

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2515 to 2517 of 2016
and C.M.P.Nos.17838 to 17840 of 2016

Mekala

.. Appellant in all C.M.As.

Vs.

- 1.V.Ganesan .. 1st Respondent in C.M.A.No.2515/2016
1.C.Settu .. 1st Respondent in C.M.A.No.2516/2016
1.K.Palanisamy .. 1st Respondent in C.M.A.No.2517/2016

2.M/s.National Insurance Co. Ltd.,
Divisional Office No.II,
No.11, Ramakrishna Road,
Salem 7.

3.C.Chinnusamy

4.M/s.National Insurance Co. Ltd.,
Divisional Office No.1,
LRN Colony,
Salem -7.

.. Respondents 2 to 4 in all C.M.As.

(R3 set exparte before the Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 01.06.2016 made in M.C.O.P.Nos.300, 312 & 314 of 2009 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Salem.

For Appellant : Mr.P.Jagadeesan (in all C.M.As.)

For R1 : Mr.S.P.Yuvaraj,
for Mr.R.P.Murugan Raja

For RR2 & 4 : Mr.D.Bhaskaran

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the award and decree dated 01.06.2016 made in M.C.O.P.Nos.300, 312 & 314 of 2009 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Salem.

2.All the three appeals are arising out of the same accident and common award. Hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petitions.

3.The appellant is the 1st respondent in M.C.O.P.Nos.300, 312 & 314 of 2009 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Salem. The 1st respondents herein/claimants filed the said claim petitions, claiming a sum of Rs.3,00,000/-, Rs.5,00,000/- and Rs.5,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 13.02.2005.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Toyota van belonging to the appellant and exonerated the 4th respondent-Insurance Company from its liability and directed the appellant to pay the compensation on the ground that the policy is only Act policy and no additional premium was paid for four persons.

5.Challenging the award exonerating the 2nd respondent-Insurance Company and questioning the quantum of compensation, the 1st respondent-owner of the Toyota van has come out with the present appeal.

6.The learned counsel appearing for the 1st respondent/appellant contended that the Tribunal erred in holding that the accident occurred due to negligence on the part of the driver of the Toyota van belonging to the appellant, without properly appreciating the materials on record. The claimants failed to prove that accident occurred only due to negligence on the part of the 1st respondent's driver. The Tribunal erred in exonerating the 2nd respondent-Insurance Company without

considering the fact that the claimants are load men working under the 1st respondent/appellant. The Tribunal erred in holding that the Insurance Policy does not cover the claim of the claimants. The Tribunal ought to have held that the accident occurred only due to rash and negligent driving by the driver of the tractor trailer belonging to the 3rd respondent. The injuries sustained by the claimants are simple injuries and amounts awarded by the Tribunal are excessive. The claimants in all the appeals are employees of the appellants and hence, the claim petitions are not maintainable. In any event, the Tribunal ought to have directed the 2nd respondent-Insurance Company to pay the compensation to the claimants.

7. The learned counsel appearing for the claimants contended that the claimants have let in both oral and documentary evidence and proved that the accident occurred only due to rash and negligent driving by the driver of the Toyota van/driver of the 1st respondent. The claimants have examined the Doctor to prove the nature of injuries and percentage of disability suffered by them. They have produced discharge summary and wound certificate. The Tribunal has awarded compensation considering the evidence let in by the claimants and they are not excessive. The insurance policy taken by the 1st

respondent/appellant covers the employees of the 1st respondent and 2nd respondent-Insurance Company is also liable to pay the compensation.

8.The learned counsel appearing for the respondents 2 and 4 has contended that the policy taken by the 1st respondent is only Act policy and she has insured the vehicle for 3rd party claim and paid premium to cover driver and only one employee. One of the injured claimant viz., Raja filed M.C.O.P.No.829 of 2005 on the file of the Fast Track Court No.1, Salem and the Tribunal by the award dated 28.03.2011, held that the driver of the tractor trailer belonging to the 3rd respondent and insured with the 4th respondent is not responsible for the accident and therefore, the Tribunal has rightly dismissed the claim petition against the respondents 2 to 4. In view of the said award, the 2nd respondent is not liable to pay any compensation to the claimants and prayed for dismissal of the appeals. सत्यमेव जयते

9.Heard the learned counsel appearing for the 1st respondent/appellant, claimants as well as the respondents 2 and 4 and perused the materials available on record.

