
(2003) 12 MAD CK 0077

In the Madras High Court

Case No : C.M.A. No's. 807 and 808 of 1995 and C.M.A. No's. 1088 and 1089 of 1994

National Insurance Co. Ltd.

APPELLANT

Vs

Sujaya C. Murthy and Others

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Citation : (2006) ACJ 1190

Hon'ble Judges : S.K. Krishnan, J;E. Padmanabhan, J

Bench : Division Bench

Advocate : K.S. Narasimhan and S. Venkateswaram, for the Appellant; R. Sree Krishnan and N. Rosi Naidu, for the Respondent

Judgement

E. Padmanabhan, J.—C.M.A. No. 807 of 1995 has been preferred by National Insurance Co. Ltd. as against the award and decree dated 7.4.1994 made in M.C.O.P. No. 131 of 1990 on the file of the Motor Accidents Claims Tribunal (District Judge), Dindigul.

C.M.A. No. 808 of 1995 has been preferred by the same National Insurance Co. Ltd. being aggrieved by the award and decree dated 7.4.1994 made in M.C.O.P. No. 132 of 1990 on the file of the same Tribunal.

2. C.M.A. No. 1088 of 1994 has been preferred by the claimant Nos. 1 to 4 being aggrieved by the judgment and award dated 7.4.1994 made in M.C.O.P. No. 131 of 1990 insofar as the claimants were aggrieved by the finding that the accident has been caused by the car bearing registration No. TAA 3618 by its driver and insofar as the portion of the claim has been disallowed by the Tribunal below.

3. C.M.A. No. 1089 of 1994 has been preferred by the claimant Shylaja C. Murthy as against the award and decree dated 7.4.1994 made in M.C.O.P. No. 131 of 1990 on the file of the same Claims Tribunal insofar as the Tribunal held that the accident has been caused by the rash and negligent driving of the car No. TAA 3618 and insofar as the substantial portion of her claim has been

negatived by the said Tribunal.

4. Heard Mr. K.S. Narasimhan and Mr. Venkateswaran, learned Counsel appearing for the appellants and Mr. N. Rosi Naidu and Mr. R. Sree Krishnan, learned Counsel appearing for the respondents.

5. As all these appeals arise out of the common judgment dated 7.4.1994 made in M.C.O.P. Nos. 131, 132 and 397 of 1990 on the file of the District Court, Dindigul, the above four appeals were consolidated and taken up together. With the consent of counsel on either side, the appeals are taken up for final disposal.

6. With respect to one more claim petition, namely, M.C.O.P. No. 397 of 1990 there is no information as to whether any appeal has been preferred or subsequently the claimants have re-presented the papers after impleading necessary parties and, therefore, the present four appeals alone are taken up for consideration in this batch of appeals and disposed of on merits on the available materials.

7. On 13.8.1989 around 9.25 p.m., on Dindigul-Vedasendur Main Road near Thadikombu village, the car bearing registration No. TAA 3618 and the lorry bearing registration No. TAN 3274 collided which has given rise to the two claim petitions M.C.O.P. Nos. 131 and 132 of 1990 on the file of Motor Accidents Claims Tribunal, Dindigul. In M.C.O.P. No. 131 of 1990, the legal heirs of the deceased Chidambara Murthy have claimed the compensation for the death of the said Chidambara Murthy while in M.C.O.P. No. 132 of 1990, Shylaja C. Murthy, daughter of the said Chidambara Murthy who is also one of the claimants in M.C.O.P. No. 131 of 1990 claimed compensation for the personal injuries sustained by her in the said accident as she was also a passenger along with her father Chidambara Murthy in the said car at the time of accident.

8. As the two claims arose out of the same accident involving the car and the lorry the common facts leading to the claim petitions and appeals are set out.

9. Deceased Chidambara Murthy was employed as an officer in Canara Bank. Deceased along with his daughter Shylaja C. Murthy was returning from Bangalore to Madurai on 13.8.1989 at 21.25 hrs and proceeding towards Madurai on Dindigul-Vedasendur Main Road. When their car was crossing Kudaganar River bridge, which is 8 km from Dindigul Taluk Police Station, the accident took place. The car No. TAA 3618 was owned by Canara Bank in which the deceased was employed as an officer. It is admitted that he proceeded on an official duty from Madurai to Bangalore and was returning from Bangalore to Madurai on the ill-fated day. The driver of the car was one Selvaraj and his heirs instituted M.C.O.P. No. 397 of 1990 and on technical grounds the said claim petition was ordered to be returned for impleading the owner of the car as well as the insurer of the car and lorry. As already pointed out we are not deciding the claim of the legal heirs of the deceased Selvaraj who also died in the accident.

