

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2018

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.Nos.825, 826 and 827 of 2007
M.P.Nos.2, 2, 2 of 2007

The Branch Manager,
United India Insurance Co. Ltd.,
Thirunagar,
Madurai.

...Appellant in all CMAs/2nd Respondent

/Versus/

1. Sathya ...1st Respondent/ Petitioner

2. A.Samuel Selvyn Anbiah ...2nd Respondent/ 1st Respondent

3. N.Babu

4. The Branch Manager,
National Insurance Co. Ltd.,
Attur Town, Salem District. ...Respondents in
CMA No.825 of 2007

(R3 and R4 are impleaded as party
respondents vide court order dated
25.09.2018 made in CMP Nos.1478
to 1480 of 2007 in CMA Nos.825 to
827 of 2007.

1.Girija ...1st Respondent/Petitioner

2. A.Samuel Selvyn Anbiah ...2nd Respondent/ 1st Respondent

3. N.Babu

4. The Branch Manager,
National Insurance Co. Ltd.,
Attur Town, Salem District. ...Respondents in
CMA No.826 of 2007

(R3 and R4 are impleaded as party
respondents vide court order dated
25.09.2018 made in CMP Nos.1478
to 1480 of 2007 in CMA Nos.825 to
827 of 2007.

1.Murugan

...1st Respondent/Petitioner

2.A.Samuel Selvyn Anbiah

..2nd Respondent/ 1st Respondent

3. N.Babu

4. The Branch Manager,
National Insurance Co. Ltd.,
Attur Town, Salem District.

...Respondents in
CMA No.826 of 2007

(R3 and R4 are impleaded as party
respondents vide court order dated
25.09.2018 made in CMP Nos.1478
to 1480 of 2007 in CMA Nos.825 to
827 of 2007.

Prayer in CMA No.825 of 2007: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act 1988, against
the Decree and award made in M.C.O.P No.493 of 2003 dated
03.11.2005 on the file of Motor Accidents Claims Tribunal (Sub
Court), Krishnagiri.

Prayer in CMA No.826 of 2007 : Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act 1988, against
the Decree and award made in M.C.O.P No.494 of 2003 dated
03.11.2005 on the file of Motor Accidents Claims Tribunal (Sub
Court), Krishnagiri.

Prayer in CMA No.827 of 2007 : Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act 1988, against
the Decree and award made in M.C.O.P No.1304 of 2003 dated
03.11.2005 on the file of Motor Accidents Claims Tribunal (Sub
Court), Krishnagiri.

For Appellant : Mr.T.Ravichandran
in all CMAs.

For 1st Respondent: Mr.M.Selvam
in all CMAs.

For 4th Respondent: Mrs.N.B.Surekha
in all CMAs.

For R2 and R3 : ---

C O M M O N J U D G M E N T

These three Criminal Miscellaneous Appeals have been
preferred against the judgment and award in M.C.O.P.Nos.493 of
2003, 494 of 2003 and 1304 of 2003 dated 03.11.2005 on the file

of Motor Accidents Claims Tribunal (Sub Court), Krishnagiri.

2. The brief facts of the case leading to the claim application are as follows:

On 04.08.2002, when the driver of the Tourist bus bearing Registration No. TN 32 5499 was proceeding towards Trichy at 9.30 a.m, near Aasanoor, 14 kilo metres from Ulundurpet P.S, the Lorry belongs to the 1st respondent bearing Registration No.TDM 4001 was driven in a rash and negligent manner and came in the wrong side and dashed the right side portion of the bus and proceeded further 50 feet and then only stopped there. The petitioners in MCOP No.493 of 2003 and 494 of 2003 who travelled in the said bus are the passengers who got grievous multiple crush injuries in their right hand and they were given first aid and then admitted in Jipmer Hospital, Pondicherry and inspite of treatment, both the petitioners got their hand amputated and there was a permanent disability caused to them because of the accident. The petitioner in MCOP No.1304 of 2003 who travelled in the said bus got grievous injuries and he was immediately taken to Government Hospital, Ulundurpet Hospital and thereafter, referred to Government Head Quarters Hospital, Dharmapuri for further treatment and thereafter, he was given further treatment in Kamala Private Nursing Home, Dharmapuri and his distal end of proximal phalanx of right index finger got fractured. All the three petitioners have also stated that the 1st respondent driver is the person responsible for the accident which resulted in the injury and disability to the petitioners. Hence, the petitioners in MCOP No.493 and 494 of 2003 have claimed a sum of Rs.10,00,000/- each as compensation and the petitioner in MCOP No.1304 of 2003 has claimed a sum of Rs.3,00,000/- as compensation.

