

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.2918 of 2013 and 911 of 2014
and

C.M.P.No.19644 of 2017 and M.P.No.1 of 2013

C.M.A.No.2918 of 2013:

United India Insurance Co. Ltd.,
Having its Office at
Division Office - 1,
Dr.Nanjappa Road,
Coimbatore. Appellant/4th Respondent

..vs..

1.S.P.Dhamodharan
2.Umesh
3.M.Sathish Kumar
4.K.Balachandar Respondents/Respondents 1 to 3
(RR 2 to 4 set exparte in Lower Court)

C.M.A.No.911 of 2014:

S.P.Dhamodharan Appellant/Petitioner

..vs..

1.Umesh
2.M.Sathish Kumar
3.K.Balachandar
(RR 1 to 3 set exparte in Lower Court)
4.United India Insurance Co. Ltd.,
Having its Office at Division Office - 1,
Dr.Nanjappa Road,
Coimbatore. Respondents/Respondents

PRAYER IN BOTH CAMS:

These Civil Miscellaneous Appeals have filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 08.02.2012, made in MCOP.No.872 of 2006 on the file

of the Motor Accident Claims Tribunal/Principal Sub Court, Coimbatore.

For Appellant : Mrs.R.Sree Vidhya
(in CMA.No.2918 of 2013 and
4th respondent in CMA.No.911/2014)

Respondents : Mr.Ma.P.Thangavel
(first respondent in CMA.No.2918 of
2013 and appellant in C.M.A.No.
911 of 2014)

COMMON JUDGMENT

Aggrieved over the findings of the Tribunal dated 08.02.2012, made in MCOP.No.872 of 2006 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Coimbatore, the 4th respondent Insurance company filed the appeal in C.M.A.No.2918 of 2013, while not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant filed the appeal in C.M.A.No.911 of 2014.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioner is that on 15.12.2002, while the petitioner and his friend one Balachander, the third respondent herein, were proceeding in a Motor Cycle bearing Registration No.TN-38-R-6571, from Kaikolapalayam to Andakkapalayam, at about 15.45 hours, the first respondent driven two wheeler bearing Registration No.TN-37-X-5141, coming in the opposite direction, came at high speed, dashed against the two wheeler in which the petitioner was proceedings as pillion rider causing multiple grievous injuries to the petitioner. The said motor cycle bearing Registration No.TN-37-X-5141 belongs to the second respondent. Due to the accident, the petitioner has suffered fracture in right shoulder, right hand, left knee PCL Avulsion with fragment. Immediately after the accident, the petitioner was admitted in KMCH Hospital, Coimbatore for taking first aid treatment and then underwent treatment at Senthil Hospital from 16.12.2002 to 19.12.2002 and again from 22.12.2002 to 27.12.2002 and thereafter he was admitted in the same hospital on 26.12.2002 and 23.01.2003 for taking treatment. Thereafter, the petitioner underwent treatment as out patient for six days in each month. The petitioner was aged 58 years and by carrying on cotton broker business was earning a sum of Rs.7,500/- per month. Due to the injuries suffered, he is not able to carry on his avocation resulting in loss of income to him. Thus, the petitioner/claimant seeks a

sum of Rs.4,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, the 4th respondent Insurance Company by filing counter contends that the two wheeler bearing Registration No.TN-38-R-6571, in which the petitioner travelled along with the owner of the vehicle, the 3rd respondent herein was insured with them. The accident alleged in the petition took place only due to the negligence of the rider of the other Motor Cycle bearing Registration No.TN37-X-5141. The said Motor Cycle belongs to the second respondent and the same was driven by the first respondent. The police registered the case against the first respondent and after completion of investigation laid charge sheet against the first respondent only. The same was taken on file by the Judicial Magistrate No.II, Coimbatore in STC.No.1302/2002 and the first respondent admitted his guilt and paid a sum of Rs.1000/- as fine on 30.11.2002. The third respondent, who is the rider cum owner of the vehicle bearing Registration No.TN-38-R-6571 is no way responsible for the accident. Thus, the 4th respondent contends that the petition is to be dismissed against them. The claim of the petitioner about the age, occupation and income is denied. The amount claimed by the petitioner under different heads is excessive. The respondents 3 and 4, who are the owner and insurer of the two wheeler bearing Registration No.TN-38-R-6571 ought not to have been impleaded and the petition is hit by mis-joinder of parties. Thus, the 4th respondent Insurance Company sought for dismissal of the claim petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1, produced documents Ex.P1 to Ex.P10 to prove his claim. The respondent examined R.W.1, produced document Ex.R1 to contradict the claim of the petitioner.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent rider alone caused the accident, passed an award for a sum of Rs.57,480/- payable by the respondents 1 to 4 jointly and severally to the petitioner. Aggrieved over the said findings of the Tribunal, the 4th respondent Insurance Company has come forward with the appeal in CMA.No.2918 of 2013 to set aside the award passed by the Tribunal, while not being satisfied with the quantum of compensation awarded, the petitioner/claimant has come forward with the appeal in C.M.A.No.911 of 2014.

