident. The tribunal further found that the car driver had dashed against the parked vehicle. Consequently, the tribunal apportioned 60% of contributory negligence on the driver of the car and 40% of contributory negligence on the driver of the lorry. The tribunal has also relied upon a judgment of the Hon'ble Supreme Court reported in **2015 (1) TNMAC 801 (Khenyei Vs. New India Assurance Company Ltd., & Others)** to point out that the apportionment of the liability between the respondents is not for the purpose of execution. Therefore, both the insurance companies are jointly and severally liable to satisfy the award.

6. The tribunal after taking into consideration that the deceased was working abroad for nearly 3 years, fixed the notional monthly



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income of the deceased at Rs.10,000/- per month and deducted 50% towards his personal expenses and added 50% towards his future prospects. Ultimately, the tribunal arrived at a sum of Rs.14,40,000/- towards loss of income. The tribunal had awarded a sum of Rs.1,00,000/- as loss of consortium to the wife and a sum of Rs.20,000/- towards loss of love and affection to the mother. A sum of Rs.5,000/- was awarded towards funeral expenses and another sum of Rs.5,000/- was awarded towards loss of estate. A sum of Rs.3,000/- was awarded towards travel expenses and a sum of Rs.1,86,665/- was awarded as medical expenses based on medical bills. Totally, a sum of Rs.16,99,665/- was awarded as compensation for the death of the said Kanagaraj.

7. Considering the injury sustained by the Karpagavalli, the tribunal has awarded a sum of Rs.25,000/- towards pain and suffering and Rs.500/- towards damaged clothing and Rs.1,500/- towards hospital charges and Rs.10,603/- towards medical bills. Totally, a sum of Rs.37,600/- was awarded as compensation for the injury sustained by the said Karpagavalli. These awards are under challenge in both the appeals by the insurance company of the car in which the deceased and the injured claimant have travelled.



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8. The learned counsel appearing for the appellant had contended that admittedly Tata Safari car in which the deceased and his wife have travelled is insured with the appellant company. However, it is a Liability Only Policy as per Exhibit R.1. Therefore, the insurance company is not liable to indemnify the owner of the vehicle with regard to the death or injuries sustained by the occupants of the car. However, the tribunal after apportioning the liability at 60% on the driver of the Tata Safari car, had proceeded to direct the appellant insurance company to satisfy the award to the extent of 60%. Only when there is a coverage, the question of indemnifying the owner of the offending vehicle would arise. When there is no coverage at all, the insurance company cannot be compelled to satisfy the said award amount and recover the same from the owner of the vehicle.

9. The learned counsel for the appellant had further contended that the tribunal without any basis whatsoever has arrived at the notional income of Rs.10,000/- in the case of deceased Kanagaraj. The tribunal has also awarded a sum of Rs.1,00,000/- towards loss of consortium to the wife of the said Kanagaraj which is highly excessive. He further pointed out that even assuming that 60% of contributory negligence is on the part of the driver of Tata Safari car, only the owner of the said car is



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liable to pay the said amount. Hence, he prayed for allowing the appeal.

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10. Per contra, the learned counsel appearing for the claimants had relied upon a judgment of the Hon'ble Supreme Court in **2015 (9) SCC 273 Khenyei Vs. New India Assurance Company Limited & Others**) had contended that the apportionment of contributory negligence between two tortfeasors will not in any way affect the rights of the claimants in executing the entire award as against one of the tortfeasors. He further contended that one of the tortfeasors could satisfy the award amount in entirety and thereafter, recover the award amount from the other tortfeasor in proportion to the liability fixed by the tribunal. He further contended that the tribunal was legally right in directing the appellant insurance company to satisfy the entire award amount. He further contended that the quantum of the award as far as the death of Kanagaraj and the injury sustained by his wife Karpagavalli are adequate in nature and they are not excessive or unreasonable. Hence, he prayed for confirming the award passed by the tribunal in both the claim petitions.

11. I have carefully considered the submissions made on either side and perused the records.



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12. The deceased Kanagaraj and his wife Karpagavalli had travelled in a Tata Safari car on the fateful day and it dashed against the rear side of a parked lorry. In the said accident, Kanagaraj had passed away and his wife Karpagavalli had sustained injuries. In the claim petition, the claimants have contended that both the driver of the Tata Safari car and the driver of the lorry were equally responsible for the said accident and had prayed for compensation from all the respondents.