10. According to claimants, namely, the legal representatives of the deceased

Chidambara Murthy, motor car in which Chidambara Murthy and Shylaja C. Murthy, claimant in M.C.O.P. No. 132 of 1990 were travelling, was proceeding from north to south towards Madurai. The lorry No. TAN 3274 belonging to C. Kuppusamy, respondent No. 1 and insured with United India Insurance Co. Ltd., respondent No. 2, was coming from the opposite direction. It is alleged that the lorry was driven rashly and negligently by its driver, dashed against Ambassador car. As a result of the accident one of the occupants of the car Chidambara Murthy died on the spot. The driver Selvaraj sustained grievous injuries. He died later in the day in the hospital and the other occupant Shylaja C. Murthy sustained grievous injuries, fracture and she was admitted in the hospital. It is the case of the claimants that the accident was caused by rash and negligent driving of the lorry by its driver. Alternatively, it was pleaded that the drivers of the two vehicles have driven the vehicles rashly and it is composite negligence of the two drivers which resulted in the accident and the occupants of the car, Chidambara Murthy and its driver died on the spot. It is claimed that Ambassador car owned by Canara Bank was insured with National Insurance Co. Ltd., respondent No. 4. The car was owned by the Divisional Manager, Canara Bank, Madurai, respondent No. 3. Owner of the lorry, Kuppusamy is respondent No. 1. The insurer of the lorry, United India Insurance Co. Ltd., is respondent No. 2, the Divisional Manager, Canara Bank is the respondent No. 3, while the insurer of Ambassador car is respondent No. 4.

11. The deceased Chidambara Murthy was employed as a Divisional Manager in Canara Bank at Madurai at the time of accident and he was drawing a salary of Rs. 9,278.42. On the date of accident, he had 7 years of further service. It is also claimed that the deceased Chidambara Murthy was due for his promotion and he would have retired as a General Manager, but for the accident. Chidambara Murthy was having a good physique and but for the accident, which was fatal, he would have at least retired as a General Manager. All the claimants are the dependants and consequent to the death of the deceased his daughter who is claimant in the connected O.P., could not complete her studies and the calamity has caused serious loss to the family and dislocation and her prospect of marriage has been diminished and likely to be delayed.

12. In the next claim petition the claimant Shylaja C. Murthy while narrating the accident alleged that the accident has been caused by the rash and negligent driving of the lorry as well as the negligence on the part of the car driver and pleaded that in the accident she sustained fracture of her thigh bone, cut injuries on her forehead, injuries on her left eye, bruises on the left shoulder, grievous injuries on her left thigh and bruises throughout her body. She was immediately taken to the Government Hospital at Dindigul and thereafter she was moved to a speciality hospital at Madurai where she has undergone treatment between 14.8.1989 and 10.9.1989. According to this claimant she also underwent an operation. As a result of the fracture, bone came out, steel rod was fixed, however the operation was not successful, with the rods she continued to live, that subsequently during March, 1990 she underwent another operation and

recovered. But the permanent disability continues. Even after prolonged treatment she is not able to walk and as a result of which she has abandoned the course of Hospital Administration which she was undergoing at the time of accident and as a result of the injuries sustained on her face, her face has been disfigured and, therefore, she claimed Rs. 2,00,000. While in the other claim petition for the death of Chidambara Murthy his dependants claimed a compensation of Rs. 10,00,000.

13. The insurer of the lorry filed a counter which was adopted by the owner of the lorry. According to them the accident was not caused in the manner alleged by the claimants. The respondent pleaded that the lorry No. TAN 3274 was driven by its driver on its left side at a slow speed. But the car driven by its driver rashly and negligently was coming from the opposite direction and while negotiating a curve of Kudaganar River where the road width was only 24 ft, turned to its extreme right side and when the lorry driver noticed Ambassador car approaching at a high speed, without control, then the lorry driver had to stop the vehicle on the mud portion of the road on the extreme left side of the road and despite such an attempt, the car came and dashed against the lorry resulting in heavy damage to both the vehicles. It is incorrect to plead that the accident has been caused by the rash driving of the two vehicles. But it has been caused by the rash and negligent driving of the car only. This is also clear from the first information report given by the car driver. It is further alleged that the car driver who started in the early morning at Madurai proceeded to Bangalore and was returning back to Madurai on the same day and, therefore, he was exhausted, lost his control and dashed against the lorry. It is alleged that the car driver alone has been negligent and not the lorry driver. The respondents denied the details of claims, the employment, the salary, age and nature of treatment as well as the claim made by Shylaja C. Murthy. In any event, the compensation claimed is excessive and it is only the owner of the car or insurer of the car alone who is liable to pay the compensation.

14. The Divisional Manager, Canara Bank who is respondent No. 3 has filed a counter which was adopted by insurer of the car, respondent No. 4. According to the said counter, the driver Selvaraj was not employed by the bank, that nobody has authorised Selvaraj to drive the vehicle on the date of accident, that Chidambara Murthy engaged Selvaraj on his own and went to Bangalore, that the bank is not liable to pay any compensation and so also the insurer. It is further alleged that it is the lorry which was driven rashly and negligently and the accident has been caused by the negligence of the lorry driver. Therefore, neither the heirs of Chidambara Murthy nor the claimant Shylaja C. Murthy could claim compensation either for the death of the deceased Chidambara Murthy or for the injuries sustained by Shylaja C. Murthy in the accident. It is also claimed that no claim petition is maintainable against the bank or the insurer of the car. Claimants are put to strict proof of their claims.

