

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3663 of 2006 and 1642 of 2007
&
M.P.Nos.1 of 2006 and 2 of 2007

C.M.A.No.3663 of 2006:

National Insurance Company Limited,
Branch Office - 4,
930, Sathy Road,
Gandhi Puram, Coimbatore - 12. .. Appellant/3rd Respondent

Vs.

1.Dr.A.R.Sivakumar
2.Saravana Prabhu
3.N.Sivakumar
(R2 and R3 remained exparte before Tribunal.
Hence, notice dispensed with)
4.Tharadevi
5.Branch Manager,
New India Assurance Company Limited,
Avinashi Road, Coimbatore. .. Respondents/Petitioner
& Respondents 1,2,4 &5

C.M.A.No.1642 of 2007:

Branch Manager,
New India Assurance Company Limited,
Avinashi Road, Coimbatore. .. Appellant/5th Respondent

Vs.

1.Dr.A.R.Sivakumar
2.Saravana Prabhu
3.N.Sivakumar
(R2 and R3 remained exparte before Tribunal.
Hence, notice dispensed with)

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4.National Insurance Company Limited,
Branch - 4, 930, Sathi Road,
Gandhipuram, Coimbatore - 12.
5.Taradevi

.. Respondents/
Petitioner & Respondents 1 to 4

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.08.2006 made in M.C.O.P.No.51 of 2004 on the file of Motor Accidents Claims Tribunal, I Additional Sub Court, Gobichettipalayam.

C.M.A.No.3663 of 2006:

For Appellant : Mr.S.Vadivel
For R1 : Mr.Ma.P.Thangavel
For R5 : Mr.S.Jayasankar
For R2 & 3 : Ex-parte
For R4 : No appearance

C.M.A.No.1642 of 2007:

For Appellant : Mr.S.Jayasankar
For R1 : Mr.Ma.P.Thangavel
For R4 : Mr.S.Vadivel
For R2&3 : Ex-parte
For R5 : No appearance

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

Both the Civil Miscellaneous Appeals are filed against the award dated 07.08.2006 made in M.C.O.P.No.51 of 2004 on the file of Motor Accidents Claims Tribunal, I Additional Sub Court, Gobichettipalayam.

2.Both the Civil Miscellaneous Appeals are arising out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

3.The 1st respondent in both the appeals is the claimant and the appellant in C.M.A.No.3663 of 2006 is the 3rd respondent and the appellant in C.M.A.No.1642 of 2007 is the 5th respondent in M.C.O.P.No.51 of 2004 on the file of Motor Accidents Claims Tribunal, I Additional Sub Court, Gobichettipalayam.

4.The claimant filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.04.2003.

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5. According to the claimant, on 28.04.2003 at about 11.00 A.M., while he was riding the TVS 50 moped bearing Registration No. TN 37 L 4517 on Coimbatore - Avinasi Road, in front of Aravind Eye Hospital, the 1st respondent, who is the rider of the motorcycle bearing Registration No. TN 37 X 8266 coming in the opposite direction in a rash and negligent manner, suddenly turned the motorcycle to his right side and dashed against the claimant and caused the accident. In the said accident, the claimant and the 1st respondent fell down and sustained grievous injuries and the claimant was admitted in Kovai Medical Centre and Hospital, Coimbatore and he was discharged on 10.05.2003. Due to the injuries sustained by him in the accident, he is not able to continue his work as he was doing earlier and therefore, he filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the respondents.

6. The 3rd respondent-National Insurance Company, being the insurer of the motorcycle bearing Registration No. TN 37 X 8266 belonging to the 2nd respondent filed counter statement and denied all the averments made by the claimant and stated that the claimant has to prove the nature of injuries, disability suffered by him, period of treatment taken and the accident has occurred only due to negligence on the part of the rider of the motorcycle bearing Registration No. TN 37 X 8266, belonging to the 2nd respondent by producing valid documents. The 3rd respondent-National Insurance Company has stated that the accident has occurred due to negligence on the part of the claimant and the owner and insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517, ridden by the claimant have to be impleaded as necessary parties. The claimant was not having valid driving license and the motorcycle ridden by the claimant was not insured and TVS 50 moped bearing Registration No. TN 37 L 4517 has no Registration Certificate at the time of accident and prayed for dismissal of the claim petition against 3rd respondent-National Insurance Company.

