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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.02.2021

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3064, 3077 and 3267 of 2019
and C.M.P.Nos.16784, 16946 and 18802 of 2019

The Manager
Reliance General Insurance Co. Ltd.
6th floor, Reliance House
Haddows road, Nungambakkam
Chennai-6.

..Appellant in all
the three appeals

Vs

1.Seergali @ Govindaraj	..1 st Respondent in C.M.A.No.3064/2019
1.Velayutham	..1 st Respondent in C.M.A.No.3077/2019
1.Sakthivel	..1 st Respondent in C.M.A.No.3267/2019
2.M.Rajesh	..2 nd Respondent in all the three appeals

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.12.2018 made in M.C.O.P.Nos.319 to 321 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tirupattur.

In all the CMAs.

For Appellant : Mrs.C.Bhuvanasundari

For R1 : Mr.V.Kumaravelan

R2 : Exparte (before the Tribunal



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

These Civil Miscellaneous Appeals are filed by the Insurance Company to set aside the award dated 14.12.2018 made in M.C.O.P.Nos.319 to 321 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tirupattur.

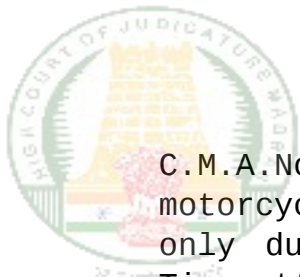
2.All the three appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.Nos.319 to 321 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tirupattur. The 1st respondent in all the three appeals filed claim petitions claiming a sum of Rs.10,00,000/-, Rs.50,000/- and Rs.10,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 17.02.2014.

4.According to the 1st respondent in all the three appeals, on the date of accident i.e., on 17.02.2014 at about 16.30 hours, while the 1st respondent in C.M.A.No.3267 of 2019 viz., Sakthivel was riding the motorcycle along with the 1st respondents in C.M.A.Nos.3064 and 3077 of 2019 as pillion riders towards Tiruvannamalai, in front of Udayamuthur Prince Nursery Primary School, the driver of the goods vehicle belonging to the 2nd respondent insured with the appellant, who was coming in the opposite direction towards Tirupattur, drove the same in a rash and negligent manner, dashed against the motorcycle. Due to the said impact, the 1st respondents in all the three appeals were thrown away from the motorcycle, fell down and thus, the accident occurred. In the accident, the 1st respondent in all the three appeals sustained grievous injuries all over the body and therefore, they have filed the above claim petitions claiming compensation as against the 2nd respondent and appellant/Insurance Company.

5.The 2nd respondent, owner of the goods vehicle, remained exparte before the Tribunal.

6.The appellant/Insurance Company being insurer of the said goods vehicle filed separate counter statements in all the three claim petitions denying the averments made by the 1st respondent in all the three appeals and stated that the rider of the motorcycle viz., Sakthivel, the 1st respondent in



C.M.A.No.3267 of 2019 did not possess driving license to ride the motorcycle at the time of accident. The accident has occurred only due to negligent riding by the rider of the motorcycle. Tirupattur Taluk Police registered F.I.R. only against the said Sakthivel, the rider of the motorcycle. The owner and insurer of the motorcycle were not made as parties to the claim petitions and hence, the claim petitions are bad for non-joinder of necessary parties. The driver of the goods vehicle belonging to the 2nd respondent is not responsible for the accident. At the time of accident, three persons travelled in the motorcycle, which is in violation of the Motor Vehicles Act and Rules. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent in all the three appeals. The appellant has also denied the age, avocation, income, nature of injuries and disability suffered by the 1st respondent in all the three appeals. In any event, the compensation claimed by them are excessive and prayed for dismissal of the claim petitions.

7.Before the Tribunal, the 1st respondent in C.M.A.Nos.3064, 3077 and 3267 of 2019, examined themselves as P.W.1 to P.W.3 and 23 documents were marked as Exs.P1 to P23. The appellant/Insurance Company examined three witnesses as R.W.1 to R.W.3 and marked seven documents as Exs.R1 to R7.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the goods vehicle belonging to the 2nd respondent as well as the rider of the motorcycle viz., Sakthivel, the 1st respondent in C.M.A.No.3267 of 2019, fixed 40 : 60 contributory negligence on the part of the driver of the goods vehicle and the 1st respondent in C.M.A.No.3267 of 2019, awarded a sum of Rs.15,82,593/-, Rs.26,500/- and Rs.18,33,919/- as compensation to the 1st respondent in all the three appeals respectively and directed the appellant/Insurance Company being insurer of the said goods vehicle to pay a sum of Rs.6,33,037/-, Rs.10,600/- and Rs.7,33,568/- being 40% of the compensation to the 1st respondent in all the three appeals respectively and dismissed the claim petitions in M.C.O.P.Nos.319 and 320 of 2014 as against the 2nd respondent and appellant/Insurance Company in respect of the claim for 60% compensation.

