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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.4125 & 4197 of 2019
and C.M.P.No.23715 of 2019

C.M.A.No.4125 of 2019

Royal Sundaram Alliance Insurance Company Ltd.,
Sundaram Towers, 45 & 46, Whites Road,
Chennai 600 014.

.. Appellant

Vs.

1.M.Vignesh Raja
2.Habibulla Sha
3.S.Viswanath

4.The Oriental Insurance Company Ltd.,
No.5/4, Headquarters Road,
Coimbatore.

.. Respondents

C.M.A.No.4197 of 2019

The Oriental Insurance Company Ltd.,
No.5/4, Headquarters Road,
Coimbatore.

.. Appellant

Vs.

1.M.Vignesh Raja
2.Habibulla Sha
3.S.Viswanath

4.The Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
Nos.45 & 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 judgment and decree dated 11.08.2017, made in M.C.O.P. No.1617 of 2012, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

(In C.M.A.No.4125/2019)

For Appellant : Mr.K.Vinod
for M/s.Elveera Ravindran

For Respondents: M/s.S.Mukunth (For R1)
for M/s.Sarvabhauman Associates

Mr.M.B.Raghavan (For R4)
for M/s.N.Vijayaraghavan

(In C.M.A.No.4197/2019)

For Appellant : Mr.M.B.Raghavan
for M/s.N.Vijayaraghavan

For Respondents: M/s.S.Mukunth (For R1)
for M/s.Sarvabhauman Associates

No appearance (For R2 & R3)

Mr.K.Vinod (For R4)
for M/s.Elveera Ravindran

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

(These matters are heard through "Video Conferencing/Hybrid mode")

These Civil Miscellaneous Appeals have been filed to set aside the award of the Tribunal dated 11.08.2017, made in M.C.O.P. No.1617 of 2012, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

2.The appellant in C.M.A.No.4125 of 2019 is 3rd respondent and appellant in C.M.A.No.4197 of 2019 is 4th respondent in M.C.O.P. No.1617 of 2012, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore. The 1st respondent in both the appeals filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.03.2019.



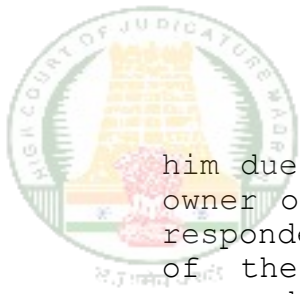
3.The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.According to the claimant, on the date of accident, when he was travelling as a pillion rider in a Motorcycle bearing Registration No.TN-37-AR-5014 driven by his friend Kamalesh from South to North on the Eswarankoil Street, Coimbatore, very slowly, near the Big Bazaar street junction, after giving proper signal, the rider of the Motorcycle turned the vehicle to right side, towards East direction. At that time, an Eicher Tempo bearing Registration No.KL-10-3097 driven by the 1st respondent, came from East to West in a rash and negligent manner without any control or abiding any traffic rules, suddenly dashed on the Motorcycle in which the claimant traveled in pillion and thus, the accident occurred. Due to the said impact, the rider and pillion rider of the Motorcycle were thrown at tarmac and sustained severe injuries. The accident occurred only due to rash and negligent driving by the 1st respondent, driver of the Eicher Tempo owned by the 2nd respondent and insured with the 3rd respondent. Hence, the claimant initially filed the said claim petition claiming compensation against the respondents 1 to 3 as driver, owner and insurer of the offending vehicle respectively. Subsequently, by order 23.11.2011 made in I.A.No.701 of 2011, the insurer of the Motorcycle was impleaded as 4th respondent in the claim petition.

5.The respondents 1 and 2, driver and owner of the Eicher Tempo, remained exparte before the Tribunal.

6.The 3rd respondent, insurer of the Eicher Tempo, filed counter statement and denied all the averments made by the claimant in the claim petition. According to the 3rd respondent, the accident occurred due to head on collision between the Motorcycle and Eicher Tempo. But for the rash and negligent riding of Motorcycle, the accident would not have taken place. Hence, the negligence has to be apportioned on both the drivers of the vehicle equally. The claimant has to prove his age, avocation and income, injuries sustained and treatment taken to claim compensation and prayed for dismissal of the claim petition.