15. Respondent No. 4 filed a counter denying the averments set out in the claim

petition. Respondent No. 4 called upon the claimants to prove that the deceased was a passenger. So also the other claimant or that the car was driven rashly and negligently or that there was a head-on collision with the lorry. It is stated that in the very complaint given by the deceased driver it has been stated that the lorry was driven rashly and negligently and it is for the claimants to prove that the car was driven rashly and negligently. At any rate no claim is maintainable against the owner of the car No. TAA 3618 and, therefore, no claim is maintainable against the insurer of the vehicle as the driver was engaged by Chidambara Murthy and he is not a bank employee. It is further alleged that the accident has been caused during the return trip from Bangalore, which trip was for the personal affairs and not on official duty. It is further alleged that Shylaja C. Murthy, claimant No. 2, is an unauthorised occupant of the car and, therefore, she is not entitled to maintain any claim. In any event, the claim is highly disproportionate, imaginary and, therefore, the claim petition is not maintainable.

16. Respondents prayed for dismissal of both the claim petitions.

17. In Claims Petition Nos. 131 and 132 of 1990, identical issues were framed. The only difference being the claimant and the quantum of compensation claimed.

18. Before the Claims Tribunal below the claimant Shylaja C. Murthy examined herself as PW 1, besides, she examined four witnesses. Claimants marked Exhs. P1 to P16. The respondents examined two witnesses and they also marked Exhs. R1 to R2, while, salary certificate, Exh. C1, has been marked as a court exhibit. On a consideration of oral and documentary evidence, the Tribunal below recorded a finding that the accident has been caused by the rash and negligent driving of Ambassador car by its driver owned by Canara Bank, respondent No. 3. Tribunal below held that the lorry driver was not negligent. As regards the quantum of compensation, Claims Tribunal awarded Rs. 60,000 to Shylaja Murthy and awarded Rs. 1,38,000 as compensation under various heads to all the claimants to be apportioned at the rate mentioned in the award by its common award and decree dated 7.4.1994. Being aggrieved, National Insurance Co. Ltd. which is the insurer of Ambassador car has preferred C.M.A. Nos. 807 and 808 of 1995 while the legal heirs of the deceased Chidambara Murthy preferred C.M.A. No. 1088 of 1994 insofar as the lorry driver and owner have been exonerated and for disallowing substantial portion of their claim, C.M.A. No. 1089 of 1994 has been preferred by Shylaja C. Murthy challenging the finding recorded by the Tribunal below holding that the car driver alone was negligent and not the lorry driver as well as claiming enhanced compensation.

19. The common points that arise for consideration in this batch of appeals are:

(1) Whether the accident was caused due to the rash and negligent driving of Ambassador car bearing the registration No. TAA 3618?

(2) Whether the accident was caused by the rash and negligent driving of the lorry bearing the registration No. TAN 3274?

- (3) Whether the accident was caused by the composite negligence on the part of the drivers of the two vehicles, namely, Ambassador car and lorry?
- (4) Whether the exoneration of the lorry driver and the insurer of the lorry are liable to be interfered or sustained?
- (5) Whether Selvaraj, driver of Ambassador car was engaged by the bank or by the deceased Chidambara Murthy?
- (6) Whether Shylaja C. Murthy could maintain a claim petition against owner and insurer of Ambassador car?
- (7) What is the quantum of compensation which Shylaja C. Murthy is entitled to?
- (8) Whether Shylaja C. Murthy, the claimant in M.C.O.P. No. 132 of 1990 (C.M.A. No. 1089 of 1995) is entitled to enhancement of compensation? If so, how much and who is liable to pay the compensation?
- (9) What is the quantum of compensation which the legal heirs of the deceased Chidambara Murthy are entitled to claim?
- (10) Whether the claimants, namely, legal heirs of the deceased Chidambara Murthy are entitled to enhancement of compensation? If so, how much?
- (11) To what relief, if any, in C.M.A. Nos. 807 and 808 of 1994, 1088 and 1089 of 1995?

20. Before taking up the point Nos. 1, 2, 3 and 4, it is essential to consider point No. 5. Selvaraj was the driver of Ambassador car and he was admittedly driving the car belonging to Canara Bank. The said Ambassador car owned by Canara Bank was placed at the disposal of the deceased Chidambara Murthy, the then Divisional Manager, Madurai, for being used as staff car, had started from Madurai in the early morning, proceeded to Bangalore where the deceased attended his office work and he was returning back to Madurai with his daughter at the time, when the accident took place. It is in evidence that Chidambara Murthy is entitled to use the car for his official duty. The staff car has been provided by the bank and it is an official car which Chidambara Murthy was entitled to use for his official work or purposes as he was a Divisional Manager. When the bank provided the car to the deceased Chidambara Murthy commensurate with his status as Divisional Manager, who was managing the Madurai Division, it follows automatically that it is Canara Bank which not only provided the car but also provided for the fuel and driver. However, there is no material to show that the deceased driver Selvaraj was appointed by the bank. There is nothing to show that he was in the service of the bank. But that will not make any difference. As a Divisional Manager the deceased was not expected to drive and he has to necessarily engage the service of a driver who has to be paid by the bank only. His services may be temporary, or casual, or monthly or on contract basis. But, it is the bank which has to pay for the driver of the staff car. It is true that no appointment order has been issued in favour of the deceased

Selvaraj, nor material has been produced before the court to substantiate that the driver was appointed by the bank. The deceased Chidambara Murthy being a Divisional Manager has used the car only for his official purpose as has been deposed by the claimants' witness as well as bank officer examined on behalf of the bank. This is clear from the notices exchanged and, therefore, assuming that the deceased Selvaraj was engaged by the deceased Chidambara Murthy, it would only mean that the driver has been engaged to drive the vehicle of Canara Bank. Selvaraj was the driver of the bank's official Ambassador car at the time of accident. It is not as if the car is owned by Chidambara Murthy and he has engaged the driver of his car. Admittedly, the car stands registered in the name of the bank and insured by the bank with National Insurance Co. Ltd.

