



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2382 to 2391 of 2019
and C.M.P.Nos.10892 to 10894, 10896,
10899, 10900, 10902 to 10904 and 10908 of 2019

C.M.A.Nos.2382 to 2391/2019 :

The Divisional Manager,
Oriental Insurance Co. Ltd.,
No.23-B, Arunagiri Complex,
Bye-pass Road, Hosur- 635 109..

Appellant in all C.M.As/
5th Respondent in Tribunal below

Vs.

- 1.Jeevitha (minor)
rep. By mother and natural friend, Marakka
..1st Respondent in CMA.2382 of 2019
Petitioner Tribunal below
- 2.Mohemned zakir Ahmed@ Mohamed Ahmed
..1st Respondent in CMA.2383 of 2019
Petitioner Tribunal below
- 3.Jeeva (Minor)
Rep.by Mother and Next Friend Marakka
..1st Respondent in CMA.2384 of 2019
Petitioner Tribunal below
- 4.Lakshmi@ Pushpavathi
..1st Respondent in CMA.2385 of 2019
Petitioner Tribunal below
- 5.T.Sumithra
..1st Respondent in CMA.2386 of 2019
Petitioner Tribunal below
- 6.Vijayakumari W/o.Ganesan
..1st Respondent in CMA.2387 of 2019
Petitioner Tribunal below



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7. Marakka W/o. Madesh

..1st Respondent in CMA.2388 of 2019
Petitioner Tribunal below

8. P.G. Murali S/o. Ganesan

..1st Respondent in CMA.2389 of 2019
Petitioner Tribunal below

9. S. Jothi

..1st Respondent in CMA.2390 of 2019
Petitioner Tribunal below

10. Prema

..1st Respondent in CMA.2391 of 2019
Petitioner Tribunal below

11. M/s. Dharmapuri District Co-Op.
Milk Producers Union Ltd.,
Milk Dairy, Salem Main Road,
Krishnagiri.

..2nd Respondent in all CMAs/
1st Respondent in Tribunal below

12. The Branch Office,
M/s. National Insurance Co. Ltd.,
Rep. By its Branch Manager,
Anuradha Complex, III Floor,
No. 333, Bangalore Road,
Krishnagiri.

..3rd Respondent in all CMAs/
2nd Respondent in Tribunal below

13. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Regional Office, Bharathipuram,
Dharmapuri.

..4th Respondent in all CMAs/
3rd Respondent in Tribunal below

14. S. Subramaniam

..5th Respondent in all CMAs/
4th Respondent in Tribunal below

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common award dated 16.12.2016 made in M.C.O.P.Nos.291, 296,



292, 298, 301, 300, 297, 299, 294 and 293 of 2014 on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.

(In all appeals)

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For Appellant : Ms.C.Harini
for Mr.N.Vijayaraghavan
in all CMAs
For R3 : Ms.R.Sreevidhya
in all CMAs
For R4 : Mr.D.Venkatachalam
in all CMAs

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

These Civil Miscellaneous Appeals are filed against the common award dated 16.12.2016 made in M.C.O.P.Nos.291, 296, 292, 298, 301, 300, 297, 299, 294 and 293 of 2014 on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.All the appeals arise out of the same accident and common award and 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-Insurance Company is the 5th respondent in M.C.O.P.Nos.291, 296, 292, 298, 301, 300, 297, 299, 294 and 293 of 2014 on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri. The claimants filed the said claim petitions, claiming various amounts as compensation for the injuries sustained by them in the accident that took place on 14.02.2013. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by all the drivers of the vehicles involved in the accident and fixed 40% negligence on the part of the driver of the 3rd respondent-Transport Corporation bus, 30% negligence on the part of the driver of the SRS private bus belonging to the 4th respondent and 30% negligence on the part of the driver of the Aavin tanker lorry belonging to the 1st respondent. The Tribunal granted a sum of Rs.25,000/-, Rs.25,000/-, Rs.25,000/-, Rs.25,000/-, Rs.74,000/-, Rs.25,000/-, Rs.25,000/-, Rs.86,400/- Rs.25,000/- and Rs.25,000/- as compensation to the claimant in all the claim petitions respectively and directed the respondents 1 and 2 to jointly and severally pay 30% of the award amount, 3rd respondent to pay 40% of the award amount and respondents 4 and 5 to jointly and severally pay 30% of the award amount



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granted to the claimant in all the claim petitions.

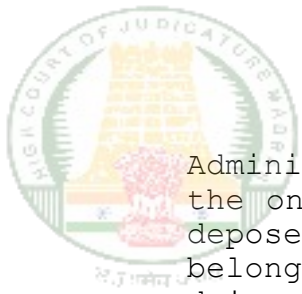
4. Challenging the said common award dated 16.12.2016 made in M.C.O.P.Nos.291, 296, 292, 298, 301, 300, 297, 299, 294 and 293 of 2014, the 2nd respondent-Insurance Company/appellant has come out with the present appeals.