10. From the materials on record, it is seen that the Toyota van belonging to the 1st respondent/appellant dashed the tractor trailer belonging to the 3rd respondent from behind, which was going in front of the van belonging to the 1st respondent/appellant. The claimants have stated in the claim petitions that the accident occurred due to rash and negligent driving by driver of both the vehicles belonging to the respondents 1 and 3. The Tribunal has considered Ex.P1, FIR which is registered against the driver of the 1st respondent. The driver of the 1st respondent did not give any complaint to the police against the driver of the tractor belonging to the 3rd respondent. The 1st respondent/appellant also has not examined the driver of the Toyota van to prove that the accident occurred only due to rash and negligent driving by the driver of the tractor belonging to the 3rd respondent. The van was going behind the tractor. The Tribunal has held that had the driver of the van belonging to the 1st respondent/appellant driven the vehicle at a moderate speed and with sufficient distance between the two vehicles, the accident could have been avoided. The Tribunal has come to the said conclusion based on the judgments relied on by the parties. The Tribunal has given cogent and valid reason for the said conclusion and there is no reason for interfering with the said finding.

11.From the materials available on record, it is seen that the 1st respondent has taken only third party insurance with extra premium to cover only driver and one of the employees. The Tribunal has extracted the details of premium paid by the 1st respondent/claimant from Ex.A13, Insurance policy. From the premium paid by the appellant, it is seen that in addition to basic premium, the 1st respondent/appellant has paid Rs.25/- to cover only one worker. In view of the same, the conclusion of the Tribunal that the 2nd respondent-Insurance Company is not liable to pay compensation to the claimants as they are not covered by the policy issued by them, is correct.

12.As far as the quantum of compensation is concerned, the Tribunal has accepted the evidence of Doctor with regard to percentage of disability and awarded Rs.2,000/- per percentage for each of the respondents and the same is in order. As far as the compensation awarded by the Tribunal in respect of pain and suffering, attender charges, loss of amenities, damages to clothes, transportation and loss of income are concerned, the amounts granted under the said heads are excessive. Hence, the amounts granted under the heads of pain and suffering, loss of amenities, damages to clothes, loss of income and transportation are reduced to Rs.10,000/-, Rs.5,000/-, Rs.200/- and

Rs.12,000/- in all the claim petitions respectively. The amounts granted towards attender charges are reduced to Rs.1,000/-, Rs.3,000/- and Rs.5,000/- respectively in all the claim petitions. The compensation awarded by the Tribunal under all other heads are just compensation and are hereby confirmed.

13.In the result, the award of the Tribunal with regard to liability on the part of the 1st respondent/appellant is confirmed and the quantum of compensation awarded by the Tribunal are modified as follows:

(i)C.M.A.No.2515/2016 [M.C.O.P.No.300/2009]:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	40,000	40,000	confirmed
2.	Pain and suffering	20,000	10,000	reduced
3.	Medical expenses	7,100	7,100	confirmed
4.	Extra nourishment	3,000	3,000	confirmed
5.	Attender charges	10,000	1000	reduced
6	Loss of	15,000	5,000	reduced

	amenities			
7	Damages to clothes	900	200	reduced
8	Transportation	2,000	500	reduced
9	Loss of income	16,000	12,000	reduced
	Total	1,14,000	78,800	Reduced by Rs.35,200/-

(ii)C.M.A.No.2516/2016 [M.C.O.P.No.312/2009]:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	70,000	70,000	confirmed
2.	Pain and suffering	25,000	10,000	reduced
3.	Medical expenses	45,300	45,300	confirmed
4.	Extra nourishment	3,000	3,000	confirmed
5.	Attender charges	10,000	3,000	reduced
6	Loss of amenities	20,000	5,000	reduced
7	Damages to clothes	700	200	reduced
8	Transportation	2,000	500	reduced
9	Loss of income	20,000	12,000	reduced
	Total	1,96,000	1,49,000	Reduced by Rs.47,000/-

