

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2098, 2099, 2100 & 2101 of 2013

CMA.No.2098 of 2013

P.Vijayaraj

...Appellant

vs.

1. A.Chellapandi
(Was set ex-parte in the
Trial Court)

2. National Insurance Co. Ltd.,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai - 600 002.

.. Respondents

CMA.No.2099 of 2013

A.Thenammal alias Thenambal

.. Appellant

vs.

1. A.Chellapandi
(Was set ex-parte in the
Trial Court)

2. National Insurance Co. Ltd.,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai - 600 002.

.. Respondents

CMA.No.2100 of 2013

National Insurance Co. Ltd.,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai - 600 002.

.. Appellant

Vs.

WEB COPY

1.P.Vijayaraj

2.A.Chellapandi

..Respondents

CMA.No.2101 of 2013

National Insurance Co. Ltd.,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai - 600 002.

.. Appellant

Vs.

1.A.Thenammal @ Thenambal

2.A.Chellapandi

..Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the common Judgment and Decree dated 05.11.2012 made in MCOP Nos.1994 & 1995 of 2010 on the file of the II Judge, Motor Accident Claims Tribunal (Small Causes Court) Chennai.

For Appellants

in CMA Nos.2098 & 2099/2013

and For Respondent in

CMA Nos.2100 & 2101/2013 :Mr.K.Surya Narayana
for M/s.M.Swamikkannu

For Respondent 2

in CMA Nos.2098 & 2099/2013

and for Appellant in

CMA Nos.2100 & 2101/2013 : Mr.S.Arun Kumar

COMMON JUDGMENT

(These appeals were heard through the Video Conferencing)

CMA.Nos.2100 & 2101 of 2013 have been filed by the insurance company and CMA.Nos.2098 & 2099 of 2013 have been filed by the claimants challenging the common award dated 05.11.2012 passed by the learned II Judge, Motor Accident Claims Tribunal (Small Causes Court) Chennai. in M.C.O.P.Nos.1994 & 1995 of 2010.

2. Heard Mr.K.Surya Narayana for Mr.M.Swamikkannu, the learned counsel for the Appellants in CMA Nos.2098 & 2099/2013 and appearing for the first Respondent in CMA Nos.2100 & 2101/2013 and Mr.S.Arun Kumar, learned counsel for the Insurance Company. The first respondent in CMA Nos.2098 & 2099/2013 as well as the second respondent in CMA Nos.2100 &

2101/2013 who is the owner of the vehicle remained exparte before the Tribunal as well as this Court.

3. The Insurance company has challenged the common award only on the following grounds:

a) According to them, they are not liable to compensate the claim, since Mr.P.Vijayaraj, appellant in CMA.No.2098 of 2013 is a tort-feasor. It is their contention that the Tribunal failed to take note the FIR (Ex.R1) which reveals that the cause of accident is only Mr.P.Vijayaraj (the claimant in MCOP No.1994 of 2020). It is their further contention that the complaint was lodged by Thenammal @ Thenambal, the claimant in MCOP No.1995 of 2010 and only based on the said complaint, the FIR was registered against P. Vijayaraj. According to them, the Tribunal ought to have accepted the contents of the FIR and held the appellant/insurance company not liable.

4. The respective claimants who are the appellants in CMA.Nos.2098 & 2099 of 2013 had challenged the common award on the ground that the quantum of compensation awarded by the Tribunal is not a just compensation and therefore, it has to be enhanced.

5. Before the Tribunal, the claimants have filed 12 documents which were marked as Exs.P1 to P12 and 4 witnesses were examined namely

a) P.Vijayaraj, the appellant in CMA.No.2098 of 2013 as P.W.1

b) A.Thenammal alias Thenambal , the appellant in CMA No.2099 of 2013 as P.W.2

c) C.G.Renuka, Assistant at the office of Surgical Registrar, Government General Hospital, Chennai, as P.W.3.

d) Dr.Amarnath R. Sowlee, the Doctor who examined the respective claimants as P.W.4.