9.To set aside the said award dated 14.12.2018 made in



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M.C.O.P.Nos.319 to 321 of 2014, the appellant/Insurance Company has come out with the present three appeals challenging the contributory negligence fixed on the driver of the goods vehicle belonging to the 2nd respondent as well as for quantum of compensation awarded by the Tribunal.

10.The learned counsel appearing for the appellant/Insurance Company contended that the accident occurred only due to rash and negligent riding by the rider of the motorcycle, the 1st respondent in C.M.A.No.3267 of 2019, who rode the motorcycle under the influence of alcohol with two pillion riders without possessing driving license at the time of accident. The Tribunal having found that the accident occurred only due to negligence of the rider of the motorcycle, without properly appreciating the manner of the accident, erroneously fixed 40% contributory negligence on the rider of the goods vehicle belonging to the 2nd respondent. F.I.R. was registered only against the rider of the motorcycle viz., Sakthivel, the claimant in M.C.O.P.No.321 of 2014 (1st respondent in C.M.A.No.3267 of 2019). The Police after investigation filed charge sheet only against the said Sakthivel, the rider of the motorcycle. The Tribunal ought to have dismissed the claim petitions as against 2nd respondent and the appellant/Insurance Company. The learned counsel for the appellant further contended that the disability suffered by the 1st respondent in C.M.A.Nos.3064 and 3267 of 2019 are not functional disability and there is no loss of earning capacity. The 1st respondent in C.M.A.Nos.3064 and 3267 of 2019 have not filed any treatment records subsequent to the initial treatment. In the absence of evidence, the Tribunal erroneously adopted multiplier method and granted compensation towards disability in respect of 1st respondent in C.M.A.Nos.3064 and 3267 of 2019. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the 1st respondent in all the three appeals contended that the accident has occurred only due to rash and negligent driving by the driver of the goods vehicle belonging to the 2nd respondent, who dashed against the motorcycle in which the 1st respondent in all the three appeals were riding. The Tribunal ought to have fixed entire negligence on the driver of the goods vehicle belonging to the 2nd respondent. The appellant has not proved that the rider of



the motorcycle did not possess driving license and hence he is responsible for the accident. The Tribunal considering the nature of injuries and disability suffered by the 1st respondent in C.M.A.Nos.3064 and 3267 of 2019, adopted multiplier method and granted compensation to them. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeals.

12.Heard through "Video-Conferencing" the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1st respondent in all the three appeals and perused the entire materials on record.

13.It is the case of the 1st respondent in all the three appeals that on 17.02.2014 at about 16.30 hours, while the 1st respondent in C.M.A.No.3267 of 2019 was riding the motorcycle along with the 1st respondent in C.M.A.Nos.3064 and 3077 of 2019 as pillion riders, the driver of the goods vehicle belonging to the 2nd respondent, who was coming in the opposite direction, drove the same in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the accident, the 1st respondent in all the three appeals sustained injuries and filed claim petitions claiming compensation for the injuries sustained by them. To substantiate their case, the 1st respondent in all the three appeals examined themselves as P.W.1 to P.W.3 and marked F.I.R. and other documents as Exs.P1 to P23. On the other hand, it is the case of the appellant/Insurance Company that the rider of the motorcycle viz., Sakthivel, the 1st respondent in C.M.A.No.3267 of 2019, who was under the influence of alcohol at the time of accident, rode the same in a rash and negligent manner, dashed on the goods vehicle and invited the accident. At the time of accident, the rider of the motorcycle did not possess driving license to ride the motorcycle. To substantiate their case, the appellant relied on Ex.P1/F.I.R., which was registered against the rider of the motorcycle and examined Mr.Karthikeyan, Police Officer as R.W.3, who deposed that charge sheet was laid against the said Sakthivel, the rider of the motorcycle. The said Sakthivel, the rider of the motorcycle as P.W.3 has admitted that he dashed on the right hand side front wheel of the goods vehicle and thus, the accident has occurred.

