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C.M.A.Nos.2587 to 2595 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2587 to 2595 of 2011

And

M.P.Nos.1 to 1 of 2011

M/s.National Insurance Co. Ltd.,
No.74-A, Paramathy Road,
Namakkal Town.

... Appellant in C.M.A.2587/2011

Vs.

1.Kuppan
2.Vellaiyammal
3.Kalarani
4.Kalaiselvi
5.Sasikala
6.C.Mohan
7.A.Alagesan
8.M/s.United India Insurance Co. Ltd.,
No.2, Dr.Sankaran Road,
Namakkal Town.

(Respondents 6 & 7 ex parte
in Lower Court and hence notice
may be dispensed with) ... Respondents in C.M.A.2587/2011

Prayer in C.M.A.No.2587 of 2011:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1 of 2007, dated 27.04.2010 on the file of the Court of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal.



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For Appellant : M/s.N.B.Surekha
in all the C.M.As.

For Respondents : Mr.S.Sankar for R1 to R5
for M/s.C.Thangaraj
R6 & R7 – Exparte
Mr.M.J.Vijavaragavan for R8
in C.M.A.No.2587 of 2011

Mr.S.Sankar for R1
for M/s.C.Thangaraj
R2 & R3 – Exparte
Mr.M.J.Vijavaragavan for R4
in C.M.A.Nos.2588 to 2595 of 2011

COMMON JUDGMENT

The second respondent Insurance Company before the Motor Accidents Claims Tribunal, Principal District Court, Namakkal, is the appellant herein. These appeals have been filed seeking to set aside the common order dated 27.04.2010 passed by the Motor Accidents Claims Tribunal, Principal District Court, Namakkal in M.C.O.P.Nos.1, 15, 16, 17, 18, 19, 21, 23 and 24 of 2007 respectively.

2.The brief facts of the case is that on 15.09.2005 at about 3.30 hours the deceased Prabhu (in M.C.O.P.No.1/2007) and the injured (in other M.C.O.Ps.) were travelling in a lorry bearing Registration No.TN-28/A-8728 owned by one A.Alagesan at Karur to Salem NH-7 Main Road, near Ramesh Petrol Bunk, Manmangalam, the said lorry



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dashed

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against one parked lorry bearing Registration No.KA-01/AC-9699 owned by C.Mohan since the same was parked without any signal and without observing the Road Traffic Rules, due to which, the said Prabhu died on the spot and the claimants in M.C.O.P.Nos.15, 16, 17, 18, 19, 21, 23 and 24 of 2007 sustained injuries.

3. Thereafter, the dependants of the deceased Prabhu and other injured/ claimants filed claim petitions before the Motor Accidents Claims Tribunal, claiming compensation of Rs.5 Lakhs, Rs.1 Lakh, Rs.1Lakh, Rs.1 Lakh, Rs.1 Lakh, Rs.1 Lakh, Rs.1 Lakh, Rs.4 Lakhs and Rs.4 Lakhs respectively.

4. C.Mohan is the first respondent in the claim petitions. National Insurance Co. Ltd./ Appellant herein is the second respondent in the claim petitions. A.Alagesan is the third respondent in the claim petitions. United India Insurance Co. Ltd. is the fourth respondent in the claim petitions.

5. After adjudication, the Motor Accidents Claims Tribunal,



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Principal District Court, Namakkal, awarded the following compensation

to the claimants/ petitioners therein and aggrieved by the same, the appellant Insurance Company has filed these appeals.

(i)In M.C.O.P.No.1/2007 the tribunal awarded a sum of Rs.4,14,000/- as compensation to the claimants along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization and costs and directed the respondents 1 and 2 therein are jointly and severally liable to pay the compensation amount.

(ii)In M.C.O.P.No.15/2007 the tribunal awarded a sum of Rs.66,000/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization and costs and directed the respondents 1 and 2 therein are jointly and severally liable to pay the compensation amount.

(iii)In M.C.O.P.No.16/2007 the tribunal awarded a sum of Rs.30,000/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization and costs and directed the respondents 1 and 2 therein are



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jointly and severally liable to pay the compensation amount.

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(iv) In M.C.O.P.No.17/2007 the tribunal awarded a sum of Rs.33,000/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization and costs and directed the respondents 1 and 2 therein are jointly and severally liable to pay the compensation amount.

(v) In M.C.O.P.No.18/2007 the tribunal awarded a sum of Rs.29,000/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization and costs and directed the respondents 1 and 2 therein are jointly and severally liable to pay the compensation amount.

(vi) In M.C.O.P.No.19/2007 the tribunal awarded a sum of Rs.29,500/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization and costs and directed the respondents 1 and 2 therein are jointly and severally liable to pay the compensation amount.

(vii) In M.C.O.P.No.21/2007 the tribunal awarded a sum of



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Rs.7,000/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization

and costs and directed the respondents 1 and 2 therein are jointly and severally liable to pay the compensation amount.