7. As per order made in I.A.No.1039 of 2004 dated 12.04.2005, the respondents 4 and 5, being the owner and insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517 were impleaded as necessary parties.

8. The 4th respondent, being the owner of the TVS 50 moped bearing Registration No. TN 37 L 4517 filed counter statement and denied that the accident has occurred due to negligence on the part of the claimant and stated that the accident has occurred only due to negligence on the part of the 1st respondent, who is the rider of the motorcycle bearing

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Registration No.TN 37 X 8266. The Police mistakenly filed the Criminal Case against the claimant and the rough sketch filed was not correct. The TVS 50 moped bearing Registration No. TN 37 L 4517 belonging to the 4th respondent is insured with the 5th respondent-New India Insurance Company. If any award is passed against the 4th respondent, the 5th respondent is liable to pay the compensation and prayed for dismissal of the claim petition.

9.The 5th respondent-New India Assurance Company, being the insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517 filed counter statement and denied all the averments made by the claimant. According to the 5th respondent, the 1st respondent, who is the rider of the motorcycle bearing Registration No.TN 37 X 8266 using his political influence, filed Criminal Case against the claimant. The 5th respondent is unnecessary party to this Claim Petition. The claimant has to prove his age, avocation, income and disability by producing valid documents. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

10.Before the Tribunal, the claimant examined himself as P.W.1 and Dr.Thambiraj was examined as P.W.2 and 20 documents were marked as Exs.P1 to P20. On behalf of the respondents, one Rajendran was examined as R.W.1 and 4 documents were marked as Exs.R1 to R4.

11.The Tribunal considering the pleadings, oral and documentary evidence, held both the riders of the motorcycle belonging to the 2nd respondent and 4th respondent are responsible for the accident and awarded a sum of Rs.3,01,000/- as compensation to the claimant and directed the respondents 1 to 3 being the rider, owner and insurer of the motorcycle bearing Registration No.TN 37 X 8266 to jointly and severally pay 50% of the award amount and the respondents 4 and 5 being the owner and insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517 to jointly and severally pay balance 50% of the award amount.

12.Challenging the said award dated 07.08.2006 made in M.C.O.P.No.51 of 2004, the 3rd respondent-National Insurance Company, being the insurer of the motorcycle bearing Registration No.TN 37 X 8266 has come out with an appeal in C.M.A.No.3663 of 2006 and the 5th respondent-New India Assurance Company, being the insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517 has come out with an appeal in C.M.A.No.1642 of 2007.

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13.The learned counsels appearing for the respondents 3 and 5 separately contended that the Tribunal erred in fixing 50% negligence on the part of the 1st respondent, who is the rider of the motorcycle bearing Registration No.TN 37 X 8266 as well as 50% negligence on the part of the claimant. They contended that entire negligence must be fixed on the other rider. The learned counsel appearing for the 3rd respondent-National Insurance Company being the insurer of the motorcycle bearing Registration No.TN 37 X 8266 further contended that the Tribunal failed to consider the evidence of R.W.1, Exs.R1 to R4 - Rough sketch, charge sheet, copy of the judgment and the policy of the motorcycle bearing Registration No.TN 37 X 8266 and Ex.Pl/F.I.R., which was registered against the claimant. Charge sheet was also filed against the claimant in a Criminal Case and he pleaded guilty and paid the fine. The learned counsel appearing for the 5th respondent-New India Assurance Company, being the insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517 contended that the claimant being the tort-feasor is not entitled to claim compensation from the 5th respondent. The Tribunal has not given any valid reason for fastening 50% liability on the part of the 5th respondent. The Tribunal erred in awarding a sum of Rs.50,000/- towards loss of income, when the claimant himself has admitted that he was receiving the salary and increment during treatment period. The Tribunal erred in granting a sum of Rs.81,000/- towards medical expenses, when the claimant has produced medical bills only for the tune of Rs.62,744/-. P.W.2/Doctor assessed that the claimant suffered 27% disability and the same was accepted by the Tribunal, but the Tribunal erroneously awarded a sum of Rs.50,000/- towards disability, which is excessive. The Tribunal granted interest at the rate of 9% interest, which is highly excessive. The total amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