7.The 4th respondent, insurer of the Motorcycle, filed counter statement and denied all the averments made by the claimant in the claim petition. According to the 4th respondent, when there is no allegation against the owner of the Motorcycle and he was not impleaded as a party to the claim petition, the question of liability being fastened upon the 4th respondent does not arise. As per the insurance policy, an Insurance Company is required to indemnify the insured for the loss if any caused to



him due to an accident. Therefore, when the insured, that is the owner of the Motorcycle has not been arrayed as a party, the 4th respondent cannot be held liable to pay compensation. The rider of the Motorcycle followed the traffic rules and the 1st respondent, driver of the Eicher Tempo only drove the vehicle in a rash and negligent manner and caused the accident. In any event, the claimant has to prove his age, avocation and income, injuries sustained and treatment taken to claim compensation and prayed for dismissal of the claim petition.

8. Before the Tribunal, the claimant examined himself as P.W.1 and marked 12 documents as Exs.P1 to P12. The 3rd respondent examined the 1st respondent as R.W.1, one Sukumar as R.W.2 and marked one document as Ex.R1. The disability certificate issued by the Medical Board was marked as Ex.C1.

9. The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to negligence of both the rider of the Motorcycle as well as the 1st respondent, driver of the Eicher Tempo and apportioned 50:50 negligence on both of them. The Tribunal awarded a sum of Rs.25,61,564/- and directed each of the respondents 3 and 4 to pay 50% of the award amount, as compensation to the claimant.

10. To set aside the award of the Tribunal dated 11.08.2017, made in M.C.O.P. No.1617 of 201, the 3rd respondent has come out with C.M.A.No.4125 of 2019 and 4th respondent has come out with C.M.A.No.4197 of 2019.

11. The learned counsel appearing for the 3rd respondent, insurer of the Eicher Tempo, contended that the accident occurred only due to negligence of the rider of the Motorcycle, who drove the vehicle in the wrong side and hit against the Eicher Tempo. The claimant traveled as pillion in the said Motorcycle. The 3rd respondent examined 1st respondent/driver of the Eicher Tempo as R.W.1 and proved that the accident occurred only due to the negligence on the rider of the Motorcycle. The Tribunal ought to have dismissed the claim petition against the 3rd respondent. The learned counsel appearing for the 3rd respondent further contended that the disability assessed by the Medical Board is not for the whole body. The Tribunal failed to appreciate the fact that the injuries suffered by the claimant are only facial injuries and the said injuries have no impact on earning capacity. In the absence of any finding regarding functional disability, the Tribunal erred in taking the entire disability as loss of earning power and applying the multiplier method. The Tribunal failed to appreciate that the claimant did not produce original medical bills and discharge summaries. The amounts awarded by the Tribunal towards medical expenses, future loss of income, pain and suffering, loss of amenities,



transportation, extra nourishment and damage to clothes are excessive. The total compensation awarded by the Tribunal for the claimant is excessive and prayed for setting aside the award of the Tribunal and allowing C.M.A.No.4125 of 2019.

