

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.26 and 185 of 2015
and
M.P.Nos.1 and 1 of 2015

M/s. United India Insurance Co. Ltd.,
Head Office, Whites road
Chennai.

(Amended as per orders in I.A.Nos.723/2004
and 636/2002, dated 01.07.2004 & 26.09.2002
respectively) ... Appellant in both CMAs/
3rd Respondent

Vs

1.B.Sathiyarayanan ... 1st Respondent/Petitioner in
CMA.No.26 of 2015

1.D.K.B.Mani ... 1st Respondent in
CMA.No.185 of 2015

2.Siva Sankar ... 2nd Respondent/1st Respondent

3.M/s.Oriental Insurance Co.Ltd.,
Divisional Office
Katpadi road, Vellore. ... 3rd Respondent/ 2nd Respondent
in both CMAs

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 09.04.2014 made in M.C.O.P.Nos.101 and 102 of
2007 on the file of the Motor Accident Claims Tribunal,
Principal Sub Court, Tiruvannamalai.

In both CMAs.

For Appellant	:	Ms.R.Janani for Mr.J.Chandran
For R1	:	Mr.M.Kamalahasan for Mr.K.G.Senthilkumar
For R2	:	No appearance
For R3	:	Ms.Elveera Ravindran

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

These Civil Miscellaneous Appeals have been filed by the Insurance Company, challenging the common award dated 09.04.2014 made in M.C.O.P.Nos.101 and 102 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.The appellant/United India Insurance Company is 3rd respondent in M.C.O.P.Nos.101 and 102 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai. The claimants filed the above said claim petitions claiming a sum of Rs.4,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 06.12.1996. According to the claimants, the accident occurred due to rash and negligent driving by the driver of the car belonging to the 1st respondent. Due to the accident, they sustained multiple injuries, took treatment as in-patients and underwent surgeries. They could not do the work as they were doing earlier. Hence, they filed the above claim petitions seeking compensation.

4.The 2nd respondent/Oriental Insurance Company filed counter statement and contended that the vehicle of the 1st respondent was insured with the 3rd respondent/United India Insurance Company and if any compensation is payable, 3rd respondent alone is liable to pay compensation and subsequently, after filing counter statement, 2nd respondent did not contest the same.

5.The 3rd respondent/United India Insurance Company filed counter statement denying all the averments made by the claimants. According to the 3rd respondent, banet of the car suddenly opened and due to the same, accident occurred. The driver of the car was not negligent and he was not responsible for the accident. The accident occurred by the Act of God. The amount claimed by the claimants are excessive.

6.Before the Tribunal, both the claimants examined themselves as P.W.1 & P.W.2, Mr.Ravindran & Mr.V.Anand, doctors were examined as P.W.3 & P.W.4 and marked 25 documents as Exs.P1 to P25. The respondents examined one Rajendran as R.W.1 and marked investigation report as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that F.I.R. itself is registered against the driver of the car belonging to the 1st respondent, accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and fastened liability on the 3rd respondent being insurer of the car. The Tribunal dismissed the claim petitions against the 2nd respondent and directed the 3rd respondent to pay a sum of Rs.1,84,500/- and Rs.84,200/- as compensation to the claimants respectively. Against the common award dated 09.04.2014 made in M.C.O.P.Nos.101 and 102 of 2007, the present appeals have been filed by the 3rd respondent/United India Insurance Company.

8.The learned counsel appearing for the 3rd respondent contended that the Tribunal failed to consider the fact that the claimants are responsible for the accident and the Tribunal ought to have reduced compensation under Section 140 of the Motor Vehicles Act. In F.I.R., there is no mentioning about the injuries sustained by the claimants or anybody else. The claim made by the claimants are based on the fabricated documents. The evidence of P.W.3 and P.W.4/doctors cannot be accepted and they have given disability certificates after 11 years of the accident and the same cannot be accepted. The Tribunal erred in accepting percentage of disability as certified by P.W.3 & P.W.4/doctors, the compensation awarded by the Tribunal are excessive and prayed for allowing the appeals.

9.Per contra, the learned counsel appearing for the claimants contended that due to rash and negligent driving by the driver of the car belonging to the 1st respondent, accident occurred. Immediately, the claimants were admitted in the hospital and underwent surgeries. The claimant in M.C.O.P.No.101 of 2007 (C.M.A.No.26 of 2015) was admitted in the hospital four times and underwent surgeries. P.W.3 and P.W.4/Doctors have examined the claimants, took x-rays and thereafter, they have given disability certificates. The compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeals.

10.Heard the learned counsel appearing for the 3rd respondent/United India Insurance Company as well as the claimants and the 2nd respondent/Oriental Insurance Company and perused the materials available on record.

