

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.M.A.Nos.2277, 2279 and 2292 of 2019**  
**and**  
**C.M.P.Nos.9973, 9991 and 10088 of 2019**

**C.M.A.No.2277 of 2019:**

ICICI Lombard General  
Insurance Company Ltd.,  
1<sup>st</sup> Floor, Arihant Plaza,  
No.84/85, Walltax Road,  
Chennai – 600 003.

.. Appellant

Vs.

1.B.Venkatesh  
2.Tmt.Maya Venkatesh  
3.S.Arumugasamy  
4.J.Kannan

5.Royal Sundaram Alliance  
Insurance Company Limited,  
No.46, Whites Road,  
Chennai – 600 014.

.. Respondents

**C.M.A.No.2279 of 2019:**

ICICI Lombard General  
Insurance Company Ltd.,  
1<sup>st</sup> Floor, Arihant Plaza,  
No.84/85, Walltax Road,  
Chennai – 600 003.

.. Appellant

Vs.

1.Y.Ravishankar

2.Tmt.Y.Krishnakumari

3.S.Arumugasamy

4.J.Kannan

5.Royal Sundaram Alliance  
Insurance Company Limited,  
No.46, Whites Road,  
Chennai – 600 014.

.. Respondents

**C.M.A.No.2292 of 2019:**

ICICI Lombard General  
Insurance Company Ltd.,  
1<sup>st</sup> Floor, Arihant Plaza,  
No.84/85, Walltax Road,  
Chennai – 600 003.

.. Appellant

Vs.

1.Smt.K.Pushpamala

2.S.Arumugasamy

3.J.Kannan

4.Royal Sundaram Alliance  
Insurance Company Limited,  
No.46, Whites Road,  
Chennai – 600 014.

.. Respondents

**Common Prayer:** These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 19.03.2013 made in M.C.O.P.Nos.3237, 3238 and 4625 of 2009 on the file of the Motor Accident Claims Tribunal, Chief

Judge, Court of Small Causes at Chennai.

**In C.M.A.No.2277 of 2019**

For Appellant : Ms.R.Sree Vidhya

For R1 to R4 : Mr.T.Rajamohan

**In C.M.A.No.2279 of 2019**

For Appellant : Ms.R.Sree Vidhya

For R1 to R4 : Mr.T.Rajamohan

**In C.M.A.No.2292 of 2019**

For Appellant : Ms.R.Sree Vidhya

For R1 to R3 : Mr.T.Rajamohan

**COMMON JUDGMENT**

These Civil Miscellaneous Appeals have been filed against the common award dated 19.03.2013 made in M.C.O.P.Nos.3237, 3238 and 4625 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes at Chennai.

2.All the three 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 Insurance Company is 2<sup>nd</sup> respondent in M.C.O.P.Nos.3237, 3238 and 4625 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes at Chennai. The claimants filed the said claim petitions claiming a sum of Rs.15,00,000/- each as compensation for the death of Pavithra, Y.R.Venkat Sudharshan and Sakthi Srinivasan respectively, who died in the accident that took place on 18.07.2009.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by both the driver of the concrete mixture lorry belonging to the first respondent as well as the driver of the car belonging to the third respondent and fixed 40% negligence on the part of the driver of the vehicle belonging to the 2<sup>nd</sup> respondent and 60% negligence on the part of the driver of the vehicle belonging to the 4<sup>th</sup> respondent, awarded a sum of Rs.9,37,200/-, Rs.8,72,400/- and Rs.9,27,200/- respectively as compensation to the claimants in all the claim petitions and directed the second respondent/Insurance Company being insurer of the said lorry to pay 40% of the award amount and fourth respondent/Insurance

Company being insurer of the said car to pay 60% of the award amount to the claimants in M.C.O.P.Nos.3237, 3238 and 4625 of 2009 respectively.

5. Against the common award dated 19.03.2013 made in M.C.O.P.Nos.3237, 3238 and 4625 of 2009 fixing 40% negligence on the part of the driver of the lorry belonging to the 1<sup>st</sup> respondent, the second respondent-Insurance Company has come out with the present appeals.