3. The 2nd respondent United India Insurance Company has filed a counter statement in which he denied the mode of accident as stated in the FIR. It is stated by the 2nd respondent that the driver of the bus has also contributed negligence for the accident and hence, on that ground, 50% of the liability has to be fixed on the driver of the bus. The 2nd respondent has also stated that the claim application has to be dismissed for non-joinder of necessary parties since the accident took place because of the driver of the bus. The respondent has also quoted the cases wherein the liability has to be considered by the Tribunal.

4. The Tribunal after analyzing the evidence and documents placed before it, has given finding that there were three witnesses examined before the Tribunal and the evidence has clearly proved the fact that the driver of the lorry is responsible for the accident. In the absence of any evidence or documents placed by the 2nd respondent, the Tribunal, based on

the FIR and also the evidence, fixed the liability on the driver of the lorry/1st respondent and also the 2nd respondent to pay the compensation. The Tribunal has also determined the compensation based on the evidence relating to the nature of the injury, disability sustained by the claimants and also the loss of income and other expenses and inconvenience sustained by them and awarded a sum of Rs.7,00,000/- in MCOP No.493 of 2003 and Rs.7,00,000/- in MCOP No.494 of 2003 and Rs.10,000/- in MCOP NO.1304 of 2003 under the following heads :

Heads	Amount awarded by the Tribunal in MCOP No.493 of 2003 (Rs.)	Amount awarded by the Tribunal in MCOP No.494 of 2003	Amount awarded by the Tribunal in MCOP No.1304 of 2003
For Grievous injuries	1,00,000.00	1,00,000.00	(For injuries) 4,000.00
For Loss of Income in part	50,000.00	50,000.00	500.00
For Transport expenses	5,000.00	5,000.00	500.00
For Nourishment	5,000.00	5,000.00	2,000.00
For Medical Expenses	50,000.00	50,000.00	500.00
For Social Activities	50,000.00	50,000.00	--
For Loss of goods and clothes	--	--	500.00
For Pain and Sufferings	1,00,000.00	1,00,000.00	1,000.00
For Attender's charges	--	--	500.00
For future loss of earning power	--	--	500.00
For Permanent Disability	3,00,000.00	3,00,000.00	--
For Loss of Earning Power	40,000.00	40,000.00	--
Total compensation	7,00,000.00	7,00,000.00	10,000

Aggrieved against the liability and the award, the second respondent Insurance Company has preferred this appeal.

5. CMP No.1478 to 1480 of 2007 were also preferred before this Court, by which the 3rd and 4th respondents were also added as parties who are the owner and Insurance Company of the bus.

6. The appellant herein who is the insurer of the lorry viz., United Insurance Company has stated in the grounds of appeal that the finding of the Tribunal by fixing the liability on the lorry driver for his negligent driving without any documentary evidence is not proper and justified. The quantum arrived by the Tribunal without taking into consideration of the injury, medical expenses, transport expenses, nourishment, pain and sufferings and permanent disability is also not justified. The loss of earning power has also not been properly assessed by the Tribunal and the loss of earning power assessed by the Tribunal is also on the higher side. Regarding the contributory negligence on the part of the bus driver, the Tribunal did not accept the plea made by this appellant. Further, it is stated that the Insurance Company of the bus and the owner who are also to be added as parties and the liability should be fixed at 50% on the ground of contributory negligence.

7. Heard both sides and perused the documents available on record.

8. On the side of the appellant, it is argued that the accident had occurred due to the rash and negligent driving on the part of the driver of both the vehicles, i.e the lorry and the bus. Whereas, the Tribunal has fixed the entire liability on the driver of the lorry and the respondent being the insurer of the said lorry is not justified. The Tribunal has not considered the evidence placed before it by fixing the entire liability on the driver of the lorry and it has to be properly considered since the owner and insurer of the bus are also necessary parties to decide the said liability.

9. On the side of the 4th respondent, it is argued that when there were clear evidence and documents placed before the Tribunal regarding the liability and the negligence, which resulted in the accident is only on the part of the driver of the lorry, the Tribunal has also properly assessed the same. But, on the side of the appellant, it is argued that when both the vehicles are involved in the said accident, the liability fixed by the Tribunal on the lorry driver alone is not justified. In view of the same, CMPs were also filed and the owner and the Insurance company of the bus have been made as necessary parties. Hence, the matter has to be decided afresh by examining the necessary parties to arrive the proper decision.

