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C.M.A.Nos.980 to 982 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.Nos.980 to 982 of 2020

and

C.M.P.Nos.8984, 8977 & 8980 of 2020

1.Ramachandran	... Appellant in C.M.A.No.980 of 2020
2.Mohanraj	... Appellant in C.M.A.No.981 of 2020
3.Arumugam	... Appellant in C.M.A.No.982 of 2020

Vs.

1.Rajkumar

2.Manager,

New India Assurance Company Ltd.,

Divisional Office,

No.29, Paramathi Road,

Namakkal – 637 001.

... Respondents in all CMAs

Prayer in C.M.A.No.980 of 2020: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.07.2019 passed in M.C.O.P.No.1363 of 2017 on the file of Motor Accidents Claims Tribunal/Additional District Judge, Namakkal.

Prayer in C.M.A.No.981 of 2020: Civil Miscellaneous Appeal filed under



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Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.07.2019 passed in M.C.O.P.No.886 of 2017 on the file of Motor Accidents Claims Tribunal/Additional District Judge, Namakkal.

Prayer in C.M.A.No.982 of 2020 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.07.2019 passed in M.C.O.P.No.861 of 2017 on the file of Motor Accidents Claims Tribunal/Additional District Judge, Namakkal.

For Appellant : Mr.C.Thangaraju
(in all CMAs)

For Respondents : No appearance [R1]
(in all CMAs)

COMMON JUDGEMENT

Challenging the judgement and decree passed by the Motor Accidents Claims Tribunal/Additional District Judge, Namakkal in M.C.O.P.Nos.1361, 886 and 861 of 2017, dated 04.07.2019, the respective claimants are before this Court.

2. As per the claim petitions, on 25.07.2017 at about 08.00 p.m., when one of the claimant Mohanraj was driving the vehicle bearing Reg.No.TN 65 X 5946 along with the other claimants Arumugam and Ramachandran as



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million riders, the vehicle bearing Reg.No.TN 47 AT 1323 coming in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the vehicle driven by Mohanraj, resulting in the claimants sustaining grievous injuries and thereafter, they were admitted in the hospital and took treatment. Therefore, for the injuries suffered by the claimants, they have filed claim petitions claiming a sum of Rs.5,00,000/- each as compensation before the Tribunal.

3. Before the Tribunal, the claimants examined four witnesses viz., P.W.1 to P.W.4 and marked 31 documents viz., Ex.P.1 to Ex.P.31. On the side of the respondents, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 4 documents viz., Ex.R.1 to Ex.R.4. After adjudication, the Tribunal had rejected the claim petitions filed by the claimants. Aggrieved by the same, the claimants have filed the present appeals.



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4. The learned counsel appearing for the appellants/claimants submitted that, the Tribunal has wrongly come to the conclusion that the case was cooked up case on the premise that the complaint was given after a period of two days. Merely because the complaint was given after a period of two days, will not make the claims fictitious one, more so, when the claimants were injured, which is evident from the deposition of doctor and they have taken treatment for the injuries. The accident would also stand proved on the basis of FIR registered in Crime No.146 of 2017, in which the first respondent, the driver of the offending vehicle was charge sheeted and was sentenced to pay the fine by the competent criminal court. Therefore, not properly appreciating all the materials, the Tribunal erred in dismissing the claims made by the claimants, which requires interference.

5. Per contra, the learned counsel appearing on behalf of the insurance company submitted that, the claimant Mohanraj was driver of the vehicle, which had also contributed to the accident and he being the tort-feasor cannot maintain any claim against the insurance company and rightly the



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claim made by the said claimant was negatived. He also submitted that the driver of the vehicle as also the pillion riders are under the influence of alcohol, which took proved through examination of R.W.1 and therefore, the act of the claimants being in contravention of policy conditions, they would not be entitled for any compensation. The Tribunal had rightly negatived the claims made by the claimants, which needs no interference.

6. Heard the learned counsel appearing for the appellants and perused the materials available on record.

7. The appellant in C.M.A.No.981 of 2020 was the driver of the two wheeler. The carrying capacity of the vehicle is two, whereas three persons had gone in the said vehicle, which had met with the accident. The said triple driving is in violation of the condition of the policy and therefore, the claimants would not be entitled to claim any compensation at the hands of the insurance company. The fact that the claimants have gone together in the vehicle is not in dispute. The Tribunal has given a finding that the accident



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has spoken to by the claimants could not have happened on account of the fact that the complaint was given after a lapse of two days. To arrive at the said finding, the Tribunal has relied upon the fact that had the claimants taken treatment at the Government Hospital, then necessarily the accident would not have been brought to the knowledge of the law enforcing agency and the complaint would have come to be registered on the very same day itself. However, the fact that no complaint was registered on the said date, but with a delay clearly shows that the complainants have for the purpose of getting compensation created an accident and lodged a complaint after a period of two days. At the said finding coupled with the fact that the driver of the vehicle was smelling alcohol in his breath which has been deposed by R.W.1 gives more credence to the finding recorded by the Tribunal and necessarily, the accident having happened at the instances of the claimant as tort-feasor, the claimant Mohanraj/appellant in C.M.A.No.981 of 2020 would not entitled to claim any compensation at the hands of the insurance company.



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8. Insofar as the other two claimants/appellants in C.M.A.Nos.980 and 982 of 2020 are concerned, once the factum of the accident is not accepted by the Tribunal for reasons given in the impugned award and this Court also being in agreement with the said findings recorded by the Tribunal, necessarily, the compensation as sought for by the appellants in C.M.A.No.980 and 982 of 2020 cannot be granted. However, the said appellants would be entitled to compensation under no fault liability under Section 140 of the Motor Vehicles Act, 1988 and they would be entitled to compensation in a sum of Rs.25,000/- each under the provision of no fault liability.

9. In the above back drop, the impugned award passed by the Tribunal is modified by awarding a sum of Rs.25,000/- each to the appellants in C.M.A.No.980 and 982 of 2020 respectively and the appellant in C.M.A.No.981 of 2020 would not be entitled for any compensation at the hands of the insurance company.



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10. In the aforesaid terms, the appeals in C.M.A.Nos.980 and 982 of 2020 are allowed in part and the appeal in C.M.A.No.981 of 2020 is dismissed. The second respondent/ insurance company is directed to pay a Rs.25,000/- each to the credit of M.C.O.P.Nos.1363 and 861 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this common judgement. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants in C.M.A.Nos.980 and 982 of 2020 through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the modified compensation by the respective appellants. In view of the above common judgement passed in these appeals, this Court is of the view that, no order is necessary in the civil miscellaneous petitions in C.M.P.Nos.8984, 8977 and 8980 of 2023 seeking to receive the additional documents mentioned in the list of documents and to be marked as Ex.P.32



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and Ex.P.33 in the above appeals and accordingly, these Civil Miscellaneous

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Petitions are closed. No costs.

27.11.2023

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

1.The Motor Accidents Claims Tribunal/Additional District Judge,
Namakkal.

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



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M.DHANDAPANI,J.,

sp

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