21. It is not in dispute that the deceased Selvaraj was holding a valid driving licence and no dispute at all has been raised by anyone. When Chidambara Murthy goes on an official trip to the head office from his divisional office to Bangalore and used the official car, the person who drives the car also will be an official driver and he is authorised to drive, besides he is holding a valid licence. Even assuming that driver Selvaraj has driven the vehicle on the directions of the deceased Chidambara Murthy, the vehicle has been used for the official purpose and, therefore, it is an engagement by the bank through Chidambara Murthy.

22. It is true that Chidambara Murthy is not alive to depose, nor the driver Selvaraj is alive to speak under what terms he was engaged. But, PW 1 has deposed that Selvaraj was driving the vehicle and her father was not having any vehicle and Selvaraj was engaged to drive the staff car belonging to Canara Bank and, therefore, Selvaraj is not the personal driver of her father. Being a bank staff car, the bank should have engaged the driver for regular use and, therefore, it follows that being a bank staff car it should have been driven by the official driver only. Therefore, it follows that the deceased Selvaraj was engaged by the bank to drive the bank's official car for the official use of the Divisional Manager late Chidambara Murthy and the plea that Selvaraj was the personal driver of Chidambara Murthy cannot be sustained. It is nobody's case that Chidambara Murthy was owning any other car and that he has used his personal driver to drive the official car. On facts it could have been and it is also so that Selvaraj was engaged by bank to drive the said Ambassador car, a staff car used by the bank's Divisional Manager for his official trip. Therefore point No. 5 is answered against the appellant in C.M.A. Nos. 807 and 808 of 1995 and in favour of the respondents in these appeals.

23. Taking up the main points, Shylaja C. Murthy, PW 1, in her evidence deposed that around 9 p.m., near Vedachandur, the car was driven at a high speed, the lorry which was coming from the opposite direction was also driven at a high speed and they collided with each other. According to PW 1, both the lorry driver as well as the car driver are the cause for the accident. In the cross-examination by the respondent No. 1's counsel, she has deposed that the vehicle was driven at a high speed and she has denied the suggestion that she was asleep at the

time of accident. She had further deposed that the driver was alert and not tired. She had denied that the accident has been solely caused by the negligence of the car driver. It has been elicited from her that the negligence of both the drivers has resulted in the fatal accident.

24. In the cross-examination by the respondent No. 3, PW 1, had deposed that the car was on the left side of the road and further deposed that the car driver as well as the lorry driver drove the vehicle at a high speed.

25. One Palanisamy was examined as PW 5 who has claimed his residence near Thadikombu, near the place of accident and he was thorough with the locality. It is his deposition that he was driving the lorry No. TTL 9541 loaded with sand and coming from Vedachandur and proceeding towards Dindigul. He saw Ambassador car proceeding ahead of his lorry and the car was keeping its left side. It is his deposition that the lorry No. TAN 3274 coming from the opposite direction dashed against Ambassador car and the car was pushed to the extreme end of the road. PW 5 deposed that he is an eyewitness and he has seen the accident. It is he who had taken the deceased, car driver and driver of the lorry from the place of accident to the hospital. He has not been cross-examined by the respondents, excepting respondent No. 2. The evidence of PW 5, who is an eyewitness, remains unchallenged. There is no other witness to the accident excepting PW 1 and PW 5. There is no reason to discredit their evidence and in fact their evidence remain unchallenged.

26. Yet, the Tribunal below has chosen to doubt the evidence of PW 5 and ignored PW 5 on the ground that there is variation between the version given by the deceased car driver in his last statement and PW 5. The said statement, it is claimed has been recorded by police. But none connected with it have been examined. It has to be pointed out that PW 5 has not been cross-examined and there is no suggestion that he was not present at all at the scene of occurrence. The Tribunal below had placed reliance upon the statement of the driver Selvaraj recorded by the police, Exh. P1. In his statement the car driver stated that the lorry was driven rashly and it is the lorry which dashed against Ambassador car and pushed Ambassador car to extreme end of the road. The Tribunal below proceeded to draw adverse inference merely because the driver of Ambassador car has driven the vehicle up to Bangalore and was returning back on the same day and, therefore, the driver of Ambassador car has been negligent due to strain.