14.Per contra, the learned counsel appearing for the claimant contended that the accident has occurred only due to rash and negligent riding by the 1st respondent, who is the rider of the motorcycle bearing Registration No.TN 37 X 8266 belonging to the 2nd respondent. Immediately after the accident, the claimant became unconscious and was admitted in the hospital. The 1st respondent taking advantage of the same, has lodged a false complaint against the claimant. The claimant as P.W.1 has deposed the correct fact and substantiated his claim that the accident has occurred only due to rash and negligent riding by the 1st respondent - rider of the motorcycle bearing Registration No.TN 37 X 8266. The Tribunal erroneously fixed 50% negligence on the part of the claimant. The Tribunal considering the nature

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of injuries and evidence of P.W.1/Doctor and disability, awarded compensation under different heads, which are not excessive and prayed for dismissal of both the appeals.

15. Heard the learned counsels appearing for the 3rd respondent, 5th respondent as well as the learned counsel appearing for the claimant and perused the entire materials on record.

16. It is the contention of the claimant that the accident has occurred only due to rash and negligent riding by the 1st respondent, who is the rider of the motorcycle bearing Registration No. TN 37 X 8266 and that 1st respondent has lodged a false complaint against the claimant. The claimant examined himself as P.W.1 and deposed to that effect. On the other hand, it is the contention of the respondents 3 and 5, insurer of the motorcycle bearing Registration No. TN 37 X 8266 belonging to the 2nd respondent and insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517 belonging to the 4th respondent that accident has occurred only due to rash and negligent riding by the other vehicle. It is the further contention of the learned counsel appearing for the 5th respondent - New India Assurance Company, insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517 that the claimant was a tort-feasor and he is not entitled to claim any compensation from the 5th respondent - New India Assurance Company. To substantiate their contention, the 3rd respondent - National Insurance Company examined R.W.1 and marked Exs.R1 to R4. The Tribunal considered Exs.R1 to R4, wherein the claimant was charge sheeted in a Criminal Case, he was convicted in a Criminal Case and paid fine. At the same time, the Tribunal has considered the evidence of claimant as P.W.1 and held that both the claimant as well as the 1st respondent-rider of the motorcycle bearing Registration No. TN 37 X 8266 are equally responsible for the accident. The reason given by the Tribunal for fixing the negligence on the part of the claimant as well as on the part of the 1st respondent-rider of the motorcycle bearing Registration No. TN 37 X 8266 is valid.

17. The learned counsel appearing for the 5th respondent-New India Assurance Company being the insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517 contended that the claimant being the tort-feasor, the 5th respondent-New India Assurance Company is not liable to pay any compensation to the claimant. But, the 5th respondent-New India Assurance Company has not taken such a stand before the Tribunal in the counter statement. Therefore, without pleadings, it is not open to the 5th respondent-New India Assurance Company to raise such a plea

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in the present appeal. The 5th respondent-New India Assurance Company is also liable to pay 50% of the compensation as awarded by the Tribunal.

18.As far as quantum of compensation is concerned, from the award of the Tribunal it is seen that the claimant had admitted that he is receiving salary and increment. There is nothing on record to show that the claimant had suffered loss of income due to the injuries suffered by him. In the absence of any material, the Tribunal erred in awarding a sum of Rs.50,000/- towards loss of income. Similarly, the Tribunal erroneously awarded a sum of Rs.50,000/- towards mental agony. The claimant is not entitled to any compensation for loss of income and mental agony and hence, the same are set aside. As far as quantum of compensation awarded for medical expenses is concerned, the claimant has produced medical bills to the tune of Rs.81,095.03 and the Tribunal has accepted the same and awarded a sum of Rs.81,000/- towards medical expenses based on the medical bills produced by the claimant and the same is confirmed. P.W.2/Doctor assessed that the claimant suffered 27% disability and the Tribunal has awarded excessive sum of Rs.50,000/- towards disability. The accident occurred on 28.04.2003. Taking into consideration the date of accident, the claimant is entitled to only a sum of Rs.27,000/- (Rs.1,000/- X 27% of disability) towards disability at the rate of Rs.1,000/- per percentage of disability. The interest awarded by the Tribunal at 9% per annum is highly excessive and the claimant is entitled to interest only at the rate of 7.5% per annum. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	50,000/-	-	Set aside
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Damages to clothes and articles	5,000/-	5,000/-	Confirmed
5.	Medical expenses	81,000/-	81,000/-	Confirmed
6.	Mental agony	50,000/-	-	Set aside

