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C.M.A.Nos.1446 to 1449 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.Nos.1446 to 1449 of 2018

and

CMP.Nos.11523 to 11526 of 2018

M/s. The Oriental Insurance Co. Ltd.,
Divisional Office, 770-A, Anna Salai,
Spencers Towers IV Floor,
Chennai – 600 002.

...Appellant in all CMA's.

Vs.

1. S.Ranjith Kumar
2. S.Kavitha
3. M.Varadharajan
4. Christopher (*Died*)
5. Selvi
6. Nishanthi
7. Daveed

(R5-7 brought on record as LR's of the deceased R4, vide order of this Court dated 11.08.2023 made in CMP.No.4835, 4837, 4839, 4843, 4846, 4848, 4864, 4897, 4890, 4904, 4916 & 4923 of 2019 in CMA.Nos.1446 to 1449 of 2018.)

...Respondents in CMA.No.1446 of 2018

Vs.



C.M.A.Nos.1446 to 1449 of 2018

1. K.Sampath Kumar
2. K.Shiva Shankar
3. K.Kalaivani
4. K.Mohan Kumar
5. M.Varadharajan
6. Christopher (Died)
7. Selvi
8. Nishanthi
9. Daveed

(R7-9 brought on record as LR's of the deceased R6, vide order of this Court dated 11.08.2023 made in CMP.No.4835, 4837, 4839, 4843, 4846, 4848, 4864, 4897, 4890, 4904, 496, 4923 of 2019 in CMA.Nos.1446 to 1449 of 2018.)

...Respondents in CMA.No.1447 of 2018

Vs.

1. S.Revathi
2. M.Varadharajan
3. Christopher (*Died*)
4. Selvi
5. Nishanthi
6. Daveed

(R4-6 brought on record as LR's of the deceased R3, vide order of this Court dated 11.08.2023 made in CMP.No.4835, 4837, 4839, 4843, 4846, 4848, 4864, 4897, 4890, 4904, 4916 & 4923 of 2019 in CMA.Nos.1446 to 1449 of 2018.)

...Respondents in CMA.No.1448 of 2018



C.M.A.Nos.1446 to 1449 of 2018

Vs.

WEB COPY S.Sambasivam (Since Died)

1. S.Revathi
2. Sathish Babu
3. Anitha
4. Jagathish
5. M.Varadharajan
6. Christopher (*Died*)
7. Selvi
8. Nishanthi
9. Daveed

(R7-9 brought on record as LR's of the deceased R6, vide order of this Court dated 11.08.2023 made in CMP.No.4835, 4837, 4839, 4843, 4846, 4848, 4864, 4897, 4890, 4904, 4916 & 4923 of 2019 in CMA.Nos.1446 to 1449 of 2018.)

...Respondents in CMA.No.1449 of 2018

Prayer in CMA.No.1446 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the award and decree dated 15.11.2017 made in M.C.O.P.No.5223 of 2001 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

Prayer in CMA.No.1447 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the award and decree dated 15.11.2017 made in M.C.O.P.No.5224 of 2001 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

Prayer in CMA.No.1448 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the award and decree dated 15.11.2017 made in M.C.O.P.No.5225 of 2001 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.



C.M.A.Nos.1446 to 1449 of 2018

Prayer in CMA.No.1449 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the award and decree dated 15.11.2017 made in M.C.O.P.No.5226 of 2001 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

In all CMA's.:

For Appellant : Mr.S.Arun Kumar

For Respondents : Ms.V.Kayalvizhi,
(for R1 & R2 in CMA.No.1446/2018)
(for R1-R4 in CMA.Nos.1447 & 1449/18)
(for R1 in CMA.No.1448/2018)
: No Appearance
(for R3, R5-R7 in CMA.No.1446/2018)
(for R5, R7-R9 in CMA.No.1447/2018)
(for R2, R4-R6 in CMA.No.1448/2018)
(for R5, R7-R9 in CMA.No.1449/2018)

COMMON JUDGMENT

Since all these appeals are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the awards and decrees all dated 15.11.2017 made in M.C.O.P.Nos.5223 to 5226 of 2001 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, the insurer has come up with these appeals.