13. The driver of the lorry was arrayed as 6th respondent in both the claim petitions. However, he has not chosen to file a counter and he has been set ex parte in both the claim petitions. However, the lorry driver has chosen to examine himself as R.W.2. From his deposition, it could be seen that the accident has taken place at about 04.30 a.m. In his deposition, the driver has categorically admitted that in order to attend the nature call, he had parked the vehicle in an emergent situation. The driver has further admitted that he had not parked the vehicle in the place meant for lorry bay, but on the four way track. In fact he has lodged an F.I.R before Kallakudi Police Station belatedly at about 09.30 p.m on the said date. In his complaint, he has stated that he had parked the vehicle on the left side of the four way track to attend his nature call. At that point of time, he had heard a sound and when he turned back, he found



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that the car had dashed against the rear side of the lorry. In the said complaint, there is no reference about the blinking of parking lights.

Therefore, it is clear that the lorry was not parked in a bay meant for its parking, but it was parked on the left side of a four way track without parking lights at about 04.30 a.m. Therefore, the tribunal was right in arriving at a finding that the driver of the lorry has also contributed to the accident. The driver of the Tata Safari had he been cautious enough, he could have avoided the accident by dashing against a parked vehicle. Therefore, the tribunal was right in apportioning the liability of 60% on the driver of the car and 40% upon the driver of the parked lorry. The said finding of the tribunal stands confirmed.

14. The tribunal after apportioning the liability between two tortfeasors, had directed the respective insurance companies to satisfy the award amount to the extent of the liability. According to the learned counsel appearing for the appellant, the car owned by the 1st respondent was insured with the appellant insurance company. A perusal of the insurance policy would indicate that it is an Act Only Policy. In other words, it does not cover the injury or the death caused to the occupants of the car. A perusal of Exhibit R.1 insurance policy confirms that the car has only an Act Only Policy. Only when there is an insurance coverage,



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the insurance company could be directed to satisfy the award for the liability of one of the tortfeasors and recover the said amount from the other tortfeasor.

15. In the present case, Exhibit R.1 policy, being an Act Only Policy, does not cover the occupants of the Tata Safari car, in which the deceased and the injured claimant have travelled. The policy only covers the third parties, personal accident coverage to the owner and coverage under the Workmen's Compensation Act for the paid driver. When the owner of the vehicle incurs any liability to pay compensation arising out of the use of a motor vehicle, he will be indemnified by his insurer provided there is a coverage in the said policy. When the policy covers only the statutory liability and no additional premium has been paid to cover the occupants of the car, the insurer cannot be directed to satisfy the award for the liability incurred by the insured person. When the occupants of the car do not fall within the class of persons covered under the policy, the question of indemnifying the owner of the Tata Safari car would not arise. In such circumstances, the tribunal was not right in directing the appellant insurance company to satisfy the award with regard to the death and injury sustained by the occupants of a car which is covered only by a Liability Only Policy. However, the 1st respondent in



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the claim petition who is the owner of the vehicle is liable to pay 60% of the total award amount in both the claim petitions to the claimants. The appellant / insurance company cannot be called upon to indemnify or satisfy the said award. Therefore, the award passed in both the claim petitions as against the appellant insurance company is hereby set aside. However, the 1st respondent in both the claim petitions shall be liable to satisfy the said award in respect of the respective claimants.

16. As far as the quantum of award is concerned, this Court does not find that the award is either excessive or unreasonable. Therefore, the quantum of award in both the claim petitions stand confirmed.

17. In view of the above said deliberations, this Court is inclined to pass the following order:

(i) The 1st respondent in both the claim petitions shall be liable to pay 60% of the award amount to the claimants in the respective claim petitions.

(ii) The appellant insurance company is hereby exonerated.



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(iii) In other respects, the award of the tribunal stands

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18. The Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

01.06.2023

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

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To

- 1.The Motor Accident Claims Tribunal,
II Additional District Judge,
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Pre-delivery order made in
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