On the side of the Insurance Company, two witnesses were examined namely

a) S.Elangovan, investigator of the second respondent's Insurance Company as RW.1

b) K.Backiyaraj, the driver of the insured vehicle as RW.2. Two documents were also filed on their side namely Exs.R1, the Investigation Report which includes the FIR and Ex.R2, copy of the driving licence of the driver of the insured vehicle.

6. In the claim petition, the respective claimants have pleaded that on 27.11.2009, P.Vijayaraj, the appellant in CMA No.2098 of 2013 was riding his motor cycle bearing Reg. No.TN 55 K 9996 from west to east in Manaparai - Viralimalai Road and at this juncture, the insured lorry bearing Reg. No.TN 57 S 9344 came from behind and hit against the motor cycle and two other pedestrians including Thenammal, the appellant in CMA.No.2099 of

2013, due to the rash and negligent driving by the driver of the lorry which resulted in the respective claimants sustaining multiple fractures and injuries. However, the appellant in CMA No.2099 of 2013 who is the claimant in MCOP No.1995 of 2010 has admittedly given a complaint before the police, based on which, the FIR (Ex.R2) has been registered stating that only due to the rash and negligent driving by the rider of the Motor cycle P.Vijayaraj, the appellant in CMA.No.2098 of 2013, the accident had happened as according to her, it was in fact, the said motor cycle which dashed against the pedestrian as well as lorry which is insured with the appellant in CMA Nos.2100 & 2101 of 2013.

7. The only contention raised by the insurance company is that when the FIR (Ex.R2) has been registered at the behest of one of the claimants who are before this Court, the Tribunal ought to have exonerated the insurance company from any liability, as no contra evidence has been produced by the respective claimants before the Tribunal excepting for pleading in their respective claim petition that the driver of the insured lorry was at fault. Before the Tribunal, the claimants have not filed the FIR eventhough the FIR was registered only at the behest of one of them. It was in fact filed only by the insurance company before the Tribunal along with their investigation report which was marked as Ex.R1 before the Tribunal.

8. This Court has also perused the contents of the FIR as found in the investigation report which will reveal that only based on the complaint lodged by Thenammal alias Thenambal, the appellant in CMA No.2099 of 2020 the said FIR was registered against the rider of the motor cycle who is the appellant in the other appeal CMA No.2098 of 2013 who are the claimant in MCOP No.1994 of 2010. However, the Tribunal under the impugned common award has totally ignored the FIR (Ex.R1) which was the only evidence available before it with regard to the cause of accident which would reveal that the rider of the motorcycle who is the claimant in MCOP.No.1994 of 2010 was alone responsible for the cause of accident.

9. The Tribunal has accepted the contents of the claim petitions as well as the oral evidence adduced by the claimants in entirety totally ignoring the FIR (Ex.R1) which contradicts the contents of the claim petitions as regards how the accident had happened. Any adjudication of a Motor Accident Claim is done by the Tribunal based on preponderance of probabilities. The FIR has also not been challenged by the respective claimants before any Court of law and therefore, the Tribunal ought to have given due consideration to the said document before fixing the liability. However, the Tribunal has totally ignored the contents of the FIR. The Insurance Company has also adduced

oral evidence through their witness RW1, Investigator and RW2, the driver of the insured lorry deposing that the driver of the insured vehicle is not at fault. Both of them have deposed that the accident had happened only due to the rash and negligent riding by the rider of the motor cycle who was alone responsible for the cause of the accident. The Tribunal has also totally ignored the oral evidence adduced by insurance company through RW1 and RW2.