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3. The case of the appellant is that, the respective claimants filed claim petitions alleging that on 26.03.2000 at about 16.45 hours, when the persons namely Bhavani, Saraswathi and Sampasivam along with one Revathi, the 1st respondent in CMA.No.1448 of 2018 were travelling in a Maruthi Car bearing Regn.No.TN-10-A-2342, owned by one Varadharajan, the 1st respondent in all the claim petitions insured with the appellant herein, the driver of the above said car drove the same in a rash and negligent manner and dashed against the van bearing Regn.No.TAJ-2811, owned and driven by one Christopher, the 3rd respondent in all the claim petitions, which came in the opposite direction, as a result of which, the said Bhavani and Saraswathi lost their life and the said Sampasivam and Revathi sustained grievous injuries all over their body. Thereby, the injured and the dependents of the deceased filed their respective claim petitions claiming compensation. After contest, the tribunal, vide impugned awards all dated 15.11.2017 awarded a compensation of Rs.4,51,800/- for the death of the said Bhavani, Rs.4,72,000/- for the death of the said Saraswathi, Rs.1,02,000/- for the injuries sustained by the said Revathi and Rs.81,000/- for the injuries sustained by the said Sampasivam and fastened the entire



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liability as against the appellant/insurer of the said car. Aggrieved with the said orders, the appellant has come up with these Appeals, questioning the liability of the insurer.

4. Learned counsel appearing for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the driver of the van, who is its owner which is evident from the deposition of P.W5, the eye witness, who was examined by the claimants resulting in the FIR marked as Ex.P1 coming to be registered against him and the said Christopher himself pleaded guilty and paid the fine amount. While such being the case, when the said Christopher/driver cum owner of the van is the tort-feasor, due to whose negligence the above said accident had happened, no claim can be made by the injured and dependents of the deceased as against the insurer of the car in which they have travelled. While so, without considering the said facts, the tribunal had fixed the entire liability as against the appellant insurance company which cannot be acceded to and the same has to be necessarily interfered with. Further, the entire finding recorded by the tribunal was against the driver cum owner of



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the van, the said Christopher, however, the tribunal had fixed the liability as against the appellant/insurer of the car, which is not sustainable and the same deserves to be interfered with.

5. Per contra, the learned counsel appearing for the respective claimants submitted that, by considering all the relevant documents placed before it, the tribunal had awarded compensation in favour of the respective claimants, which does not warrants interference of this Court. Accordingly, he prayed for dismissal of these appeals.

6. Heard learned counsel for the appellant and the learned counsel appearing for the respective claimants and perused the material documents placed on record.

7. Though notice was served on the owner of the car as well as the LR's of the deceased owner cum driver of the van, however, none appeared on their behalf. Considering the period of pendency of these Appeals, this Court is inclined to dispose of the same based on the available materials.



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8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation and the liability fixed by the tribunal.

9. The main contention of the learned counsel for the appellant relates to the fact that the deposition of P.W5, who is an eye witness to the occurrence, categorically establishes that it was the driver of the van, who was at fault, which also finds place in the FIR which has been marked as Ex.P1, which has been filed against the driver of the van. Such being the case, the appreciation of materials by the Tribunal is erroneous.

10. The appellant claimed that the FIR has been registered against the driver of the van and that he had also pleaded guilty and paid the fine and, therefore, the rash and negligent driving is clearly to be fastened on the driver of the van and the mere fact that the claimants have attributed the negligence as against the driver of the car cannot be the basis to fasten the negligence on the driver of the car. It is borne out by record that one of the



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injured namely, Revathi and one of the dependents of the deceased namely, Sampath kumar examined themselves as witnesses before the tribunal, who have clearly spoken about the manner in which the car was driven and they have categorically deposed that the accident was due to the rash and negligent driving of the car by its driver. Though such a deposition has been made, however, the appellant had not taken any endeavour to dislodge the said deposition by placing any evidence, contra to the same so as to disprove the testimony of the said witnesses. When one of the occupants of the car, viz., Revathi, had clearly deposed the manner in which the accident had happened and had pointed finger on the driver of the car for rash and negligent driving, the appellant having not examined any proper witnesses and having not adduced any contra evidence in order to disprove the case of the claimants, the mere fact that FIR has been registered against the driver of the van cannot be a conclusive piece of evidence to fasten the negligence on the driver of the van. Further, P.W.5, who is stated to be an eye witness to the occurrence, though had deposed that the van was driven in a rash and negligent manner, however, has not, in unequivocal terms stated that there was no rash and negligent driving by the driver of the car.