6. The learned counsel appearing for the second respondent-Insurance Company contended that the driver of Maruthi car while overtaking another vehicle came to the centre of the road and dashed against the concrete mixture lorry. The accident has occurred only due to rash and negligent driving by the driver of the Maruthi car belonging to the 3<sup>rd</sup> respondent. The Tribunal ought to have fixed entire negligence on the part of the driver of the Maruthi car. The claimants themselves have admitted in their pleadings and also PW4 in his evidence admitted that while the driver of the Maruthi car was overtaking another vehicle, the accident has occurred. The Tribunal failed to consider that FIR was lodged by PW4 who travelled in the Maruthi car. The Tribunal erred in holding that PW4 has not given any written complaint. PW4 has clearly

stated that the accident occurred only due to fault on the driver of the Maruthi car. The complaint was given immediately after the accident and FIR was registered. While giving evidence PW4 has attempted to shift the blame on the driver of the concrete mixture lorry to help the claimants. The Tribunal failed to see that the driver of the mixture lorry drove the lorry in the correct lane and the driver of Maruthi car, while overtaking another vehicle, came to the centre of the road and dashed against the concrete mixture lorry and caused the accident. The Tribunal erred in holding that the driver of the concrete mixture lorry is also responsible for the accident by coming to the middle of the road and erroneously fixed 40% negligence on the part of the driver of the concrete lorry and fastened 40% liability on the 2<sup>nd</sup> respondent-Insurance Company and prayed for setting aside the common award passed by the Tribunal.

7.Per contra, the learned counsel appearing for the claimants contended that in the absence of any evidence let in on the part of the Insurance Companies, the Tribunal has rightly held that the accident occurred due to rash and negligent driving by both the drivers of the lorry as well as car and fixed contributory negligence at the rate of 40:60 on the part of both the drivers of lorry and car respectively. The Tribunal after considering both oral and documentary evidence, awarded

compensation, which is not excessive and prayed for dismissal of the appeals.

8. Heard the learned counsel appearing for the second respondent- Insurance Company as well as the claimants and perused entire materials on record.

9. From the materials available on record, it is seen that it is the contention of the claimants that while the Maruthi car in which the deceased travelled was overtaking the concrete mixture lorry insured with the 2<sup>nd</sup> respondent/Insurance Company and came in the centre of the road, the driver of the lorry drove the same in a high speed and dashed against the rear side of the Maruthi car. Due to the said impact, Maruthi car rolled over and the deceased died due to the injuries suffered in the accident. To substantiate their case, the claimants examined PW4 who travelled in the Maruthi car along with the deceased, who had deposed that the accident occurred only due to rash and negligent driving by the driver of the concrete mixture lorry. PW4 has also stated that while he was taking treatment in the hospital for the injuries sustained by him in the accident, the police took statement from him and he has not given any complaint to the police. On the other hand, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance

Company contended that the driver of the Maruthi car came to the centre of the median while overtaking another vehicle immediately and caused the accident. FIR was registered against the driver of the concrete mixture lorry.

10. From the award of the Tribunal, it is seen that PW4 stated that he has not lodged any complaint to the police and he has signed the complaint. The 2<sup>nd</sup> respondent has not taken any steps for producing the statement given by PW4. PW4 has stated that the accident occurred only due to rash and negligent driving by the driver of the concrete mixture lorry. It is well settled that contents of FIR is not a conclusive proof for negligence and the Tribunal has to fix the negligence only based on the evidence let in before it. The 1<sup>st</sup> respondent/owner of the concrete mixture lorry or 2<sup>nd</sup> respondent insurer of the concrete mixture lorry did not examine the driver of the lorry to substantiate their case. The Tribunal considering the evidence of PW4, did not accept the FIR and considering the pleadings, oral and documentary evidence let in by the claimants, held that the driver of the lorry also contributed negligence to the accident and fixed 40% negligence on the part of the driver of the concrete mixture lorry and 60% negligence on the part of the driver of the Maruthi car. The learned counsel appearing for the 2<sup>nd</sup> respondent contended that the driver of the lorry drove the same in a

correct lane and the same was proved. The said contention has no merits. The 2<sup>nd</sup> respondent did not examine the driver of the lorry or any other eyewitness to prove that the driver of the lorry has not driven the lorry in the correct lane. The Tribunal considering all the materials, fixed negligence on the part of both the drivers of the lorry as well as car and directed the 2<sup>nd</sup> respondent/Insurance Company to pay 40% compensation. There is no error in the said finding of the Tribunal warranting interference by this Court.