10. For the forgoing reasons, this Court is of the considered view that the Tribunal under the impugned common award ought not to have totally exonerated the claimants in MCOP Nos. 1994 and 1995 of 2010 as the claimant in MCOP.No.1994 of 2010 is also a tort feisor, since the FIR EX.R2 remains unchallenged and it has been registered only at the behest of the claimant in MCOP.No.1995 of 2010 who is the appellant in CMA.No.2099 of 2013. The respective claimants during cross examination by the insurance company have also not admitted that the cause of the accident was only the claimant in MCOP No.1994 of 2010 who is the appellant in CMA.No.2098 of 2013. However, this Court is of the considered view that when the FIR has been registered against the rider of the motor cycle who is the claimant in MCOP.No.1994 of 2010 and that too when the FIR has been registered only at the behest of the complaint given by one of the claimant. The Tribunal ought to have fixed the contributory negligence on the part of the claimants also as one of them was a tort feisor and other was a person who gave the complaint against the tort feisor.

11. This Court after giving due weightage to the materials and evidence available on record, is of the considered view that the claimants and the driver of the insured vehicle are both responsible for the cause of the accident. This Court fixes the contributory negligence of the claimants at 40 % and the contributory negligence of the driver of the lorry which is insured with the appellant in CMA.Nos.2100 & 2101 of 2013 at 60 %.

12. The compensation awarded by the Tribunal under the impugned award to the respective claimants are as follows:
MCOP.No.1994 of 2010

Loss of income for 6 months	-	Rs.45,000/-
Transportation	-	Rs.10,000/-
Extra nourishment	-	Rs.10,000/-
Damage to clothes	-	Rs.1,000/-
Medical Expenses	-	Rs.5,000/-
Attender Charges	-	Rs.5,000/-
Mental agony to the petitioner and the loss of amenities of life	-	Rs.25,000/-

Pain and suffering	-	Rs.25,000/-
Disability of 35% at the rate of Rs.2000/- per disability	-	Rs.70,000/-
Total Compensation is fixed at	-	<u>Rs.1,96,000/-</u>

MCOP No.1995 of 2010

Loss of income for 6 months	-	Rs.22,500/-
Transportation	-	Rs.10,000/-
Extra nourishment	-	Rs.10,000/-
Damage to clothes	-	Rs.1,000/-
Medical Expenses	-	Rs.5,000/-
Attender Charges	-	Rs.5,000/-
Mental agony to the petitioner and the loss of amenities of life	-	Rs.25,000/-
Pain and suffering	-	Rs.25,000/-
Disability of 25% at the rate of Rs.2000/- per disability	-	Rs.50,000/-
Total Compensation is fixed at	-	<u>Rs.1,53,500/-</u>

13. The year of the accident is 2009. The nature of the injuries sustained by the respective claimants have also not been disputed by the insurance company as seen from the evidence available on record. The Tribunal has accepted the disability certificate issued by the Doctors and awarded the disability compensation calculated at Rs.2000/- per percentage of disability. This Court has also perused and examined the oral and deumentary evidence placed before the Tribunal. After giving due consideration to the same, this Court is of the considered view that there is no scope for interference with regard to the quantum of compensation awarded by the Tribunal to the respective claimants. Hence, there is no merit in the appeals filed by the claimants in CMA Nos.2098 & 2099 of 2013 seeking for enhancement of compensation.

14. For the foregoing reasons, CMA.Nos.2100 & 2101 of 2013 are partly allowed by fixing the contributory negligence on the part of the claimants at 40% and on the part of the insurance company at 60% and CMA.Nos.2098 & 2099 of 2013 are dismissed by this Court. However, the rate of interest fixed by the Tribunal is confirmed. The insurance company is directed to deposit only 60% of the compensation amount awarded by the Tribunal after deducting the amount already deposited if any to the credit of

MCOP.Nos.1994 & 1995 of 2010 along with interest and cost within a period of four weeks from the date of receipt of a copy of this common judgment. On such deposit being made, the Tribunal is directed to transfer the respective award amount along with accrued interest lying to the credit of MCOP.Nos.1994 & 1995 of 2010 to the respective claimants within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

dh

To

1.The II Judge, Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

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

+1cc to Mr.M.Swami Kannu, Advocate, S.R.No.28429

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.28568

C.M.A.Nos.2098, 2099, 2100 & 2101 of 2013

SVI (CO)
CB(30/04/2021)

सत्यमेव जयते

WEB COPY