10. On a perusal of the records relating to the case, it is seen that Ex.P1 is the FIR and the evidence of PW1, 2 and 3 were all deposed before the Tribunal. The accident had occurred only due to rash and negligent driving on the part of the driver of the lorry. But, on the side of the respondent, there is no witness was examined to prove that the accident had occurred, for which, the driver of the bus was also responsible and no document was also placed before the Tribunal. Hence, the

Tribunal after analysing the evidence and documents placed before it, has observed that there is no witness examined on the side of the respondent and no other document was placed before it and decided the issue that the driver of the lorry is responsible for the accident and fixed the liability on the part of the lorry driver. Even before this Court, on the side of the appellant, no document has been produced. In addition to that, any document filed before the Tribunal in support of the argument the driver of the bus is also responsible and 50% liability is fixed on the driver of the bus. No additional argument with regard to negligent driving was placed by the appellant/Insurance Company amounts only the finding of the Tribunal is proper when there is sufficient evidence and documents placed before it. The other injured persons who travelled in the bus deposed before the Tribunal that due to rash and negligent driving on the part of the lorry driver the accident was happened and one petitioner who sustained severe crush injury in her right hand clearly proves the fact that the driver of the lorry is responsible for the said accident. To contradict the evidence let in by the injured person and also the FIR, no other evidence or document was placed by the appellant/Insurance Company. Hence, the finding of the Tribunal based on available and reliable evidence fixed the liability on the driver of the lorry is very much proper and it does not require any interference. Further, the sum determined by the Tribunal based on the injury, disability and the medical expenses under various heads is also very much reasonable. Hence, the finding of the Tribunal regarding the liability does not require any interference.

11. In the result Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

12. Accordingly, the Appellant/Insurance Company is directed to deposit the entire Award amount along with interest as awarded by the Tribunal, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

gbi/uma

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
(Sub Court), Krishnagiri.

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

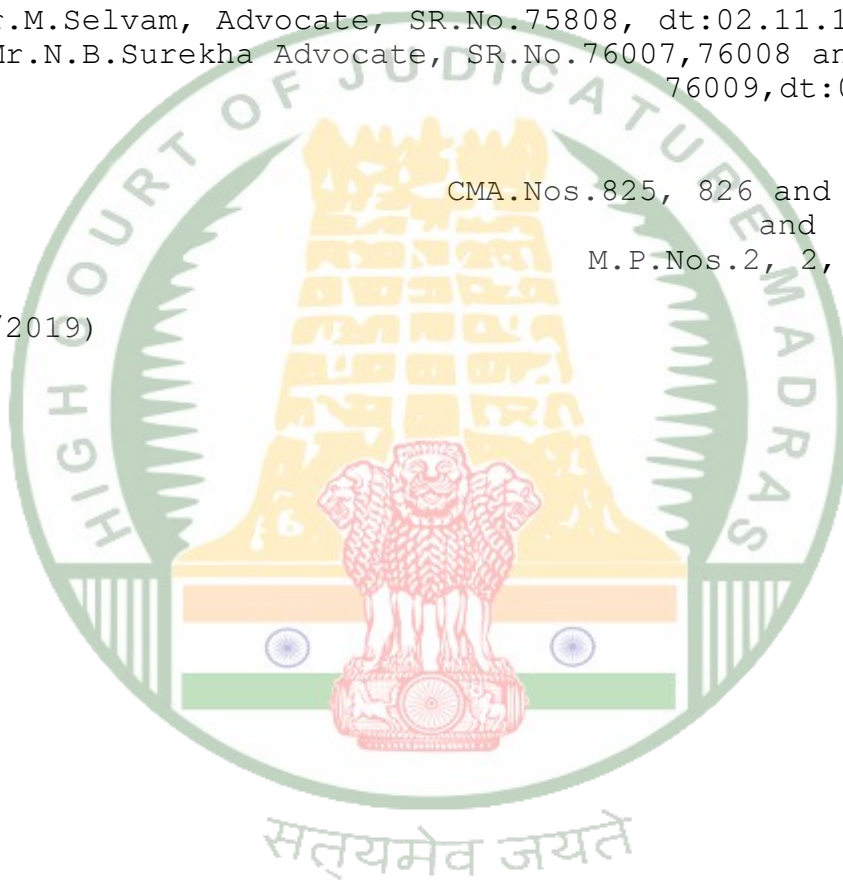
+1cc to Mr.T.Ravichandran, Advocate, SR.No.75797, dated:02.11.18

+1cc to Mr.M.Selvam, Advocate, SR.No.75808, dt:02.11.18

+3CCs to Mr.N.B.Surekha Advocate, SR.No.76007,76008 and
76009,dt:02.11.18

CMA.Nos.825, 826 and 827 of 2007
and
M.P.Nos.2, 2, 2 of 2007

Kak(25/06/2019)



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