(viii)In M.C.O.P.No.23/2007 the tribunal awarded a sum of Rs.1,19,500/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization and costs and directed the respondents 1 and 2 therein are jointly and severally liable to pay the compensation amount.

(ix)In M.C.O.P.No.24/2007 the tribunal awarded a sum of Rs.73,500/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization and costs and directed the respondents 1 and 2 therein are jointly and severally liable to pay the compensation amount.

6.The learned counsel appearing for the appellant submitted that the on 15.09.2005, the lorry owned by the third respondent in the claim petitions and insured with the fourth respondent in the



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claim petitions was driven by its driver in a rash and negligent manner and dashed against the lorry owned by the first respondent in the claim petitions and insured with the appellant which was parked on the extreme left side of the road with clear indication, however, the Tribunal held that the first respondent in the claim petitions and the appellant are jointly and severally liable to pay compensation which is not sustainable one.

7.The learned counsel appearing for the United India Insurance Company Limited/ fourth respondent in the claim petitions submitted that the driver of the vehicle owned by the third respondent in the claim petitions dashed against the parked vehicle in a National Highway. However, parking vehicle in the National Highways is impermissible and contrary to the National Highways Rules since in the National Highways, there is a parking bay specifically earmarked for parking the vehicle, whereas, the vehicle insured with the appellant was parked in the National Highways Road. Hence, the Tribunal, fastened the liability as against the appellant and the first respondent in the claim petitions, which warrants no interference.

8.The learned counsel appearing for the claimants submitted



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that this Court may fix contributory negligence inbetween all the respondents in the claim petitions and if such conclusion is arrived at may direct the fourth respondent in the claim petitions to pay the amount to the claimants and to recover the same from the third respondent in the claim petitions.

9.The owners of the vehicles are already set exparte. Heard the learned counsel appearing for the claimants and the learned counsel appearing for the respective Insurance Companies and perused the materials available on record.

10.The facts in the present case is not in dispute. Admittedly, on 15.09.2005 at about 3.30 hours the deceased Prabhu (in M.C.O.P.No.1/2007) and the injured (in other M.C.O.Ps.) were travelling in a lorry bearing Registration No.TN-28/A-8728 owned by the third respondent in the claim petitions and insured with the fourth respondent in the claim petitions at Karur to Salem NH-7 Main Road, near Ramesh Petrol Bunk, Manmangalam, the said lorry dashed against one parked lorry bearing Registration No.KA-01/AC-9699 owned by the first respondent in the claim petitions and insured with the second respondent in the claim petitions, due to which, the said



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Prabhu died on the spot and the claimants in M.C.O.P.Nos.15, 16, 17, 18, 19, 21, 23 and 24 of 2007 sustained injuries.

11.Admittedly, parking vehicle in the National Highways is impermissible and contrary to the National Highways Rules since in the National Highways, there is a parking bay specifically earmarked for parking the vehicle, whereas, the vehicle insured with the appellant was parked in the National Highways Road. However, perusal of records disclose that the driver of the third respondent in the claim petitions drove the vehicle in a rash and negligent manner and dashed against the parked vehicle. Hence, this Court is inclined to fix some negligence on the part of the vehicle owned by the third respondent in the claim petitions and insured with the fourth respondent in the claim petitions.

12.Accordingly, this Court fix contributory negligence inbetween the respondents in the claim petitions and directs that the respondents 1 and 2 and respondents 3 and 4 are jointly and severally liable to pay the compensation amount in the ratio: 'respondents 1 and 2 : respondents 3 and 4 – 70 : 30'. The United India Insurance Company/ fourth respondent in the claim petitions shall deposit 30% of the compensation amount awarded in all the



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claim petitions and recover the same from the third respondent in the claim petitions in the manner known to law.

13.Since the quantum of compensation has not been questioned by the parties, this Court is not inclined to interfere with the quantum of compensation awarded by the Tribunal in the claim petitions and the same are confirmed.

14.The civil miscellaneous appeals are partly allowed. The common decree and judgment dated 27.04.2010 passed by the Motor Accidents Claims Tribunal, Principal District Court, Namakkal in M.C.O.P.Nos.1, 15, 16, 17, 18, 19, 21, 23 and 24 of 2007 respectively, is modified to the above extent.

15.The appellant National Insurance Company/ second respondent in the claim petitions is directed to deposit the 70% of the award amount and the United India Insurance Company/ fourth respondent in the claim petitions is directed to deposit the 30% of the award amount before the Motor Accident Claims Tribunal, Principal District Court, Namakkal, within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already



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deposited. The appellant Insurance Company is permitted to withdraw the excess amount, if any, already deposited by them.

16.On such deposit being made, the claimants / petitioners in M.C.O.P.No.1 of 2007 are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal. The claimants / petitioners in M.C.O.P.Nos.15, 16, 17, 18, 19, 21, 23 and 24 of 2007 respectively, are permitted to withdraw the award amount, along with accrued interest and costs, on making proper and necessary application before the Tribunal.

17.The civil miscellaneous appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

13.10.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Namakkal.

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M.DHANDAPANI,J.
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And
M.P.Nos.1 to 1 of 2011**

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