27. The Claims Tribunal while referring to Exh. B1, with a lot of skepticism, drew adverse inference as if it is Ambassador car which came and hit against the lorry and turned towards north while it should have actually proceeded towards south. It is true that Ambassador car was coming from north to south. While the lorry No. TAN 3274 was coming from south to north. Exh. B1 would show where the vehicles were lying after the accident and they have not chosen to specify the place of impact. If we look up at Exh. B 1, Ambassador car which was coming from north to south should be on the left side, i.e., on the eastern side of the

road normally while the lorry proceeding from the south to north should be on the western side of the north south road. But in this case, as seen from the sketch, both the vehicles were on the western side of the road. The lorry was facing towards north, Ambassador car also was lying there and facing towards north. This would show that the lorry which came from the opposite direction obviously on the eastern side of the road had hit Ambassador car which was keeping to its left side pushed it to the far western end of the road and this lead to Ambassador car being drawn and dragged and this has lead to its facing towards north. This would show the impact was very heavy on Ambassador car which was coming from north to south and turned towards north. Had the lorry been keeping its left side, i.e., western side of the north south road, then there is no possibility at all for Ambassador car hitting the lorry on the western side of the road. Obviously it is the lorry which went to its right hand side of the north south road hit and the collision had taken place on the right hand side of the north south road and as a result of the impact Ambassador car being very small compared to the heavy lorry and due to the impact of a high speed, it pushed and dragged Ambassador car to the western side of the north south road and as a result, the car was lying facing north. For the purpose of argument if Ambassador car had hit against the lorry, then no question of Ambassador car which was proceeding toward south turning back to north. This would show the velocity and speed with which the impact had occurred and as a result of the heavy impact by the lorry, Ambassador car was not only pushed to the western side of the road from the east to the western side of the road, but it had been dragged to a distance and it also turned towards north as a result of the impact. Thus, even if Ambassador car had been driven very fast and hit against the lorry coming from the opposite direction the collision would have been either on the middle of the road or on the eastern side of the road, but definitely not on the western side of the north south road. This would show that the impact has taken place far south than the place where the vehicles were lying and Ambassador car was dashed by the heavy lorry and pushed it and it has turned towards north. This is because of the impact.

28. The Claims Tribunal below failed to appreciate the evidence of an independent witness, PW 5, but had chosen to doubt the evidence of PW 5. It is PW 5 who had taken the deceased as well as the driver to the hospital and admitted as he happened to be on the spot at the time of accident and he had seen the impact. PW 5 was not even cross-examined on this aspect. It is also the evidence that Ambassador car was at a fast speed as well. But the driver of Ambassador car alone cannot be held to be negligent on that score. The lorry was also driven rashly as has been deposed by PW 5 and he had seen the impact. PW 1 has also deposed that both the vehicles collided. Therefore if Ambassador car had been driven very carefully and was keeping it to its left side, i.e., to the left side of the north south then Ambassador car would not be lying facing north, but facing south only and the impact would be on the left side of Ambassador car. But here it is not so. Therefore the driver of Ambassador car

had also driven the vehicle at a fast speed. The two vehicles, namely, the lorry and Ambassador car were driven rashly and, therefore, it is clear that it is composite negligence of the drivers of both the vehicles which caused the accident.

29. To decide as to the percentage of negligence on the part of the two drivers, namely, Ambassador car and the lorry driver the evidence of PW 1 and PW 5 would show that it is the lorry which came and hit against Ambassador car. Lorry being a heavy vehicle with load had dashed against Ambassador car with heavy impact pushed the car towards the western side of the north south road and the impact is so heavy that Ambassador car turned to its opposite direction as against the normal direction which it was proceeding, namely, towards south. Ambassador car was also driven at a high speed, but for which the driver could have avoided the accident.

30. Taking up the composite negligence aspect, this Court as seen from Exh. B 1, as well as the evidence of PW 5 and PW 1 and there being no evidence to the contra, fix the negligence of Ambassador car driver at 25 per cent and that of the lorry driver at 75 per cent. It is the composite negligence on the part of the drivers of the two vehicles which caused the accident.

31. We disagree with the findings of the Tribunal below holding that the driver of Ambassador car was solely negligent and not the lorry driver as we find that the Tribunal below has not appreciated the evidence of PW 5 and had failed to consider the evidence in a proper perspective. The finding of the Claims Tribunal has to be necessarily reversed.

32. In the circumstances on point Nos. 1 and 2, this Court holds that the accident has been caused by the rash and composite negligence on the part of Ambassador car bearing registration No. TAA 3618 as well as the lorry bearing registration No. TAN 3274. On point No. 3 this Court holds that it is the composite negligence on the part of the drivers of the two vehicles and the negligence of Ambassador car is fixed at 25 per cent and that of the lorry is fixed at 75 per cent.

33. On point No. 4, this Court holds that since the lorry was driven rashly and negligently and has caused the accident as discussed above the owner of the lorry as well as insurer of the lorry are liable to pay the proportionate compensation and the contrary view taken by the Tribunal below is set aside as one based on surmises and runs counter to the evidence available on record.