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
7.	Disability	50,000/-	27,000/-	Reduced
8.	Pain and sufferings	50,000/-	50,000/-	Confirmed
	Total	Rs.3,01,000/-	Rs.1,78,000/-	reduced by Rs.1,23,000/-

19.The compensation awarded by the Tribunal at Rs.3,01,000/- is hereby reduced to Rs.1,78,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 to 3 being the rider, owner and insurer of the motorcycle bearing Registration No.TN 37 X 8266 are jointly and severally directed to deposit 50% of the award amount i.e.,Rs.89,000/- and the respondents 4 and 5 being the owner and insurer of the TVS 50 moped bearing Registration No. TN 37 L 4517 are jointly and severally directed to deposit balance 50% of the award amount i.e.,Rs.89,000/-, along with proportionate 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.No.51 of 2004 on the file of Motor Accidents Claims Tribunal, I Additional Sub Court, Gobichettipalayam. On such deposit, the claimant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The 3rd respondent-National Insurance Company as well as the 5th respondent-New India Assurance Company are at liberty to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.51 of 2004 on the file of Motor Accidents Claims Tribunal, I Additional Sub Court, Gobichettipalayam, if the entire amount has been already deposited by them.

20.In the result, both the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The I Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Gobichettipalayam.

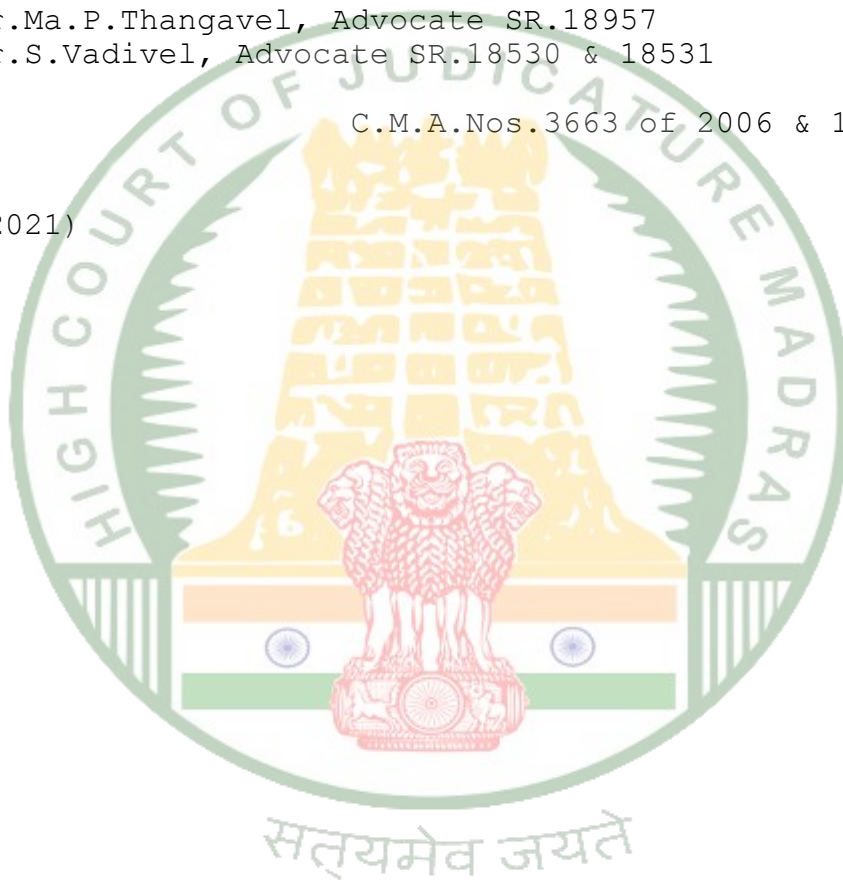
2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate SR.18957

+2cc to Mr.S.Vadivel, Advocate SR.18530 & 18531

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