

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.620, 621 & 622 of 2008

&

M.P.Nos.1,1 & 1 of 2008

The Oriental Insurance Co. Ltd.
Rep.by its Regional Manager
Chamundi Complex
114, Omalur Main Road
Salem-7.

... Appellant in all CMAs.
/2nd Respondent

..Vs..

1.Devaraj

... Respondent in CMA.No.620 of 2008/Petitioner

1.Mounalakshmi

... Respondent in CMA.No.621 of 2008/Petitioner

1.Mary

... Respondent in CMA.No.622 of 2008/Petitioner

2.N.Ramesh

3.T.Kumarasamy

... Respondents in all CMAs/1st and 3rd Respondent

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, seeking to set aside the decree and judgment passed by the Motor Accidents Claims Tribunal, Salem (Additional District Judge, Fast Track Court No.2, Salem) and made in MCOP No.980 of 2004, MCOP No.981 of 2004, MCOP.No. 982 of 2004 respectively dated 26.02.2007.

For Appellant in all CMAs : Mr.M.Rajasekhar

For Respondents 1 to 3

in all CMAs

: No appearance

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

The instant appeals have been filed Challenging the common Award dated 26.02.2007 passed by the Motor Accident Claims Tribunal, (Additional District Judge, Fast Track Court No.2, Salem) in M.C.O.P.Nos.980, 981 & 982 of 2004.

The brief facts leading to the filing of the instant appeals are as follows:

2. The first respondent in C.M.A.Nos.620, 621 & 622 of 2008 sustained injuries while travelling in a L.M.V.Tourist Maxi Cab vehicle bearing Registration No.TN.37-AA-1337 owned by the second respondent and insured with the Appellant. The first respondent in all these appeals preferred separate claims before the Motor Accident Claims Tribunal in M.C.O.P.Nos.980, 981 & 982 of 2008 seeking compensation from the appellant and the second respondents for the injuries sustained by them as a result of the above said accident. The Motor Accident Claims Tribunal by its common award dated 26.02.2007 in M.C.O.P.Nos.980, 981 & 982 of 2008 directed the appellant to pay the first respondent in C.M.A.No.620 of 2008 a sum of Rs.35,000/-, the first respondent in C.M.A.No.621 of 2008 a sum of Rs.45,000/- and the first respondent in C.M.A.No.622 of 2008 a sum of Rs.15,000/- as compensation and also directed the appellant to pay interest at the rate of 7.5% per annum on the compensation amount to the respective claimants.

3. Aggrieved by the common Award dated 26.02.2007 passed in M.C.O.P.Nos.980, 981 & 982 of 2008, the instant appeals have been filed by the Appellant/Insurance Company.

4. Heard Mr.M.Rajasekhar learned counsel for the appellant in all CMAs. There is no representation on the side of the respondents in all CMAs, even though the name of the counsels are printed in the cause list today.

5. According to the learned counsel for the appellant, the Tribunal has erroneously passed the common award, even though the First Information Report was registered only in the name of the owner of the Tractor which is not insured with the appellant.

6. This Court after having considered the materials available on record and after examining the award and after hearing the submissions of the learned counsel for the Appellant, observes the following:

a) In the claim petition, the first respondent/claimants in all these appeals have categorically stated that only due to the rash and negligent driving by the driver of the Maxi Cab insured with the appellant, the accident happened. They have also deposed before the Tribunal that the accident happened only due to the rash and negligent driving by the driver of the Maxi Cab in which they were travelling.

b) The complaint based on which the First Information Report was registered was admittedly given by a person who travelled in

the Tractor. Further it is not known as to whether charge sheet has been filed against the driver of the Tractor by the police. No evidence has been placed before the tribunal by the appellant with regard to the status of the FIR. Since the First Information Report has been registered only on the basis of the complaint given by a person who was travelling in the tractor, the statement that the accident occurred only due to the rash and negligent driving by the driver of the tractor could not be believed without there being a charge sheet against the driver of the tractor.

c) It is an undisputed fact that as a result of the accident, the first respondent in CMA.No.620 of 2008 has sustained fracture in right shoulder and four teeth got dislocated in lower jaw, the first respondent in CMA.No.621 of 2008 has sustained fracture of Pelvis, subluxation of two and multiple injuries and the first respondent in CMA.No.622 of 2008 has sustained head injury and multiple injuries.

d) Before the tribunal, the first respondent in all these appeals have filed documents which included the discharge summary from the hospital to prove their hospitalisation as a result of the injuries sustained by them, due to the accident. They have also filed their disability certificate to prove their disability. No contra evidence has been produced by the appellant before the tribunal to disprove the loss suffered by the first respondent in all the appeals as a result of the injuries caused to them on account of the accident.

e) The tribunal has considered the oral and documentary evidence and only thereafter, has passed the impugned award. In the considered view of this Court, the quantum of compensation awarded to the first respondent in all these appeals is a just compensation.