34. Taking up point No. 6, Shylaja C. Murthy, the claimant in M.C.O.P. No. 132 of 1990 has accompanied her father. Ambassador car is not a taxi but it is a staff car to be used by the deceased Chidambara Murthy. The evidence of PW 1 would show that Chidambara Murthy had used the car for his official trip and was returning from Bangalore to Madurai. During such return trip, Shylaja C. Murthy accompanied her father. It cannot be stated that Shylaja C. Murthy is an unauthorised passenger, but she is a traveller gratis. Being a gratuitous traveller

she is not entitled to maintain a claim against the owner of Ambassador car as she is not entitled to travel in the car as a matter of right. The car was not owned by her father Chidambara Murthy. But it was owned by the bank. It is true that her father has taken her along with him to Madurai and the accident had taken place. It may be that her travel may not be unauthorised or illegal. But she is only a gratuitous passenger so far as the bank is concerned. Therefore she cannot maintain a claim against the owner of Ambassador car, namely, Canara Bank. But she could very well maintain an action against the lorry driver, owner of the lorry and consequently against the insurer of the lorry.

35. As regards the claim of claimants, namely, Sujaya C. Murthy and her daughter and son and mother of Chidambara Murthy, the deceased who is entitled to use the car has used the car for his official trip to Madurai to Bangalore and back. It is not an unauthorised trip or an illegal trip. The driver has been engaged to use staff car and the bank cannot disclaim that the driver has been engaged by Chidambara Murthy as his own. As already pointed out, the driver was engaged to drive the bank car and as a Divisional Manager, the deceased could always engage a driver for his staff car. On point No. 5 itself, we have concluded that the driver was in the employment of the bank while driving the car and, therefore, for the negligence on the part of Ambassador car driver also the legal heirs of the deceased Chidambara Murthy could very well maintain an action for compensation against his negligence. We hold that all the respondents are liable to pay compensation to claimants in M.C.O.P. No. 131 of 1990 who are the dependants of the deceased Chidambara Murthy. Canara Bank being the owner of Ambassador car, National Insurance Co. Ltd., the insurer of Ambassador car, Kuppusamy, the owner of the lorry and United India Insurance Co. Ltd., the insurer of the lorry are liable to pay the compensation, besides, the lorry driver. So also with respect to the claim of Shylaja C. Murthy, the driver of the lorry, who is a third party to the car owned by Kuppusamy, insured with United India insurance Co. Ltd. and she could very well maintain a claim petition for the negligence on the part of the lorry driver.

36. Next we have to consider the quantum of compensation which the claimants are entitled to in both the M.C.O.Ps.

37. In M.C.O.P. No. 131 of 1990, the dependants of Chidambara Murthy are the claimants. Tribunal below in all awarded Rs. 1,38,000 to the four claimants. Not being satisfied with the quantum of compensation awarded in M.C.O.P. No. 131 of 1990, the claimants Sujaya C. Murthy and the other three dependants of Chidambara Murthy have preferred C.M.A. No. 1088 of 1994. While, Shylaja C. Murthy has preferred C.M.A. No. 1089 of 1994.

38. Taking up C.M.A. No. 1088 of 1994, the deceased Chidambara Murthy was the Divisional Manager in Canara Bank at Madurai. He was 53 years at the time of the accident. He had seven more years of service which he would have normally continued but for the accident. The deceased, it is in evidence would have also earned further promotion within the next seven years. CW 4 has

deposed about the salary which the deceased might have earned but for his demise during the next seven years period and also deposed that he would have earned further promotions. Deceased was entitled to free quarters, free transportation. The deceased had the prospects of further promotions. If we look up the evidence of Senior Manager in Canara Bank Central Circle Office, PW 4, he has deposed that the bank has issued Exh. A4. Exh. A16 is the calculation memo which the bank has issued.

39. It is the evidence of PW 4 that according to the then existing service rules and pay scales Exh. A16 has been issued to the claimants. Deceased was drawing a salary of Rs. 7,248 per month. PW 4 had denied the suggestion made to him during the cross-examination. Claims Tribunal below had not placed reliance on the said exhibits for no obvious reason. We are not satisfied with the reasons assigned by the Tribunal below for rejecting Exhs. A4 and A16. Merely because the service register or salary register has not been produced, it cannot be taken that the deceased might not have earned a particular sum. PW 4 is a responsible officer in the bank and there is no reason for him to depose falsely. Exh. A16 contains service rules. So also calculation sheet of the salary particulars of the deceased. According to the said calculation, the deceased would have earned Rs. 8,83,648.68 as per the then existing scales in the course of time as DGM. The deceased also would have earned gratuity and availed other facilities as well. We have no reason to reject Exh. A16 and the evidence of PW 4 in this respect deserves to be accepted. Exh. A4 is the salary certificate issued by the Senior Manager of Canara Bank which would show that the deceased was drawing a salary of Rs. 7,248 per month including allowances, besides he is entitled to enjoy the perquisites of furnished quarters for the value of Rs. 1,870 per month, free car allowance of Rs. 630 per month and medical care at Rs. 1,000 per annum. Therefore, for free quarters, free car and free medical care which the deceased is entitled to if he continued in service, as already pointed out he would have earned Rs. 6,09,000. Therefore, in all he would have earned Rs. 6,09,000 during the said period of seven years. Had he continued in service of the bank, he would have earned promotion and there is prospect of earning more. Apart from that he will get gratuity for the service. That apart, even after retirement also he could usefully engage himself as a financial consultant with the rich experience he had gained in the managerial level in Canara Bank. There is no reason at all to doubt Exhs. A4 and A16. But the Tribunal has chosen to brush it aside, as if the bank officer, PW 4 has not produced the service register or other registers, which is not relevant.