11.From the materials available on record, it is seen that F.I.R. was registered against the driver of the car belonging to the 1st respondent. The claimants as P.W.1 and P.W.2 have deposed as to how the accident occurred. The Tribunal considering the evidence of P.W.1, P.W.2 and F.I.R., has held

that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

12.As far as quantum of compensation is concerned, it is the contention of the learned counsel appearing for the 3rd respondent that the claimants have not sustained injuries and the 3rd respondent has substantiated the said contention by examining R.W.1 and marking Ex.R1/Investigation report. The said contention is contrary to the materials on record. The claimants have marked x-rays, medical bills, wound certificates and disability certificates to substantiate their claim that they have suffered multiple injuries and underwent surgeries for fracture. In addition to those documents, they have examined P.W.3 and P.W.4/Doctors, who have taken x-rays and after considering the medical report, they certified that the claimants have suffered 40% and 25% disabilities respectively. The learned counsel appearing for the 3rd respondent contended that evidence of P.W.3 and P.W.4/Doctors and disability certificates furnished by them are not acceptable. But the 3rd respondent has not let in any contra evidence to disprove the evidence of P.W.3 and P.W.4. In view of the same, there is no error in the finding of the Tribunal accepting the evidence of P.W.3 and P.W.4 and fixing disability as certified by the doctors. Considering the entire materials on record, the total compensation awarded by the Tribunal is not excessive. The 3rd respondent has not made out any case for interfering with the award of the Tribunal.

13.In the result, both the Civil Miscellaneous Appeals are dismissed and the common award of the Tribunal is confirmed. The 3rd respondent/United India Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/1st respondents in both CMAs are permitted to withdraw their respective award amount granted by the Tribunal along with interest and costs, after adjusting the amount already withdrawn, if any. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

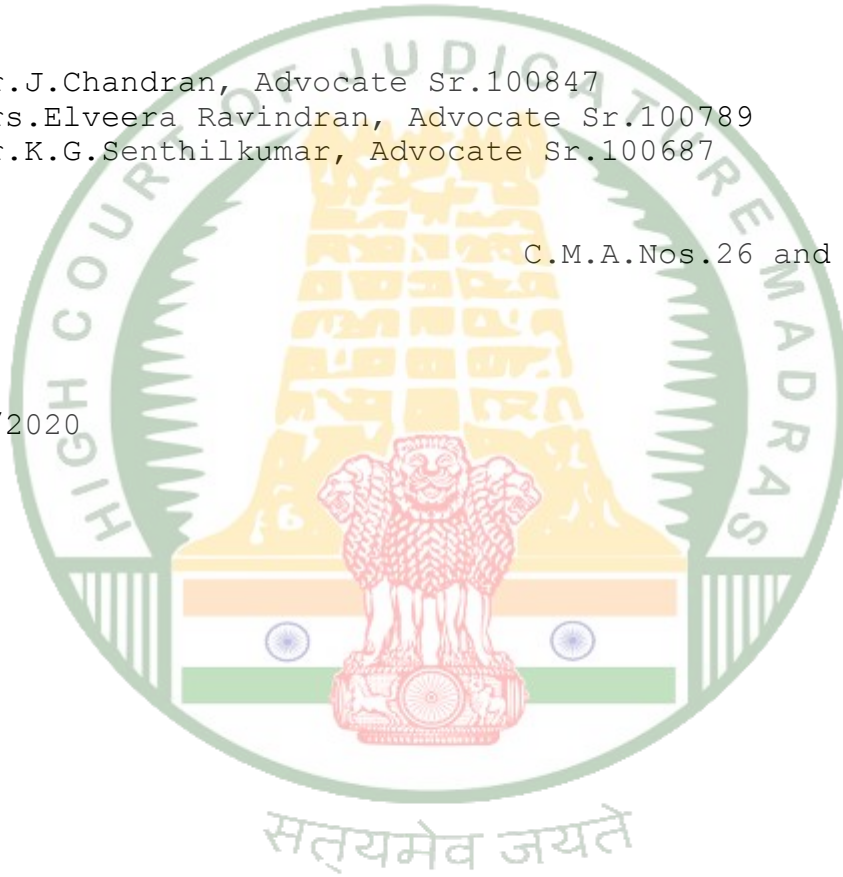
1.The Principal Subordinate Judge
The Motor Accident Claims Tribunal
Tiruvannamalai.

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

+1cc to Mr.J.Chandran, Advocate Sr.100847
+1cc to Mrs.Elveera Ravindran, Advocate Sr.100789
+1cc to Mr.K.G.Senthilkumar, Advocate Sr.100687

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srg 07/08/2020



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