



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM :

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) Nos. 621 and 622 of 2017

and

C.M.P. (MD) Nos. 6482 and 6483 of 2017

C.M.A. (MD) No. 621 of 2017

The Divisional Manager,
Oriental Insurance Company Ltd.,
T.P.HUB, K.J.R., Complex, 16,
North Veli Veethi,
Madurai - 625 001
(Policy No.454900/31/2012/4939)

... Appellant in both CMAs

Vs.

1.S.Shanmugam

...1st respondent in
C.M.A. (MD) No.621 of 2017

2.Rajavel

...1st respondent in
C.M.A. (MD) No.622 of 2017

3.Subramaninan Motor Private Ltd.,
125, Mannikkam Nagar,
Medical College Road,
Tanjore.

... 2nd Respondent in both CMAs

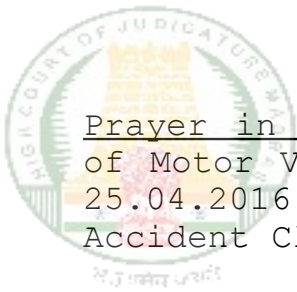
4.S.Ravi

... 3rd Respondent in both CMAs

5.The Divisional Manager,
Reliance General Insurance Company Ltd.,
P.L.A. Kanagu Towers,
IInd Floor 15-K,
Thillai Nagar 11th Cross,
Trichy-620 018.
(Policy No.1206712311000067)

... 4th Respondent in both CMAs

Prayer in C.M.A. (MD) Nos. 621 of 2017: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.04.2016 passed in M.C.O.P.No.1 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Ramanathapuram.



Prayer in C.M.A. (MD) Nos. 622 of 2017: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.04.2016 passed in M.C.O.P.No.9 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Ramanathapuram.

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For Appellant	: Mr.C.Ramachandran
For R-1	: Mr.B.S.Meltiue
For R-2	: No Appearance
For R-4	: Mr.V.Sakthivel

(in both CMAs)

COMMON JUDGMENT

These appeals has been filed by Oriental Insurance Company Limited, challenging the impugned award both on the ground of the liability as well as quantum. A police vehicle was proceeding from Ramesvaram to Ramnad. The Fiat Car belonging to second respondent herein was coming from opposite direction. The Swift Dzire car belonging to the third respondent herein came from the branch road. Noting that the car owned by the third respondent herein was coming in a rash and negligent manner the police vehicle stopped immediately. In order to avoid hitting the vehicle belonging to the third respondent herein, the Fiat Car swerved on the right side and hit the stationary police vehicle. FIR was registered in this regard and the final report was also filed against both the drivers. As regards the third respondent herein, he was charged under Section 279 IPC. Since, the Fiat car belonging to the second respondent while trying to avoid hitting the Swift Car dashed against the police vehicle and caused injury, the driver of the Fiat car was charged under Section 279 and 338 IPC.

2. A mere look at the averments in the claim petition as well as the evidence adduced by the injured persons would show that the drivers of the Fiat Car and Swift Dzire Car were equally at fault and negligent. But the Tribunal chose fastened the negligence only on the driver of the Fiat Car. This is seriously questioned by the learned counsel for the appellant insurance company which had insured the Fiat Car.

3. Heard the learned counsel on either side.

4. It is seen that the accident in question would not have been occurred, but for the rash and negligent driving of the Swift car by the third respondent herein.

5. This conclusion is reinforced by the fact that the third respondent was also charge sheeted by the police after investigation. The claim petition as well as the evidence of the injured claimant would also clearly point finger on the third respondent herein. Therefore, this Court is of the view that the tribunal erred in exonerating the third and fourth respondent completely and fastened the liability only on the appellant herein.



6. Considering the facts and circumstances, this Court is of the view that negligence of 75% can be fastened on the second respondent and 25% on the third respondent. Therefore the liability of the appellant herein is reduced from 100% to 75%. Contributory negligence at 25% is fixed on the third respondent.

7. Coming to the quantum, it is seen that the claimant Shanmugam was working as a Inspector of Police at the time of the accident. He was having the benefit of insurance coverage. It is seen from the evidence on record that sum of Rs.1,00,000/- was already covered by the Star Health Insurance Company. Therefore, the award amount will have to be reduced from Rs.5,00,000/- to Rs.4,00,000/-. The learned counsel appearing for the appellant contended that a sum of Rs.50,000/- was awarded toward the loss or shortening of life period. Even though, I accept the contention of the learned counsel for the appellant that the damages under this head could not be awarded, I am of the view that this can be easily adjusted against the award of compensation under the head "pain and sufferings". Instead of Rs.50,000/-, Rs.1,00,000/- can be awarded for pain and sufferings. Therefore, the compensation awarded to Shanmugam claims in M.C.O.P.No.1 of 2013 is reduced from Rs.5,00,000/- to Rs.4,00,000/-.

8. As regards the compensation awarded to Rajavel, Head Constable claim in M.C.O.P.No.9 of 2013, it is seen that the compensation awarded to him is entirely justified. He has not availed any reimbursement from the the Star Health Insurance Company. Therefore, no interference as regards quantum is called for in respect of award in M.C.O.P.No.9 of 2013 on the file of the Motor Accident Claims Tribunal [Chief Judicial Magistrate], Ramanathapuram.

9. In C.M.A.(MD).No.621 of 2017, the award dated 25.04.2016 made in M.C.O.P.No.1 of 2013 on the file of the Motor Accident Claims Tribunal [Chief Judicial Magistrate], Ramanathapuram is modified. The compensation payable is reduced from Rs.5,00,000/- to Rs.4,00,000/-. The appellant/Insurance company is directed to bear 75% of the liability and fourth respondent as insurer of the third respondent is directed to bear 25% of the liability. The appellant/Insurance company and the fourth respondent/Insurance company are directed to pay the entire amount as apportioned above with interest at 7.5% per annum and costs from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited by them, if any. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal.

10. As regards CMA(MD).No.622 of 2017, the award dated 25.04.2016, in M.C.O.P.No.9 of 2013 is modified. There is no change as regards quantum. The appellant is directed to bear 75% liability. The fourth respondent, as the insurer of the third respondent, shall bear 25% of liability.



11. The appellant/Insurance company and the fourth respondent/Insurance company are directed to pay the entire amount as apportioned above with interest at 7.5% per annum and costs from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal.

12. In the result, both CMA(MD).No.621 of 2017 and C.M.A. (MD).No.622 of 2017 are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal
Ramanathapuram

2.The Record Keeper, Vernacular Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+2ccs to Mr.C.Ramachandran, Advocate, SR.Nos.88796 and 88797
+2ccs to M/s.V.Sakthivel, Advocate, SR.Nos.88448 and 88449
+2ccs to Mr.B.S.Meltiue, Advocate, SR.No.88319

kmi

RL/10C/4P/JC/SAR1/5/4/2018

C.M.A. (MD) Nos.621 and
622 of 2017