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12.The learned counsel appearing for the 4th respondent, insurer of the Motorcycle, contended that the Tribunal erred in holding that the 4th respondent is liable to pay 50% of the compensation to the claimant, when the insured/owner of the Motorcycle has not been arrayed as a party in the claim petition. As per the policy terms, the 4th respondent is to indemnify on behalf of the insured and when the insured/owner himself is not a party to the claim petition, liability of the 4th respondent does not arise at all. The Tribunal failed to consider that FIR marked as Ex.P4 and Charge Sheet marked as Ex.P5 has been filed only against the 1st respondent/driver of the Eicher Tempo, insured with the 3rd respondent. The Tribunal ought to have considered the evidence of P.W.1 who categorically deposed that the accident occurred only due to the negligence of the 1st respondent/driver of the Eicher Tempo and not due to the rider of the Motorcycle. The Tribunal merely relying on the rough sketch prepared after accident, held that rider of the Motorcycle was negligent to the extent of 50%, which is erroneous and unreasonable. The learned counsel appearing for the 4th respondent contended that the accident has occurred only due to rash and negligent driving by 1st respondent, driver of Eicher Tempo. In the M.C.O.P.No.953 of 2010 filed by the mother of the rider of the Motorcycle, the Tribunal passed an award holding that the accident occurred only due to rash and negligent driving by 1st respondent and directed the 3rd respondent to pay compensation to the claimants. By the judgment dated 12.12.2019, the Division Bench of this Court dismissed the C.M.A.No.10 of 2018 filed by 3rd respondent, confirming the award of the Tribunal passed in M.C.O.P.No.953 of 2010, fixing entire negligence on the 1st respondent and directing the 3rd respondent to pay entire compensation to the claimants therein (mother of the rider of the Motorcycle), in respect of the very same accident. The Tribunal without assigning any reasons, erred in adopting multiplier method and awarding compensation to the claimant, which is excessive. The total compensation granted by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and allowing C.M.A.No.4197 of 2019.

13.The learned counsel appearing for the claimant contended that the accident has occurred only due to rash and negligent driving by the 1st respondent, driver of the Eicher Tempo, owned by the 2nd respondent. The claimant, as P.W.1, deposed to that effect and marked FIR as Ex.P4 and charge sheet as Ex.P5 and proved that accident occurred only due to the rash and negligent driving by driver of the Eicher Tempo. The Tribunal erroneously



fixed 50% negligence on the rider of the Motorcycle, relying on the rough sketch. The Tribunal ought to have fixed the entire negligence on the driver of the Eicher Tempo and directed the 3rd respondent, insurer of the Eicher Tempo to pay entire compensation. The learned counsel appearing for the claimant further contended that when there are joint tort-feasors, the claimant can recover the compensation from any one of the tort-feasor and inter se apportionments has to be worked out separately. The claimant has not contributed to the accident. He is only a sufferer. The claimant who has suffered injuries must be protected. The issue of negligence is inter se distributed between the 3rd and 4th respondents. In the present case, there is no contributory negligence. The case is only a composite negligence and relied on the judgment of the Hon'ble Apex Court reported in (2015) 9 SCC 273 [Khenyei vs. New India Assurance Co. Ltd.,], which reads as follows:

"15. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons. This Court in T.O. Anthony v. Karvarnan & Ors. [2008 (3) SCC 748] has held that in case of contributory negligence, injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence.....

.....

22. What emerges from the aforesaid discussion is as follows :

22.1. In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

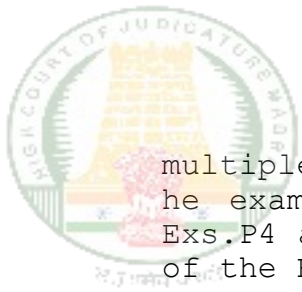
22.2. In the case of composite negligence, apportionment of compensation between two tort



22.3. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

The learned counsel appearing for the claimant further contended that the claimant was a I year MBA student in PSG College of Tech, which is a reputed institution. He suffered head injuries, lost memory and his entire future is lost. The Tribunal failed to consider the nature of injuries sustained, disability suffered by him and treatment taken and awarded meagre amounts as compensation. In view of the same, the total compensation awarded by the Tribunal is not excessive and prayed for dismissal of both the appeals.

15. It is the case of the claimant that while he was riding in pillion, driven by one Kamalesh, the rider of the Motorcycle was turning the vehicle right towards East direction. At that time, the 1st respondent, who was coming from East to West in a rash and negligent manner, dashed on the Motorcycle driven by his friend and caused the accident. In the accident, the rider of the Motorcycle died. The claimant suffered head injuries and



multiple grievous injuries all over the body. To prove his case, he examined himself as P.W.1 and marked FIR, charge sheet as Exs.P4 and P5, which were laid against the 1st respondent, driver of the Eicher Tempo.