7. Heard the learned counsel appearing for the Appellant/4th respondent Insurance Company and the learned counsel appearing for the petitioners/claimants and perused the materials available on record.

8. The learned counsel appearing for the

appellant/claimant/petitioner contends that the Tribunal erred in fixing the contributory negligence against both the vehicles drivers at 50% each is not correct and the apportionment can be fixed as 75% x 25% on the Insurance Company and first respondent. The amount awarded by the Tribunal is very low. The Tribunal ought to have awarded much higher amount under different heads to compensate the injuries suffered by the petitioner. The Tribunal ought to have provided substantial amount towards future medical expenses and also for further prospects. Thus, the petitioner sought for enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the 4th respondent/Insurance Company contends that the Tribunal erred in holding that the rider of the Motor cycle bearing Registration No.TN-38-R-6571 was also guilty of negligence, without properly appreciating the oral and documentary evidence available on record. The Tribunal erred and failed to note that the rider of the motor cycle bearing Registration No.TN-38-R-6571 was proceeding from South to North on the left side of the road, while the other vehicle belonging to the second respondent bearing Registration No.TN-37-X-5141 came to the wrong side of the road and dashed against the motor cycle of third respondent resulting in the accident. The Tribunal was wrong in concluding on the basis of Ex.P5 M.V. report that both vehicles suffered damages, as the drivers of both vehicles were negligence and thereby the accident occurred. The Tribunal failed to consider the evidence of the rider of the Moped bearing Registration No.TN-37-X-5141 clearly admitting his guilt and paid fine amount in the criminal Court. The amount awarded by the Tribunal is highly excessive. Thus, the appellant/4th respondent Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

10. The petitioner states that while he was travelling as a pillion rider in the two wheeler bearing Registration No.TN-38-R-6571 driven by its owner, the third respondent herein on 15.02.2002 at 15.45 hours, while proceeding from Kaikolpalayam to Aandakkapalayam, the first respondent came at high speed in the two wheeler bearing Registration No.TN-37-X-5141, in the opposite direction and dashed against the motor cycle in which the petitioner was proceedings as pillion rider. The petitioner who deposed as P.W.1 stated that the police registered Ex.P1 First Information Report against the rider of the other vehicle bearing Registration No.TN-37-X-5141 and after completion of investigation, the police laid Ex.P3 charge sheet against the said driver only. It is further stated by the petitioner that the rider of the other two wheeler, who is arrayed as first respondent herein appeared before the Criminal Court, admitted his guilt and paid fine amount as evidenced by Ex.P4 copy of the

criminal Court judgment and the same will clearly establish the fact that the first respondent negligence alone caused the accident. Admittedly, the respondents 1 and 2 have not come forward to depose before the Tribunal. As stated above, the police have registered the case against the first respondent and he admitting his guilt, paid the fine amount as imposed by the Criminal Court in STC.No.1302/2002 on the file of the Judicial Magistrate No.II, Coimbatore. It is therefore clear from the evidence of P.W.1 and the contents of Ex.P1 First Information Report, Ex.P3 Charge Sheet and Ex.P4 copy of the Criminal Court judgment that the negligence of the first respondent who was riding the Moped belonging to the second respondent alone caused the accident. It is clear from Ex.P5 Motor Vehicle Inspector Report that there is no mechanical default in the said vehicle. The respondents 1 and 2 has not examined themselves or any other witnesses to contradict the version of P.W.1.