11. In the result, all the three appeals are dismissed. The compensation awarded by the Tribunal at Rs.9,37,200/-, Rs.8,72,400/- and Rs.9,27,200/- are hereby confirmed. The 2<sup>nd</sup> respondent is directed to deposit 40% of the award amount and the 4<sup>th</sup> respondent is directed to deposit 60% of the award amount in all the appeals, 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 common judgment to the credit of M.C.O.P.Nos.3237, 3238 and 4625 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes at Chennai. On such deposit, the claimants in M.C.O.P.Nos.3237, 3238 and 4625 of 2009 are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, along with interest and costs, after adjusting the

amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

**27.04.2019**

Index : Yes / No  
Internet : Yes/ No  
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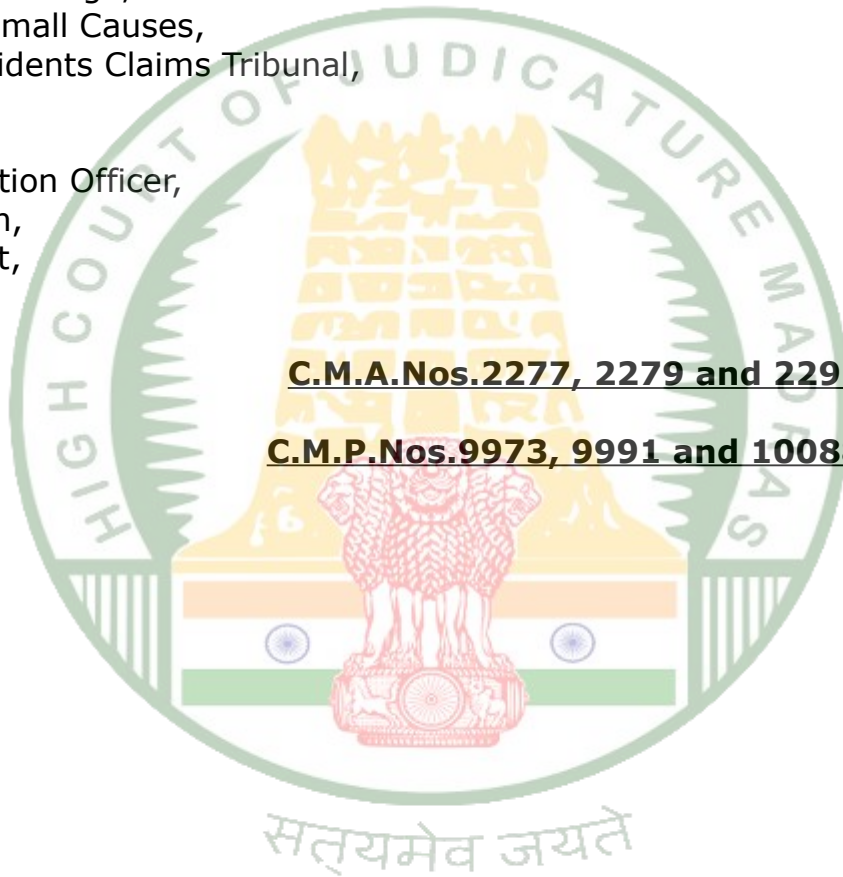
**V.M.VELUMANI, J.,**

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To

1.The Chief Judge,  
Court of Small Causes,  
Motor Accidents Claims Tribunal,  
Chennai.

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



**C.M.A.Nos.2277, 2279 and 2292 of 2019**  
**and**  
**C.M.P.Nos.9973, 9991 and 10088 of 2019**

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