

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA No.1621, 1622, 1623 and 1624 of 2009 and
M.P.No.1+1+1+1 of 2009

The New India Assurance Company Limited,
Motor Third Part Claims, 46, Moore Street,
Chennai. ... Appellant in all CMAs

Vs.

A.Suriyakala ... 1st respondent in CMA1621/2009

M.Sridhar ... 1st respondent in CMA 1622/2009

K.Jaya ... 1st respondent in CMA 1623/2009

S.Somasundaram ... 1st respondent in CMA 1624/2009

2. C.Poongavanam

3. J.Prema

4. The Oriental Insurance Company Limited,
No.8, Esplanade, Chennai 600 108.

... Respondents 2 to 4 in all CMAs

Prayer in CMA No.1621/2009 This Civil Miscellaneous
Appeal has been filed under Section 173 of the Motor Vehicles
Act, 1988, against the orders dated 04.04.2008 passed in
M.C.O.P.No.5660 of 2003 by the V Judge/ Motor Accident Claims
Tribunal, Court of Small Causes, Chennai.

Prayer in CMA No.1622/2009 This Civil Miscellaneous
Appeal has been filed under Section 173 of the Motor Vehicles
Act, 1988, against the orders dated 04.04.2008 passed in
M.C.O.P.No.5661 of 2003 by the V Judge/ Motor Accident Claims
Tribunal, Court of Small Causes, Chennai.

Prayer in CMA No.1623/2009 This Civil Miscellaneous
Appeal has been filed under Section 173 of the Motor Vehicles
Act, 1988, against the orders dated 04.04.2008 passed in
M.C.O.P.No.5662 of 2003 by the V Judge/ Motor Accident Claims
Tribunal, Court of Small Causes, Chennai.

Prayer in CMA No.1624/2009 This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 04.04.2008 passed in M.C.O.P.No.5663 of 2003 by the V Judge/ Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

In all CMAs

For Appellant : Mr.J.Chandran
For Respondents : Mr.K.Ayyadurai (for R1)
for Mr. N.M.Mutheeswaran
Mr.R.Sivakumar (for R4)
No appearance for R2 and R3

COMMON JUDGMENT

The New India Assurance Company Limited, Chennai, who is the 2nd respondent in MCOP Nos.5660/2003,5661/2003,5662/2003 and 5663/2003 on the file of the V Judge/Motor Accident Claims Tribunal, Court of Small Causes, Chennai has filed the present appeal against the decree and judgment passed by the Tribunal questioning their liability to pay compensation to the claimants.

2. The petitioners in all the claim petitions sought compensation from the owner of the car bearing registration No.TN-02-H-9213 belonging to the first respondent and insured with the present appellant as well as the owner of the lorry bearing registration No.TN-05-H-8361 and insured with the Oriental Insurance Company Limited, Chennai for the injuries sustained by them in a road accident that took place on 05.06.2003 at 12.00 hours. According to the claimants, when they were travelling as passengers in a car bearing registration No.TN-02-H-9213 from Walajabath to Chennai, two lorries, which were coming on the opposite direction with dazzling head light attempted to overtake each other and therefore, the driver of the car without stopping the car drove the vehicle rashly and negligently and dashed against the lorry bearing registration No.TN-05-H-8361 which was parked on the left hand side of the road, without any indicator lights on its rear portion. According to the claimants, not only the rash and negligent driving of the driver of the car was the cause of accident but also the stationary lorry which was parked on the road without rear indicator lights was also the reason for the accident and that since the owner of the car insured his vehicle with the present appellant, and the owner of the lorry insured his vehicle with the Oriental Insurance Company Limited, all of them are jointly and severally liable to pay compensation to them.

3. The owner of the car bearing registration Number TN-02-H-9213 and the owner of the lorry bearing registration No.

TN-05-H-8361 remained absent before the Tribunal and therefore, they were set exparte. The present appellant and the Oriental Insurance Company Limited contested the claim petition.

4. The learned V Judge/Motor Accident Claims Tribunal, Court of Small Causes, Chennai, after analysing the evidence on record, held that the driver of the car bearing registration No.TN-02-H-9213 was rash and negligent in driving his vehicle and therefore, the owner of the car and its insurer (appellant) were held liable to pay compensation. Aggrieved over the orders passed by the Tribunal, the present appeals are filed by the New India Assurance Company Limited, Chennai, questioning their liability to pay compensation as well as the quantum of compensation awarded by the Tribunal.

5. Mr.J.Chandran, learned counsel appearing for the appellant contended that the Tribunal was wrong in fixing negligence only on the part of the driver of the car bearing registration No.TN-02-H-9213, especially, when the eyewitness to the occurrence had clearly deposed that the lorry was parked on the road without any indication lights on the rear side. Therefore, he contended that the liability should be apportioned in the ratio 50: 50 between the car bearing registration No.TN-02-H-9213 and the lorry bearing registration No.TN-05-H-8361.