11.However, the 4th respondent examined their staff as R.W.1, who deposed that the accident does not occur in the manner alleged by the petitioner. The learned counsel appearing for the 4th respondent Insurance Company contends that the admission of guilt by the first respondent in the criminal court cannot be a conclusive proof and the Tribunal ought to have analysed the evidence independently and to conclude as to whose negligence caused the accident. The 4th respondent contends that in the petition itself, the allegation is that the accident occurred due to the negligence of the first respondent only, but the petitioner is substantially claiming that the accident occurred due to the negligence of the riders of both vehicles, and the same is not supported by any independent witness. The said contention of the 4th respondent Insurance company is appropriate and the Tribunal is duty bound to analyse the evidence on record independently and to fix negligence on the said basis only.

12. In the case on hand, the Tribunal has considered the evidence and concluded that the drivers of both the vehicles contributed equally for the accident. The Tribunal considering the Motor Vehicle Inspector Report filed as Ex.P5 found the Moped bearing Registration No.TN-37-X-5141 suffered the following damages.

- 1.Front wheel cover completely damaged
- 2.Front fork cover bend
- 3.Head light cover broken
- 4.Indicator light aft front space cover broken and
- 5.Front cross bar bend.

Likewise, the vehicle bearing Registration No.TN-38-R-6571 belonging to the third respondent suffered the following damages.

- 1.Front Cross bar bend
- 2.Right side foot rest bend

3. Foot brake pedal bend and
4. Left side foot rest bend

The Tribunal considering the damage suffered by both the vehicles held that if only both the drivers had driven their vehicles following the traffic rules, the accident could have been averted and as such only, because the first respondent admitted his guilt before the Criminal Court, the third respondent cannot be absolved of negligence. On that basis, the Tribunal held that both the first and third respondents are equally liable for causing the accident.

13. However, rebutting the same, the learned counsel appearing for the petitioner/claimant contends that the Tribunal ought not to have apportioned negligence at 50% each, in view of the admission of guilt by the first respondent himself before the Criminal Court. As stated earlier, the police have registered the criminal case against the first respondent and he himself has admitted his guilt and suffered punishment in the Criminal case. The petitioner produced Ex.P2 Rough Sketch of the occurrence spot. Taking into consideration the Rough Sketch wherein the occurrence spot is shown and the fact that both the vehicles were moving in the opposite direction, it will be appropriate to apportion the negligence on the riders of both vehicles, namely, respondents 1 and 3. As such, keeping in mind, the fact that the first respondent admitted his guilt and paid fine amount in the Criminal Court, he is to be held primarily responsible for the accident and as such the negligence for causing the accident is apportioned between the 1st and 3rd respondent at 75% x 25% respectively and the conclusion of the Tribunal fixing equal negligence on both riders is accordingly modified.

14. The next issue to be considered is adequacy of the quantum of the award. The petitioner states that he was aged 58 years and suffered multiple grievous injuries and fracture in his right shoulder, right hand and both knees which prevents him from carrying on his normal avocation of cotton broker business. After the accident, he took first aid treatment in KMCH Hospital, Coimbatore and thereafter took treatment as inpatient from 16.12.2002 to 27.12.2002 at Senthil Hospital, Coimbatore. To prove the nature of injuries suffered by him, the petitioner produced Ex.P6 copy of the accident register and Ex.P7 Rex Hospital O.P. Sheet, wherein he took treatment as out patient. The petitioner also produced the discharge summary as Ex.P10. The petitioner stated that the injuries suffered by him are grievous in nature and caused him permanent disability, which prevents him from carrying on his normal day today work. However, the petitioner failed to examine any medical expert to prove the fact as to whether he is suffering from any permanent

disability. The Tribunal considering the particulars given in Ex.P10 discharge summary found that the petitioner suffered fracture middle 3rd clavical at right shoulder, fracture of distal IP joint at right hand and PCL Avulsion with fragment at right knee, concluded that the petitioner suffered grievous injuries and passed an award for a sum of Rs.40,000/- as compensation.