40. The Claims Tribunal proceeded as if Chidambara Murthy was drawing a salary of Rs. 3,269.82 only. When Rs. 8,369 is the basic pay which Chidambara Murthy was drawing as seen from salary certificate, Exh. A16 and the Tribunal has misread the certificate. The evidence of PW 4 deserves to be accepted and there is no justification at all to disbelieve the Senior Manager in Canara Bank. We are of the considered view that the deceased was earning more than Rs. 7,250 per month and he had a prospect of earning more. The conclusion of the Tribunal

that he was earning only Rs. 3,269.82 is not correct and it cannot be sustained. It is a misreading of Exh. A4 as well as Exh. A16. Evidence of Senior Manager of the bank, PW 4, deserves to be accepted and there is no reason at all to doubt.

41. Out of the salary so earned according to the Tribunal the deceased would have contributed 2/3rd of his total earnings to his family. Deceased had left his wife, one daughter, one son, besides his aged mother. The deceased was able to educate his daughter and son up to a postgraduate level. This would show that the deceased has been spending 2/3rd of his salary on his family members. The deceased would have spent around Rs. 2,250 for his personal expenditure and remaining Rs. 5,000 he would have contributed to his family. As such he would have contributed at least Rs. 60,000 every year and in the course of seven years he would have contributed not less than Rs. 4,20,000 for the marriage of his daughter, for the education of his son, etc. But the Tribunal has proceeded as if annual contribution was Rs. 27,600 which is just half of what the deceased was contributing. In our considered view, deceased would have contributed Rs. 4,20,000 out of his income. That the deceased would have earned gratuity and arranged for his daughter's marriage. Consequent to the death of the deceased the family has lost the only breadwinner of the family and, therefore, there was loss of income. We hold that all the claimants in M.C.O.P. No. 131 of 1990 are jointly entitled to claim Rs. 4,20,000 towards loss of income.

42. Apart from the loss of earnings, towards conventional damages no amount has been awarded by the Claims Tribunal below. The claimant No. 1, is the widow of the deceased. The claimant Nos. 2 and 3 are respectively daughter and son and claimant No. 4 is the mother of the deceased. Towards conventional damages we fix Rs. 30,000 in all. Towards funeral expenses of the deceased we award Rs. 2,500. Thus, in all the claimants in M.C.O.P. No. 131 of 1990 are entitled for payment of Rs. 4,52,500 and the same is rounded off to Rs. 4,50,000.

43. We further hold that out of the sum of Rs. 4,50,000, the owner of Ambassador car, namely, Canara Bank and insurer of Ambassador car are liable to pay 25 per cent and the balance of 75 per cent shall be paid by the owner of the lorry, namely, Kuppusamy and the insurer of the lorry, namely, United India Insurance Co. Ltd. with 9 per cent interest from the date of claim petition.

44. We apportion the compensation among the claimants in M.C.O.P. No. 131 of 1990 at Rs. 2,00,000 to widow of the deceased, claimant No. 1; Rs. 50,000 to the mother of the deceased, claimant No. 4 and Rs. 1,00,000 each to claimant Nos. 2 and 3. Since more than 14 years have rolled from the date of accident and the death, we are not directing the amount to be invested. The respondents shall pay the amounts as directed after giving credit to the amount, if any, already paid or deposited by them.

45. As regards the claim of Shylaja C. Murthy, who is the claimant in M.C.O.P. No. 132 of 1990, Tribunal below awarded Rs. 60,000 in all. Being aggrieved by the said award, the claimant has preferred C.M.A. No. 1089 of 1994. We have to

consider as to whether the claimant is entitled to enhancement of the compensation or compensation already awarded by the Tribunal is just and fair. The Tribunal in this respect has discussed the evidence in para 10 of its judgment. The Tribunal awarded Rs. 25,000 towards pain and suffering, Rs. 10,000 towards medical expenses, Rs. 25,000 towards permanent disability and loss of earning capacity and in all aggregating to Rs. 60,000.

46. The evidence of Shylaja C. Murthy, PW 1 and the doctor who had examined her deserves to be considered. PW 1 has deposed that she had sustained a fracture on her left thigh, injury on her head, injury on her left leg, injury throughout her body. She was transported to Dindigul Hospital from where she was transported to Senthil Nursing Home at Madurai. She was an in-patient at the nursing home for 28 days. She underwent an operation where a metal rod was fixed on her left leg. After six months, the rod was removed and for a period of 6 months she was totally immobilised. Even after removing metal strip she is not able to move. She was bedridden for eight months. It is her deposition that she is not able to walk normally, she is not able to climb steps, staircase, she is not able to sit crossing her legs. There is a scar on her leg and a scar on her face. As a result of the accident she could not continue her Master's degree in Hospital Management which she was undergoing during the year and she had to discontinue her studies. She had claimed Rs. 20,000 for her pain and suffering. Exh. A6 is the medical bill, Exh. A5 is the case-sheet maintained by Senthil Nursing Home, Exh. A7 is the receipt issued by doctor, Exh. A8 is the receipt for ambulance transportation charges, Exh. A9 is the medical bill, Exh. A-10 is the bill issued by nursing home and Exh. All is the bill to show the purchase of medicines. She had withstood the cross-examination with respect to the operation undergone by her, the expenses incurred by her. There was not even a cross-examination with respect to Exhs. A5, A6, A7, A8, A9 and A10.