5. The learned counsel appearing for the 5th respondent-Insurance Company/appellant contended that the Tribunal erred in fixing 30% contributory negligence on the part of the driver of the SRS private bus belonging to the 4th respondent and insured with the 5th respondent-Insurance Company/appellant. The Tribunal failed to see that FIR was lodged only against the driver of Aavin milk tanker lorry belonging to the 1st respondent and accident occurred only due to rash and negligent driving by the driver of the Aavin tanker lorry which was insured with the 2nd respondent. The Tribunal failed to consider the fact that the Aavin tanker lorry coming in the opposite direction driven in a rash and negligent manner dashed against the bus belonging to the 3rd respondent-Transport Corporation and then dashed against the SRS private bus belonging to the 4th respondent and the Tribunal failed to properly appreciate the evidence of R.W.1, an Official from 5th respondent-Insurance Company/appellant in proper perspective. The Tribunal has erroneously fixed excess amounts as monthly income of the deceased in all the claim petitions. The 5th respondent-Insurance Company/appellant further contended that the total compensation awarded by the Tribunal in all the claim petitions are excessive and prayed for setting aside the award of the Tribunal.

6. Mr.D.Venkatachalam, learned counsel appearing for the 3rd respondent and Ms.R.Sreevidhya, learned counsel appearing for the 2nd respondent separately contended that the accident occurred only due to rash and negligent driving by the driver of the other vehicle and the Tribunal erroneously fixed negligence on the part of the driver of the bus belonging to the 3rd respondent and tanker lorry belonging to the 1st respondent. The amount fixed by the Tribunal is excessive and prayed for dismissal of the appeals against the respondents 2 and 3.

7. Heard the learned counsel appearing for the 5th respondent-Insurance Company/appellant as well as the respondents 2 and 3 and perused the materials available on record.

8. From the materials on record, it is seen that FIR was lodged against the driver of the tanker lorry who died in the accident. The complaint was given by the Village

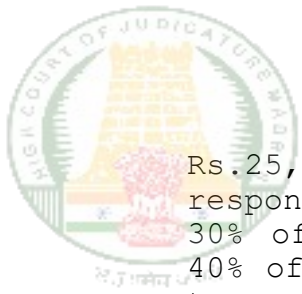


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Administrative Officer who was not an eye witness. P.W.7 is the only eye witness examined in all the claim petitions. He deposed that he traveled in the Transport Corporation bus belonging to the 3rd respondent and according to him, the driver of the bus belonging to the 3rd respondent drove the bus in a rash and negligent manner. At that time, the driver of the SRS private bus belonging to the 4th respondent driven in a rash and negligent manner came behind the Transport Corporation bus and dashed against the back side of the Transport Corporation bus. In view of the said impact, the driver of the Transport Corporation bus lost control and dashed against the Aavin tanker lorry which was coming in opposite direction in a rash and negligent manner. Again the driver of the SRS private bus belonging to the 4th respondent dashed against the Transport Corporation bus and the said bus capsized. P.W.7 deposed that the driver of the Aavin tanker lorry also drove the vehicle in a rash and negligent manner and dashed against the bus. The 2nd respondent or the 3rd respondent have not examined the drivers of the buses or any other eye witness to disprove the evidence of P.W.7. The driver of the Aavin tanker lorry died in the accident. R.W.1 is only an official from the Insurance Company and he is not an eye witness. The Tribunal considering the evidence of P.W.7 and contents in the claim petitions wherein it has been pleaded that the drivers of all the 3 vehicles drove the vehicle in a rash and negligent manner and all the vehicles involved in the accident are heavy vehicles, held that all the 3 drivers are responsible for the accident and fixed contributory negligence of 40% on the part of the driver of the bus belonging to the 3rd respondent-Transport Corporation, 30% on the part of the driver of the SRS private bus belonging to the 4th respondent and 30% on the part of the driver of the Aavin tanker lorry belonging to the 1st respondent and directed the respondents 1 and 2 to jointly and severally pay 30% of the compensation awarded, the 3rd respondent to pay 40% and the respondents 4 and 5 to jointly and severally pay 30% of the compensation granted by the Tribunal in all the claim petitions. There is no error in the said award warranting interference by this Court.

9.As far as the quantum of compensation is concerned, the Tribunal has considered all the materials on record in proper perspective and granted compensation, which are not excessive. There is no error in the said common award warranting interference by this Court.

10.In the result, all the appeals are dismissed and the compensation awarded by the Tribunal at Rs.25,000/-, Rs.25,000/-, Rs.25,000/-, Rs.74,000/-, Rs.25,000/-, Rs.25,000/-, Rs.86,400/- Rs.25,000/- and



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Rs.25,000/- along with interest and costs are confirmed. The respondents 1 and 2 are jointly and severally directed to pay 30% of the award amount, 3rd respondent is directed to pay 40% of the award amount and respondents 4 and 5 are directed to pay 30% of the award amount jointly and severally to the claimant in all the claim petitions respectively 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 to the credit of M.C.O.P.Nos.291, 296, 292, 298, 301, 300, 297, 299, 294 and 293 of 2014. The claimants are permitted to withdraw their shares of the award amount, along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor claimants are directed to be deposited in any one of the Nationalized Banks till the minors attain majority. The guardians of the minor claimants are permitted to withdraw the interest accrued, once in three months for the welfare of the minor claimants. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa
To

The Additional District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

+10ccs to Mr.N.Vijayaraghavan , Advocate SR.No. 73277 to
43286

+1cc to Mr.D.Venkatachalam, Advocate SR.No. 42732

C.M.A.Nos.2382 to 2391 of 2019
and C.M.P.Nos.10892 to 10894, 10896,
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A.SK(24/10/2019)