7. In the light of the above observations, there is no merit in the instant appeals. Accordingly, the appeal is dismissed without costs. Consequently, connected miscellaneous petitions are closed.

8. The Appellant is directed to deposit the amount awarded by the Tribunal in MCOP.Nos.980, 981 & 982 of 2004 together with interest, after deducting the amount that has already been deposited, to the credit of MCOP.Nos.980, 981 & 982 of 2004 on the file of the Motor Accidents Claims Tribunal, Salem (Additional District Judge, Fast Track Court No.2, Salem), within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the first respondent in all these appeals is permitted to withdraw the amount lying

to the credit of Motor Accidents Claims Tribunal, Salem (Additional District Judge, Fast Track Court No.2, Salem), by filing appropriate applications.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kyl/nl

To

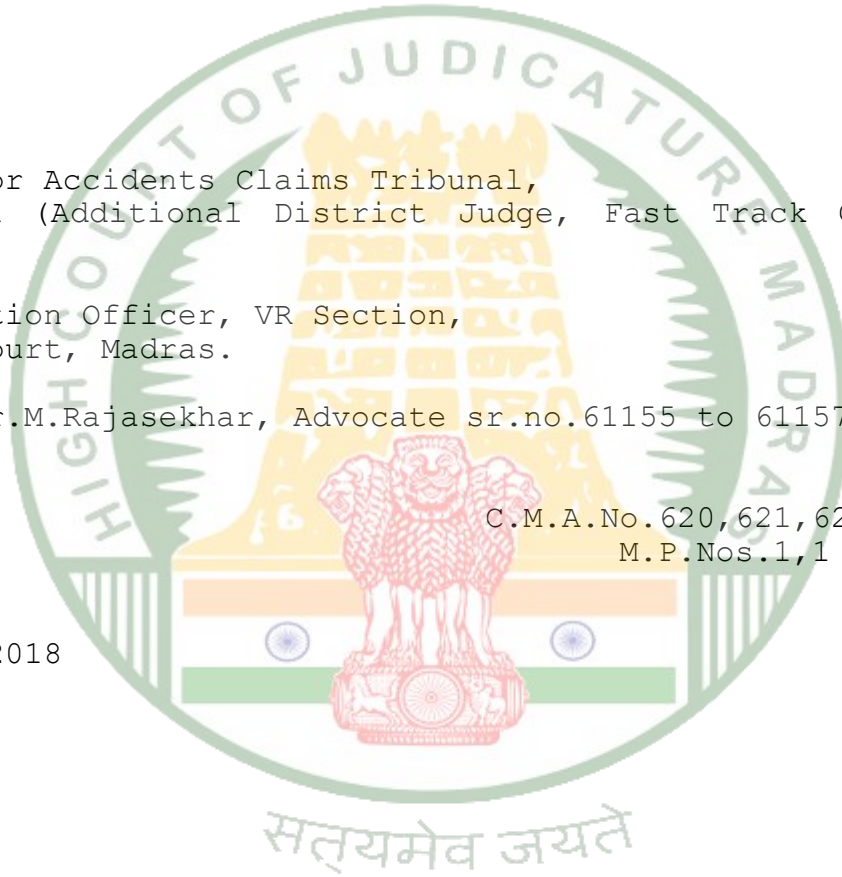
1.The Motor Accidents Claims Tribunal,
Salem (Additional District Judge, Fast Track Court No.2,
Salem).

2.The Section Officer, VR Section,
High Court, Madras.

+3cc to Mr.M.Rajasekhar, Advocate sr.no.61155 to 61157

C.M.A.No.620,621,622 of 2008 &
M.P.Nos.1,1 & 1 of 2008

sj(co)
nr 04/10/2018



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