47. PW 3, Dr. A. Devadoss, an Orthopaedic Surgeon was examined who had treated the claimant Shylaja C. Murthy. PW 3 has deposed that he has performed the operation on 14.8.1989 and claimant was discharged on 10.9.1989. Thereafter she was being treated as an outpatient. After one year, PW 3 had removed the metal strip fixed on the leg. The length of the leg has been shortened by 1 cm. PW 3 deposed that the claimant has suffered 15 per cent permanent disability. Exhs. P3 and P14 are the case-sheet and Exh. P15 is the disability certificate. PW 3 in the cross-examination deposed that the claimant has to limp and she cannot walk normally. PW 3 has denied the suggestion and deposed that permanent disability suffered by the claimant is 15 per cent. To a specific question from the court, PW 3 has deposed that the thigh bone has not joined the right direction, but there is a slight variation or difference in the ankle. There is no doubt that the disability suffered by the claimant is 15 per cent and it is a permanent disability. Exh. A14 is the X-ray which would show the fracture.

48. Senthil Nursing Home has issued a bill to the claimant and Exh. A10 series would show that the said hospital collected Rs. 3,010. Exh. A9 would show that

the claimant has paid Rs. 530 towards X-ray charges. Exh. A8 would show that the claimant has paid Rs. 555 towards ambulance charges for transportation to Rajaji Hospital, Rs. 3,675 to Dr. Devadoss and Dr. P. Sivaprakasam towards their fees, Rs. 7,615 towards hospital charges to Senthil Nursing Home, in all aggregating to Rs. 15,385. Apart from this, the claimant has also purchased medicines for Rs. 192, Rs. 2,000 under Exh. All. The Tribunal has awarded only Rs. 10,000 for medical expenses. We award Rs. 25,000 under this head. Apart from that she would have spent at least Rs. 3,000 on an attendant every month and for a period of six months she would have spent Rs. 18,000 to attend her. In all we award Rs. 30,000 for the hospitalisation and for the treatment she had undergone.

49. The Tribunal awarded Rs. 25,000 towards pain and suffering. The claimant has undergone two major surgeries and she was hospitalised for nearly a month and bedridden for nearly six months. For this, we fix a sum of Rs. 40,000 for pain and suffering as the sum of Rs. 25,000 awarded is too low. That apart she had lost her academic career.

50. The Tribunal awarded Rs. 25,000 for the permanent disability. In our considered view, taking into consideration the age of the claimant who was just 20 years on the date of accident and the 15 per cent permanent disability as assessed by Dr. A. Devadoss, with which she has to live throughout her life, we award Rs. 75,000 as she has to limp throughout her life and she may not be able to climb the staircase or steps. She is unable to sit crossing her legs. As a result of the accident, she had a scar on the left thigh and on her face also. Her marital prospect is also affected. She has also suffered a set back in her educational career and a decent employment. Thus we award Rs. 85,000 for the permanent disability.

51. In all, we enhance the compensation to Rs. 1,50,000 to the claimant Shylaja C. Murthy which is a very reasonable sum taking into consideration her age, disability which she has to suffer throughout her life. Further she had suffered a set back in her educational career resulting in set back of her getting decent employment and getting married. Out of the sum of Rs. 1,50,000, we direct Kuppusamy, respondent No. 1, the owner of the lorry and respondent No. 2, namely, United India Insurance Co. Ltd. to pay Rs. 1,12,500, being 75 per cent of compensation, to Shylaja C. Murthy, the claimant in M.C.O.P. No. 132 of 1990, with usual interest at 9 per cent from the date of petition.

52. In the result, C.M.A. No. 1088 of 1994 preferred by Sujaya C. Murthy and others is allowed holding that the respondents are liable to pay Rs. 4,50,000 with usual interest at 9 per cent per annum from the date of petition till date of payment. Out of the said sum, 75 per cent shall be paid by the owner of the lorry, namely, Kuppusamy and insurer of the lorry, namely, United India Insurance Co. Ltd. and remaining 25 per cent shall be paid by owner of Ambassador car, namely, Canara Bank and the insurer of Ambassador car, namely, National Insurance Co. Ltd.

53. In the result C.M.A. No. 1089 of 1994 is also allowed directing Kuppusamy, respondent No. 1, the owner of the lorry and the respondent No. 2, namely, United India Insurance Co. Ltd. to pay Rs. 1,12,500 being 75 per cent of compensation, to Shylaja C. Murthy, claimant in M.C.O.P. No. 132 of 1990, with interest at 9 per cent from the date of petition till date of payment, less the amount, if any, already paid.

54. Consequently, C.M.A. Nos. 807 and 808 of 1995 preferred by National Insurance Co. Ltd. are dismissed.

55. The parties shall bear their respective costs in these appeals.