15.Considering the fact that there is no disability certificate produced by the petitioner and no medical expert was examined, this Court finds that there is no evidence placed on record to conclude any permanent disability was suffered by the petitioner and does not prove that the petitioner is suffering from any functional disability. As such, there is no need to enhance the amount of Rs.40,000/- provided by the Tribunal for the injuries suffered by the petitioner.

16.The petitioner has produced Ex.P8 Medical Bills, under which a sum of Rs.28,270/- has been spent towards treatment expenses. As the petitioner has not produced any authenticated bills from Senthil Hospital as stated by the Tribunal, the sum of Rs.10,790/- was deducted out of the amount mentioned in Ex.P8 Medical Bills and the Tribunal awarded a sum of Rs.17,480/- towards medical expenses. As the same is appropriate, there is no need to modify the same.

17.The learned counsel appearing for the petitioner/claimant contends that the petitioner has suffered disability resulting in loss of amenities of life and therefore sought for compensation towards loss of amenities, for future medication, hospital expenses and also a sum of Rs.1,50,000/- towards hardship, mental shock and inconvenience caused towards future life. It is true that if there was evidence to prove that the petitioner suffered permanent disability then the above said plea of the petitioner can be considered. However, in the case on hand, no medical expert is examined and there is no evidence on record to show that the petitioner suffered partial permanent disability. Except the interested testimony, the petitioner as P.W.1, he has not chosen to examine any medical expert and also failed to produce any documentary proof to support his claim that he is suffering from permanent disability leading to loss of amenities. However, considering the fact that the petitioner underwent treatment as inpatient in Senthil Hospital as evidenced by Ex.P10 discharge summary and the fact that he has suffered fracture in his right shoulder and also right hand, he would have suffered lot of pain and suffering. As such, it will be appropriate to provide Rs.10,000/- towards pain and sufferings. Keeping in mind the nature of injuries suffered and the period of treatment undergone by him in Senthil Hospital and Rex Hospital, it will be appropriate to provide Rs.10,000/- towards Transportation and a sum of Rs.10,000/- towards extra-nourishment. Accordingly, the total sum of Rs.57,480/- awarded

by the Tribunal is enhanced to Rs.87,480/- and the same is rounded to Rs.87,500/-.

18.The learned counsel appearing for the petitioner further contended that the Motor Vehicle Act is social welfare legislation and therefore, the conclusion of the tribunal that the petitioner is not entitled for interest for the period from 06.11.2006 to 26.04.2011 is not correct and sought to set aside the same. Admittedly, the claim petition was dismissed for default on 06.11.2006 and the same was restored, as pointed out by the Tribunal as per order passed in I.A.No.393 of 2010, only on 26.04.2011. As such, this Court finds nothing wrong in the conclusion arrived at by the Tribunal that the petitioner is not entitled for interest for the said default period. Thus. The plea of the petitioner to set aside the said conclusion of the Tribunal is unsustainable.

19.The learned counsel appearing for the petitioner/claimant contends that in the case of composite negligence when both the vehicle owners and Insurer are before the Court, the determination of extent of negligence between the joint tort feorsors is only to enable any one of the insurer to recover the apportioned sum from the other insurer after satisfying the award in full. In support of the same, he relied upon the ruling reported in 2015 (9) SCC 273 in KHENYEI Vs. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS, wherein it has held as follows:-

22.What emerges from the aforesaid discussion is as follows :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feorsors and to recover the entire compensation as liability of joint tort feorsors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feorsors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feorsors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feorsors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the

plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.

20. The learned counsel also pointed out the unreported judgment of this Court passed in CMA.No.3467 of 2004 dated 15.09.2017, wherein it has held as follows:-

"In all cases of composite negligence, the drivers of both the vehicles involved in the accident along with their respective owners and Insurance companies would be jointly and severally liable to a third party, and the claimant has the choice to choose the one from whom he prefers to seek compensation. He placed reliance of 2015 (9) SCC 273 in KHENYEI Vs. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS, [2015 (1) TNMAC 801(SC)].

It is therefore clear that in the present case also, as there is determination of inter se liability of first and third respondents at 75% x 25%, the petitioner is entitled to work out his remedy as per the dictum laid down in the above said KHENYEI case. In the light of the above said discussion, the petitioner/claimant is entitled for a sum of Rs.87,500/- and the first and third respondents negligence is fixed at 75% x 25% respectively and the award passed by the Tribunal is modified accordingly.