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(i) It is the case of the 3rd respondent, insurer of the Eicher Tempo, that the accident occurred only due to rash and negligent riding by rider of the Motorcycle who entered the wrong side of the road, which is one way and caused the accident. To substantiate their case, they examined the 1st respondent, driver of the Eicher Tempo as R.W.1.

(ii) On the other hand, it is the case of the 4th respondent that accident occurred only due to rash and negligent driving by 1st respondent, driver of the Eicher Tempo. The Tribunal erroneously relying on the evidence of 1st respondent as R.W.1 and rough sketch, fixed 50% negligence on the part of the rider of the Motorcycle. The Tribunal failed to see that R.W.1, driver of the Eicher Tempo is an interested witness.

(iii) The Tribunal held that rider of the Motorcycle was negligent and caused accident mainly based on rough sketch marked as Ex.P6. The said reliance is erroneous. The mother of the rider of the Motorcycle filed M.C.O.P.No.953 of 2010 on the file of the Motor Accident Claims Tribunal (Sub Court), Dharapuram. The said Tribunal, by the award dated 11.01.2017, held that the accident occurred only due to rash and negligent driving by the 1st respondent, driver of the Eicher Tempo.

16.The appellant in C.M.A.No.4125 of 2019 filed C.M.A.No.10 of 2018, challenging the award passed in M.C.O.P.No.953 of 2010, fixing negligence on the part of the 1st respondent, driver of the Eicher Tempo. The said appeal was taken up by the Division Bench of this Court. The Division Bench of this Court, by the judgment dated 12.12.2019, dismissed the appeal, confirming the award of the Tribunal and held that the Tribunal was right in considering the evidence of P.W.2, who is an independent witness and R.W.2 in said M.C.O.P. [driver of the Eicher Tempo] is obviously an interested witness. The Division Bench of this Court, in para no.5 of the said judgment, held as follows:

"5.We do not find any merit in this appeal. On the question of negligence, the Tribunal was right in considering the evidence of P.W.2, who is an independent witnesses said to have seen the occurrence. R.W.2 is obviously is an interested witness when compared to the evidence of P.W.2. Reliance made on Exs.R1 and R2 and Exs.P1 to P5 cannot be countenanced for the reason that at best they could only be taken pieces of evidence. There is no sanctity in law that can be given to an



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F.I.R. and final report filed along with sketch by elevating them to substantive. Thus, we do not find any error in the award passed by the Tribunal with respect to the negligence. Even on the question of quantum also, we are not inclined to interfere with the award passed, though slightly higher amount is fixed for the head loss of love and affection as well as taking higher percentage towards future prospects. The Tribunal has deducted 50% towards personal expenses of the deceased. When it is the admitted case of the parties that the claimant/first respondent is the widowed mother of the deceased, as per the decision rendered by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and another (2009 ACJ 1298), it should have been only 1/3. We find that the compensation fixed is thus very reasonable and does not warrant any interference."

17. The Subordinate Judge, Dharapuram, in respect of very same accident, fixed entire negligence on the part of the 1st respondent, driver of the Eicher Tempo and the same was confirmed by the Division Bench of this Court. The Division Bench held that

"There is no sanctity in law that can be given to an F.I.R. and final report filed along with sketch by elevating them to substantive."

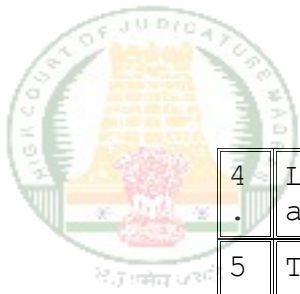
In view of the said judgment of the Division Bench of this Court, the award of the Tribunal fixing 50% negligence on the rider of the Motorcycle in M.C.O.P.No.1617 of 2012, relying on the rough sketch, is set aside. The contention of the learned counsel appearing for the claimant and the learned counsel appearing for the 4th respondent that accident occurred only due to negligence of 1st respondent, rider of the Eicher Tempo, is acceptable and this Court is of the view that the accident has occurred only due to rash and negligent driving by driver of the 1st respondent, driver of the Eicher Tempo. In view of the same, the 3rd respondent, insurer of the Eicher Tempo is alone liable to pay entire compensation awarded to the claimant.