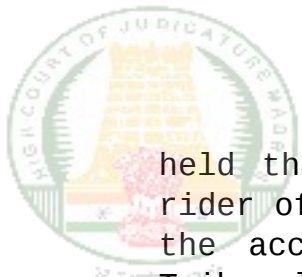
14.From the contents of F.I.R., charge sheet, admission of P.W.3 and evidence of R.W.1, it is clear that the said



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Sakthivel, the rider of the motorcycle only caused the accident by dashing on the right hand side of the goods vehicle. Further, the rider of the motorcycle failed to produce his driving license before the Motor Vehicle Inspector and also before the Tribunal. The Tribunal considered Exs.P5, P12 and P16/copies of Accident Registers, wherein it has been mentioned that the rider of the motorcycle viz., Sakthivel, the 1st respondent in C.M.A.No.3267 of 2019 and Seergazhi @ Govindaraj, the 1st respondent in C.M.A.No.3064 of 2019 were smelling alcohol at the time of accident. The Tribunal considering the fact that no blood test was conducted to ascertain the contents of alcohol in the blood, did not accept the case of the appellant that the rider of the motorcycle, Sakthivel and the pillion rider Seergazhi @ Govindaraj were under the influence of alcohol. Admittedly, at the time of accident, three persons travelled in the motorcycle, which is a statutory violation. The Tribunal considering the Division Bench judgment of this Court reported in 2018 (2) TNMAC 302 DB (Reliance General Insurance Company Ltd., Chennai vs. B.Chitra and others), held that merely because three persons travelled in the two wheeler, no contributory negligence can be fixed on the rider of the motorcycle and further held that the Insurance Company must prove by letting in evidence that the accident has occurred only due to triple riding. The Tribunal further held that both the goods vehicle as well as the motorcycle were facing each other simultaneously, the driver of the goods vehicle would have turned to right hand side and dashed on the motorcycle and held that both the driver of the goods vehicle as well as the rider of the motorcycle could have contributed to the negligence. On such finding, the Tribunal fixed 60% negligence on the rider of the motorcycle viz., Sakthivel, the 1st respondent in C.M.A.No.3267 of 2019 and 40% negligence on the driver of the goods vehicle belonging to the 2nd respondent.

15.From the materials on record, it is seen that the Tribunal considered the evidence of P.W.3 that P.W.3 after crossing the goods vehicle, dashed on the right hand side of the goods vehicle under the influence of alcohol, contributed more negligence to the accident and fixed 60% negligence on the rider of the motorcycle. The driver of the goods vehicle while driving the heavy vehicle could have avoided the accident on seeing the motorcycle and turned to the left side. The Tribunal considering the entire materials placed before it and manner of the accident,



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held that both the driver of the goods vehicle as well as the rider of the motorcycle were negligent and contributed 40 : 60 to the accident. There is no error in the said finding of the Tribunal fixing 40% negligence on the driver of the goods vehicle belonging to the 2nd respondent.

M.C.O.P.No.319 of 2014 (C.M.A.No.3064 of 2019)

16.As far as quantum of compensation is concerned, the 1st respondent has contended that he was working as a driver and was earning a sum of Rs.20,000/- per month. He failed to substantiate the said contention. In the absence of material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the 1st respondent and granted 40% enhancement towards future prospects. It is the case of the 1st respondent that in the accident, he suffered both bones fracture on right forearm. The 1st respondent was referred to Medical Board. The Medical Board after examining the 1st respondent, certified that the 1st respondent has suffered 50% permanent disability and issued Ex.P22/Disability certificate, in which it is stated as "flap right forearm plus, supination restricted, flex, extension - normal, hand stiffness". He has taken treatment as in-patient in CMC Hospital and underwent surgery. The Tribunal considering the percentage of disability, surgery done and avocation of the 1st respondent as driver, held that movement of the 1st respondent's right hand is restricted and adopted multiplier method. The 1st respondent has not examined any Doctor to show that he suffered functional disability, lost his earning capacity and his income is reduced after the accident. There is no evidence to show that his movement of the right hand is restricted and could not do the work as he was doing earlier. The 1st respondent has also not even filed his driving license to prove the avocation. In the absence of any evidence with regard to avocation, functional disability and loss of earning capacity, the Tribunal erroneously adopted multiplier method and awarded compensation towards functional disability. In view of the above, the 1st respondent is not entitled to any compensation by adopting multiplier method and a sum of Rs.13,60,800/- awarded by the Tribunal towards functional disability is liable to be set aside and is hereby set aside. The accident is of the year 2014 and hence, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, a sum of Rs.2,00,000/- (Rs.4,000/- X 50%) is awarded towards disability. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same



are hereby 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 or reduced
1.	Functional disability	13,60,800	-	Set aside
2.	Pain and suffering	50,000	50,000	Confirmed
3.	Extra nourishment	5,000	5,000	Confirmed
4.	Attendant charges	5,000	5,000	Confirmed
5.	Medical expenses	1,46,793	1,46,793	Confirmed
6.	Transportation	5,000	5,000	Confirmed
7.	Loss of amenities	10,000	10,000	Confirmed
8.	Disability	-	2,00,000	Granted
	Total	15,82,593	4,21,793	Reduced by Rs.4,64,320/-
	40% of the award amount	6,33,037	1,68,717	

M.C.O.P.No.320 of 2014 (C.M.A.No.3077 of 2019)

17.As far as quantum of compensation is concerned, the 1st respondent suffered only simple injuries. The Tribunal considering the age, nature of injuries and period of treatment taken by the 1st respondent, awarded a sum of Rs.20,000/-, Rs.5,000/-, Rs.1,000/- and Rs.500/- towards pain and suffering, extra nourishment, attendant charges and medical expenses respectively, which are not excessive warranting interference by this Court.