(iii)C.M.A.No.2517/2016 [M.C.O.P.No.314/2009]:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	80,000	80,000	confirmed
2.	Pain and suffering	25,000	10,000	reduced
3.	Medical expenses	14,100	14,100	confirmed
4.	Extra nourishment	3,000	3,000	confirmed
5.	Attender charges	10,000	5,000	reduced
6	Loss of amenities	20,000	5,000	reduced
7	Damages to clothes	900	200	reduced
8	Transportation	2,000	500	reduced
9	Loss of income	20,000	12,000	reduced
	Total	1,75,000	1,29,800	Reduced by Rs.45,200/-

15. In the result, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.1,14,000/-, Rs.1,96,000/- and Rs.1,75,000/- are hereby reduced to Rs.78,800/-, Rs.1,49,000/- and Rs.1,29,800/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The 1st respondent/appellant is directed to deposit the modified award amount along with interest and costs, less the amount already

deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondents/claimants are permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.12.2018

Index : Yes / No
Speaking Order : Yes/ No
gsa

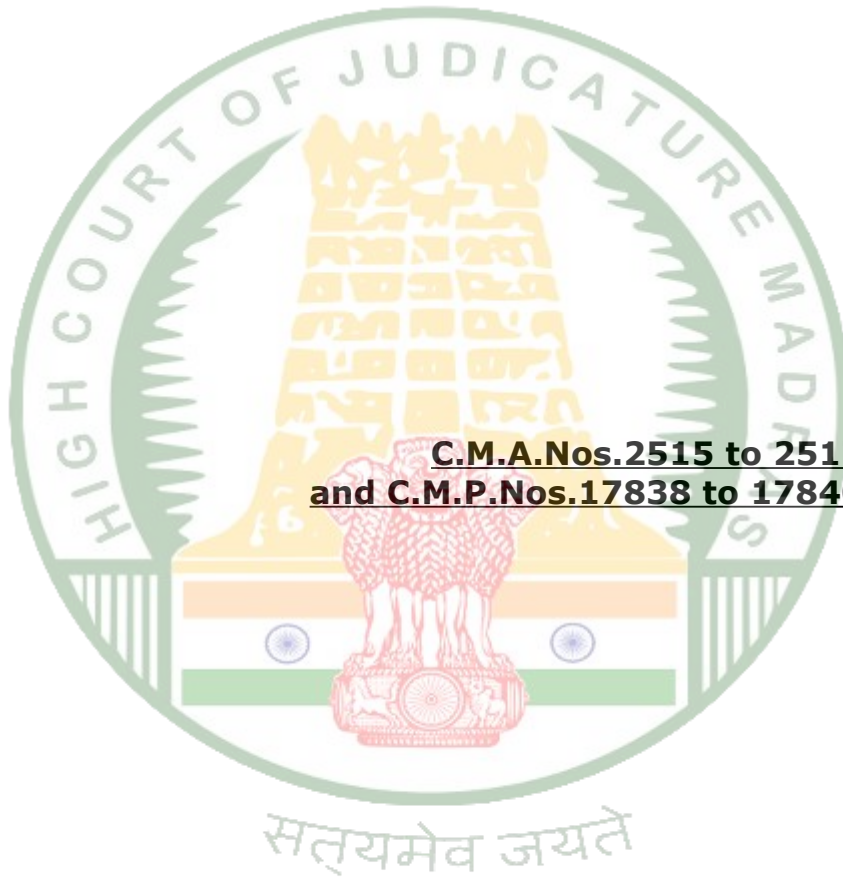
To

- 1.M/s.National Insurance Co. Ltd.,
Divisional Office No.II,
No.11, Ramakrishna Road,
Salem 7.
- 2.M/s.National Insurance Co. Ltd.,
Divisional Office No.1,
LRN Colony,
Salem -7.
- 3.The Special Subordinate Judge No.1,
(Motor Accident Claims Tribunal), Salem.

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V.M.VELUMANI,J.

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