18. In view of setting aside the portion of the award fixing 50% negligence on the part of the rider of the Motorcycle and fixing entire negligence on the part of the 1st respondent, driver of the Eicher Tempo, it is not necessary to render finding on the contention of the learned counsel appearing for the claimant in respect of composite negligence.



19. As far as the quantum of compensation is concerned, it is the case of the claimant that due to the injuries, he lost amenities, his day-to-day activities are affected and has taken treatment as in-patient in Hospital for a period of 54 days. He was referred to the Medical Board. The Medical Board examined the claimant and assessed that the claimant suffered 46% partial permanent disability. The Medical Board has not assessed the disability for whole body and has not stated that the claimant has suffered functional disability. It is seen that at the time of accident, he was aged 21 years, brilliant student, studying in a reputed college. His entire future is affected. Considering the nature of injuries, period of treatment taken, the Tribunal accepted the disability certificate issued by the Medical Board and applied multiplier method for awarding compensation. At the same time, the Tribunal without converting the disability assessed by the Medical Board for a particular part of the body to whole body, fixed functional disability and loss of earning capacity. The percentage of disability fixed by the Tribunal is excessive and the same is converted to whole body as 16% [46/3]. The Tribunal considering the fact that the claimant was a I year MBA student in a reputed college, fixed a sum of Rs.10,000/- per month as notional income of the claimant. The same is not excessive. The accident is of the year 2008. The Tribunal considering the age of the claimant, rightly applied multiplier '18'. By fixing functional disability, the amounts granted by the Tribunal towards disability is modified as Rs.3,45,600/- [Rs.10,000/- x 12 x 18 x 16%]. The Tribunal has not granted any amount for attendant charges. A sum of Rs.27,000/- is granted towards attendant charges at the rate of Rs.500/- per day. The Tribunal considering the age of the claimant, nature of injuries suffered in the accident, reduction of marital prospects, awarded a sum of Rs.2,00,000/- towards loss of amenities. The same is not excessive. The amounts awarded by the Tribunal for pain and suffering is also not excessive. The amount granted 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 . N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1 .	Disability	9,93,600/-	3,45,600/-	Reduced
2 .	Medical bills	11,07,964/-	11,07,964/-	Confirmed
3 .	Pain and sufferings	2,00,000/-	2,00,000/-	Confirmed



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4	Loss of amenities	2,00,000/-	2,00,000/-	Confirmed
5	Transportation	25,000/-	25,000/-	Confirmed
6	Extra nourishment	25,000/-	25,000/-	Confirmed
7	Damage to clothes and articles	10,000/-	10,000/-	Confirmed
8	Attendant charges	-	27,000/-	Granted
	Total	25,61,564/-	19,40,564/-	Reduced by Rs.6,21,000/-

20. In the result, C.M.A.No.4197 of 2019 is allowed and C.M.A.No.4125 of 2019 is partly allowed. The amount awarded by the Tribunal at Rs.25,61,564/- is modified to Rs.19,40,564/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent-Insurance Company is directed to deposit the entire award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.1617 of 2012. On such deposit, the claimant 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, by filing necessary applications before the Tribunal. The 4th respondent-Insurance Company is permitted to withdraw the amount, lying in the deposit to the credit of M.C.O.P. No.1617 of 2012, if any already deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Deputy Registrar (Lok Adalat)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Coimbatore.



2.The Section Officer,
V.R Section,
High Court, Madras.

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+2cc to M/s.Elveera Ravindran, Advocate, S.R.No.21202, 21203
+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.21379

C.M.A.Nos.4125 and 4197 of 2019

RGN(CO)
CB(28/10/2021)