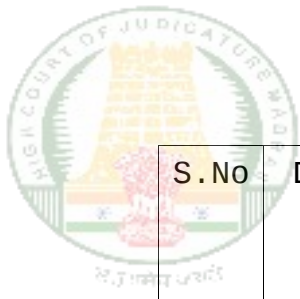
M.C.O.P.No.321 of 2014 (C.M.A.No.3267 of 2019)

18.As far as quantum of compensation is concerned, the 1st



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respondent has contended that he was working as a stone curving worker and was earning a sum of Rs.35,000/- per month. He failed to substantiate the said contention. In the absence of material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the 1st respondent and granted 40% enhancement towards future prospects. It is the case of the 1st respondent that in the accident, he sustained crush injury on right arm with supra condylar fracture to right femur with fracture of right ribs. The 1st respondent was referred to Medical Board. The Medical Board after examining the 1st respondent, certified that the 1st respondent has suffered 60% permanent disability and issued Ex.P23/Disability certificate, in which it is stated as "wrist drop plus, operated scar right arm, elbow flex 0-120, right knee 0-100 (further painful), hip flex/ext normal". He has taken treatment as in-patient in a private hospital, Salem. The Tribunal considering the percentage of disability and avocation of the 1st respondent, held that movement of the hand is restricted and adopted multiplier method. The 1st respondent has not examined any Doctor to show that he suffered functional disability, lost his earning capacity and his income is reduced after the accident. There is no evidence to show that his movement of the hand is restricted and could not do the work as he was doing earlier. The 1st respondent has not filed any document to prove his avocation and income. In the absence of any evidence with regard to avocation, functional disability and loss of earning capacity, the Tribunal erroneously adopted multiplier method and awarded compensation towards functional disability. In view of the above, the 1st respondent is not entitled to any compensation by adopting multiplier method and a sum of Rs.16,32,960/- awarded by the Tribunal towards functional disability is liable to be set aside and is hereby set aside. The accident is of the year 2014 and hence, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, a sum of Rs.2,40,000/- (Rs.4,000/- X 60%) is awarded towards disability. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Functional disability	16,32,960	-	Set aside
2.	Pain and suffering	60,000	60,000	Confirmed
3.	Extra nourishment	5,000	5,000	Confirmed
4.	Attendant charges	5,000	5,000	Confirmed
5.	Medical expenses	1,10,959	1,10,959	Confirmed
6.	Transportation	5,000	5,000	Confirmed
7.	Loss of amenities	15,000	15,000	Confirmed
8.	Disability	-	2,40,000	Granted
	Total	18,33,919	4,40,959	
	40% of the award amount	7,33,568	1,76,384	Reduced by Rs.5,57,184 /-

19. In the result,

(1) C.M.A.No.3064 of 2019 (M.C.O.P.No.319 of 2014) is partly allowed. The compensation of Rs.15,82,593/- awarded by the Tribunal is hereby reduced to Rs.4,21,793/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit a sum of Rs.1,68,717/- being 40% of the compensation now determined by this Court 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. On such deposit, the 1st respondent in C.M.A.No.3064 of 2019 is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is



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permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.319 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tirupattur, if the entire award amount has already been deposited by them.

(2) C.M.A.No.3267 of 2019 (M.C.O.P.No.321 of 2014) is partly allowed. The compensation of Rs.18,33,919/- awarded by the Tribunal is hereby reduced to Rs.4,40,959/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit a sum of Rs.1,76,384/- being 40% of the compensation now determined by this Court 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. On such deposit, the 1st respondent in C.M.A.No.3267 of 2019 is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.321 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tirupattur, if the entire award amount has already been deposited by them.

(3) C.M.A.No.3077 of 2019 (M.C.O.P.No.320 of 2014) is dismissed and the sum of Rs.26,500/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The 1st respondent is not entitled to any interest for the default period from 19.08.2016 to 20.09.2016. The appellant/Insurance Company is directed to deposit a sum of Rs.10,600/- being 40% of the compensation awarded by the Tribunal 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. On such deposit, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar



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To

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1.The Special Subordinate Judge
The Motor Accidents Claims Tribunal
Tiruppattur.

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

C.M.A.Nos.3064, 3077 and 3267 of 2019
and C.M.P.Nos.16784, 16946 and 18802 of 2019

VBM(CO)
SB(07/09/2021)