6. He also relied on the decision rendered by a Division Bench of this Court in United India Insurance Company Limited Vs. A.Semmalar and others in CMA Nos.731 and 732 of 2018 dated 01.11.2018 and contended that the negligent manner in which the lorry was parked on the road has not been taken into consideration by the Tribunal and therefore, the orders passed by the Tribunal is liable to be set aside.

7. No appearance on behalf of the 2nd and 3rd respondents.

8. Mr.R.Sivakumar. learned counsel appearing for the Oriental Insurance Company Limited/ 4th respondent contended that admittedly the car was in motion and the lorry was parked on the extreme left hand side of the road. He further contended that when there is no projection of the lorry on the road, the negligence cannot be apportioned in the ration 50:50, as contended by the appellant. He also contended that the First Information Report was registered against the driver of the car alone and all the injured had deposed that the driver of the car was rash and negligent in driving of his vehicle and he therefore, prayed for dismissal of the appeals.

9. In the instant case, in the First Information Report was lodged by the driver of the car bearing registration No.TN-

02-H-9213, wherein, it is stated that he was proceeding from Walajabad to Chennai and on seeing two lorries coming on the opposite direction with dazzling lights, he drove his car on the extreme left hand side of the road and he rammed behind a stationary lorry. He did not state in the First Information Report that the lorry was parked without any indicator lights on the rear side. It is also pertinent to point out that the driver of the car who set the criminal law into motion was not examined on the side of the appellant. Neither the owner of the car was examined. In fact, the owner of the car remained absent before the Tribunal and he was set exparte. The First Information Report, which is earliest in point of time was considered by the Tribunal, while fixing negligence on the part of the driver of the car. In the absence of any contra evidence on the side of the respondents, the Tribunal was right in holding that the driver of the car was responsible for the accident.

10. As far as the quantum of compensation is concerned, the The compensation awarded by the Tribunal under various heads in all the claim petitions are extracted hereunder.

In MCOP NO.5660/2013

Sl.No.	Heads	Amount
1	Transportation	2,000
2	Extra Nourishment	2,000
3	Damage to Clothes	2,000
4	Medical Expenses	10,000
5	Mental Agony	50,000
6	Pain and Sufferings	20,000
7	Partial permanent disability	40,000
	Total	1,26,000

In MCOP NO.5661/2013

Sl.No.	Heads	Amount
1	Loss of Income	15,000
2	Transportation	5,000
3	Extra Nourishment	5,000
4	Damage to Clothes	1,000
5	Medical Expenses	7,000
6	Attender's Charges	5,000
7	Mental Agony	30,000
8	Pain and Sufferings	20,000

Sl.No.	Heads	Amount
9	Partial permanent disability	15,000
	Total	1,03,000

In MCOP NO.5662/2013

Sl.No.	Heads	Amount
1	Loss of Income	10,000
2	Transportation	5,000
3	Extra Nourishment	5,000
4	Damage to Clothes	2,000
5	Medical Expenses	10,000
6	Attender's Charges	10,000
7	Mental Agony	30,000
8	Pain and Sufferings	20,000
9	Partial permanent disability	15,000
	Total	1,07,000

In MCOP NO.5663/2013

Sl.No.	Heads	Amount
1	Loss of Income	50,000
2	Transportation	5,000
3	Extra Nourishment	10,000
4	Damage to Clothes	2,000
5	Medical Expenses	8,500
6	Attender's Charges	15,000
7	Pain and Sufferings	30,000
8	Partial permanent disability	30,000
	Total	1,50,500

11. A perusal of the compensation awarded under various heads by the Tribunal in all the claim petitions seems to be just compensation, considering the nature of injuries sustained by them. In fact, the Tribunal had assigned cogent reasons for awarding the compensation amount to the claimants. More over, the learned counsel for the appellant also fairly conceded that the award passed by the Tribunal is perfectly right. Hence I do not see any reason to interfere with the quantum of compensation awarded by the Tribunal.

12. In the result,

(i) The Civil Miscellaneous petitions in CMA No.1621/2009, 1622/2009, 1623/2009 and 1624/2009 are dismissed. No costs. The connected miscellaneous petitions are closed.

(ii) The orders dated 04.04.2008 passed in M.C.O.P.No.5660/2003, 5661/2003, 5662/2003, 5663/2003 by the V Judge/ Motor Accident Claims Tribunal, Court of Small Causes, Chennai are upheld.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. V Judge/ Motor Accident Claims Tribunal,
Court of Small Causes, Chennai are upheld.

2.The Section officer
VR Section
High Court, Madras 104.

+1 CC to M/s.J. Chandran, Advocate sr 82402
+1 CC to Mr.N.M. Muthurajan, Advocate sr 82051
+1 CC to Mr.R.Sivakumar, Advocate sr 82049.

CMA No.1621, 1622,
1623 and 1624 of 2009
and
M.P.No.1+1+1+1 of 2009

CNR(CO)
SP(15/07/2020)