

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2901 to 2903 of 2006
and M.P.Nos.1, 1 and 1 of 2006

C.M.A.No.2901 of 2006

The Branch Manager,
National Insurance Co. Ltd.
Branch Office, No.58, Rajaji Veethi,
Kangeyam 633 701. Appellant/2nd respondent
Vs.
1.Minor S.Meena ...1st respondent/ Petitioner
2.P.Sathishkumar ...2nd Respondent/1st Petitioner

C.M.A.No.2902 of 2006

The Branch Manager,
National Insurance Co. Ltd.
Branch Office, No.58, Rajaji Veethi,
Kangeyam 633 701. Appellant/2nd respondent
Vs.
1.V.P.Natesan ...1st respondent/ Petitioner
2.P.Sathishkumar ...2nd respondent/1st Respondent

C.M.A.No.2903 of 2006

The Branch Manager,
National Insurance Co.Ltd.,
Branch Office, No.58, Rajaji Veethi,
Kangeyam 633 701. Appellant/2nd respondent
Vs.
1.Minor Tharani ...1st respondent/ Petitioner
2.P.Sathishkumar ...2nd Respondent/1st respondent

Prayer in CMA No.2901 of 2006 Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 13.04.2006 made in MCOP No.722 of 2004 on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Dharmapuri.

Prayer in CMA No.2902 of 2006 Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 13.04.2006 made in MCOP No.745 of 2004 on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Dharmapuri.

Prayer in CMA No.2903 of 2006 Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 13.04.2006 made in MCOP No.746 of 2004 on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Dharmapuri.

For Appellant in all the appeals : Mr.S.Vadivel
For R-1 in all the appeals : M.Selvam
R2 in all appeals
Set exparte lower Court

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

These appeals are directed against the common judgment dated 13.04.2006 passed by the Motor Accident Claims Tribunal-cum-Additional District Court, Dharmapuri, in MCOP Nos.722, 745 and 746 of 2004 respectively.

2.All these appeals are being decided by a common judgment as they all arise out of the same accident that took place on 25.10.2004 and in all these appeals, the common questions of law and facts are involved.

3.The facts of the case are that on 25.10.2004 at about 6.05 a.m., the claimant(s)/first respondent(s) herein have travelled in a Maruthi Car bearing Registration No.TN29E 0900 from Dharmapuri to Rasipuram and about 7.15am, the Ambassador Car bearing Registration No.TN28C 5565 belonging to the second respondent, which was driven by its driver in a rash and negligent manner, hit the Maruthi Car at Theevatippatti Agraharam. Due to the said impact, the claimant(s) sustained fractures and multiple injuries all over the body. They filed claim petitions seeking compensation of Rs.50,000/-, Rs.5,00,000/- and Rs.2,00,000/- respectively. The Tribunal, based on the oral and documentary evidence, awarded the total compensation of Rs.13,862/-, Rs.91,450/- and Rs.1,08,490/- respectively. Aggrieved over the same, the insurance company, on whom the liability was fixed, has filed these appeals.

4. The learned counsel for the Appellant/Insurance Company in all these appeals, submitted that without considering the materials placed before it in a proper perspective, the Tribunal erred in fastening the liability on the owner of the Ambassador Car, which was insured with the appellant herein; the Tribunal ought not to have relied upon the evidence of P.Ws.1, 2 and 3, because they are the interested witnesses; and since the accident was a head on collision, the Tribunal ought to have

fixed the contributory negligence on the part of the driver of the Maruthi Car also. He further submitted that the award passed by the Tribunal is excessive and exorbitant and the same needs substantial reduction.

5. Per contra, the learned counsel for the claimant(s)/first respondent(s) in all these appeals submitted that the award passed by the Tribunal is based on weightage of evidence and probabilities of the case and hence, no interference is required.

6. This Court has considered the rival submissions and perused the materials available on record.

7. A perusal of the common award passed by the Tribunal would go to show that the Tribunal has taken note of the manner of accident between the Maruthi Car and the Ambassador Car and has concluded that the driver of the Ambassador Car was at fault, on the reasoning that during the cross examination of PW.2, it was not established that the accident had not happened due to the rash and negligent driving of the Maruthi Car; in the counter filed by the Insurance Company i.e., the appellant herein, it was not denied that the accident was not caused due to the negligent driving of the Ambassador Car; the evidence of P.Ws.2 and 3 corroborates each other; and the driver of the Ambassador Car, who is the best evidence to speak about the manner of accident, has not been examined before the Tribunal. This Court is of the view that the finding so rendered by the Tribunal is based on the materials available on record and hence, the same warrants no interference.

8. As far as the compensation awarded by the Tribunal is concerned, it has to be pointed out that the Tribunal has awarded the compensation of Rs.13,862/-, Rs.91,450/- and Rs.1,08,490/- respectively. The quantum so arrived at by the Tribunal is just and reasonable, as the same is based on the oral and documentary evidence, more particularly, medical records adduced by the parties. Further, in the light of the principle laid down by the Supreme Court in National Insurance Co. Ltd v. Swaran Singh [2004 ACJ 01], the Tribunal has rightly directed the appellant Insurance Company to pay the compensation to the claimant(s), with liberty to recover the same from the second respondent /owner of the offending vehicle. Hence, no interference is required by this Court.

9. In such view of the matter, these appeals deserve to be dismissed. Accordingly, affirming the common award passed by the Tribunal, these Civil Miscellaneous Appeals are dismissed. No costs. The connected miscellaneous petitions are closed.

10. The Appellant / Insurance Company is directed to deposit the entire compensation amount (in all the three appeals), along with interest and costs, as awarded by the Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the award amounts to the Savings Bank Accounts of the respective claimant (s) / first respondent(s), within a period of one week thereafter, through RTGS.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kv/srk

To

To

1. The Motor Accident Claims Tribunal-cum-Additional District Court,
Dharmapuri.

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

+3ccs to Mr.S.Vadivel , Advocate SR.No. 63197,63198,63199

+3ccs to Mr.M.Selvam , Advocate SR.No. 63477,63478,63479

C.M.A.Nos.2901 to 2903 2006
and M.P.Nos.1, 1 and 1 of 2006

RSK

A.SK(21/07/2020)

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