21. C.M.A.No.2918 of 2013

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The order and decretal order dated 08.02.2012, made in MCOP.No.872 of 2006 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Coimbatore, is modified only on the negligence aspect. The first, second and fourth respondents in the claim petition are directed to pay 75%

of the award amount to the petitioner with interest at the rate of 7.5% p.a. from the date of filing of the claim petition to 06.11.2006 and subsequently from 26.04.2011 to till the date of deposit of the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The third and fourth respondents in the claim petition are directed to pay 25% of the award amount to the petitioner with interest at the rate of 7.5% p.a. from the date of filing the claim petition to 06.11.2006 and from 26.04.2011 to till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

22. C.M.A.No.911 of 2014

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.57,480/- awarded by the Tribunal dated 08.02.2012, made in MCOP.No.872 of 2006 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Coimbatore, is hereby enhanced to Rs.87,500/-. The first, second and fourth respondents in the claim petition are directed to pay 75% of the award amount to the petitioner with interest at the rate of 7.5% p.a. From the date of filing of the claim petition to 06.11.2006 and subsequently from 26.04.2011 to till the date of deposit of the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The third and fourth respondents in the claim petition are directed to pay 25% of the award amount to the petitioner with interest at the rate of 7.5% p.a. from the date of filing the claim petition to 06.11.2006 and from 26.04.2011 to till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal
Coimbatore.

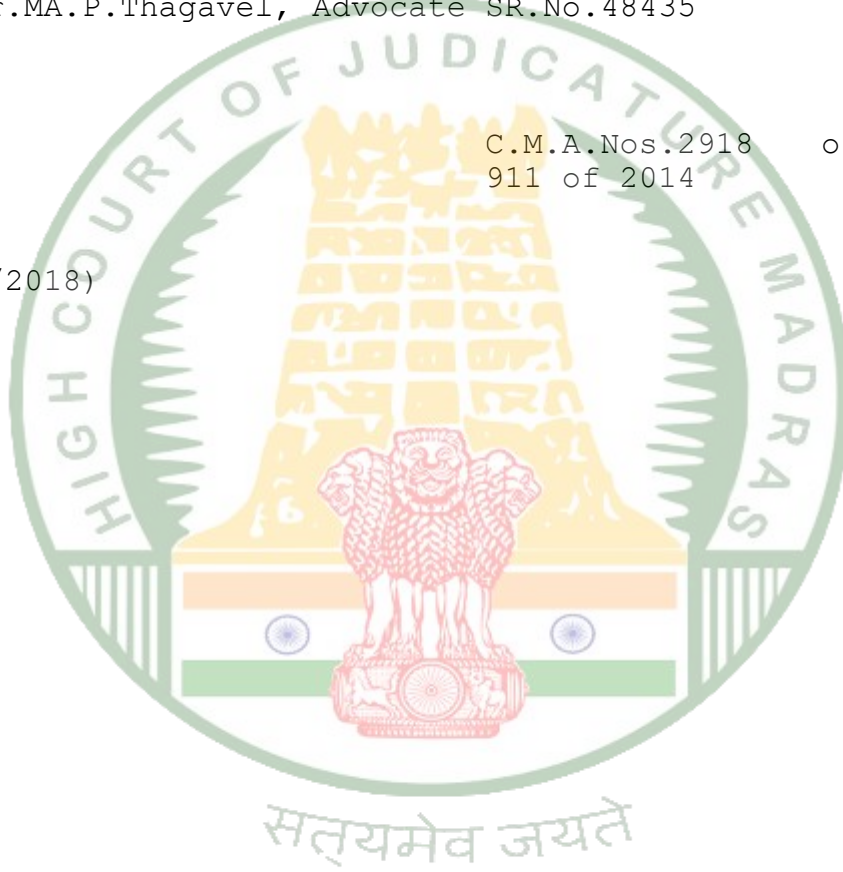
2.The Section Officer, V.R. Section,
High Court, Madras-104.

+1cc to Mr.R.Sreevidhya, Advocate SR.No.49066

+1cc to Mr.MA.P.Thagavel, Advocate SR.No.48435

C.M.A.Nos.2918 of 2013 and
911 of 2014

GMV (09/10/2018)



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