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11. It has been the consistent view of the Courts that FIR is not a conclusive proof nor is an encyclopedia for deciding the case. The FIR is only to set the criminal law in motion and no further. Merely because certain information is not mentioned or wrongly mentioned in the FIR cannot be a ground to doubt the statement of eye witnesses to the occurrence, when the said statements are found to be trustworthy. (*See Rohtash – Vs – State of Rajasthan (2006 (12) SCC 64 and Ranjit Singh & Ors. – Vs – State of Madhya Pradesh (JT 2010 (12) SC 167)*). The view expressed in the aforesaid decision has been reiterated by the Apex Court in *State of UP – Vs – Naresh & Ors. (2011 (4) SCC 324)*

12. Hence, in the absence of any contra evidence to the deposition of the P.W.2 and P.W.3, the Tribunal, had rightly considered the evidence and fastened the negligence on the part of the driver of the car. However, it is to be pointed out in the same breath that the driver of the van cannot be held to have not been negligent, when there is a clear cut evidence in the form of the deposition of P.W.5, who has spoken about the rash and negligent driving by the driver of the van. While P.W.2 as an occupant of the car had



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spoken about the rash and negligent driving of the car, the passer-by, P.W.5 has spoken about the rash and negligent driving by the driver of the van. In the above circumstances, the Tribunal ought to have fixed contributory negligence on the driver of the van as well.

13. Considering all the materials placed before this Court, this Court holds that the driver of the van had also contributed to the accident. Appreciating the materials available on record, this Court fixes the negligence at 90% on the part of the driver of the car insured with the appellant and 10% on the driver of the van (Christopher, who has since died – LR's impleaded). Therefore, the finding of the Tribunal on negligence alone stands modified in the above terms.

14. With regard to quantum of compensation, it is the claim of the appellant that the compensation awarded by the Tribunal is highly excessive which requires reconsideration. In this regard, this Court perused the impugned award passed by the Tribunal and upon perusal of the impugned award, this Court is of the view that, by no stretch the compensation



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awarded in the appeal could be said to be excessive or disproportionate.

Therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal in respect of the quantum of compensation.

15. Therefore, the appellant insurance company is directed to deposit the compensation to the extent of 90% of its share, as awarded above in the respective MCOPs along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. In respect of the award in favour of the injured, the Tribunal is directed to transfer the same to the bank account of the respective injured claimant through RTGS within a period of two weeks thereafter. Insofar as the award amount in respect of the deceased, the same shall be apportioned amongst the respective legal heirs/claimants as per the Award of the Tribunal and the Tribunal is directed to transfer the amount directly to the bank account of the respective claimants through RTGS within a period of two (2) weeks thereafter. If any excess amount is deposited by the appellant/insurance



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company, they are entitled to withdraw the same by way of filing necessary application.

16. Insofar as the negligence of 10% fixed on the driver of the van is concerned, the respective claimants are at liberty to recover the balance amount from the LR's of the deceased Christopher/driver of the van, in the manner known to law.

17. Further, pursuant to the order of this Court, the appellant paid a sum of Rs.10,000/- in each of the impleading petition totalling to a sum of Rs.40,000/-, however, in view of the fact that this Court has fixed negligence on the driver of the van as well, in which case, the legal heirs of the driver of the van, who is since deceased, are necessary parties, imposition of costs on the appellant, which has since been paid, would not be proper. In such view of the matter, Registry is directed to refund the amount of Rs.40,000/- (Rupees Forty Thousand only) paid by the appellant, vide the order dated 21.07.2023 within a period of two weeks from the date of receipt of a copy of this order.



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18. With the above directions and modification to the impugned awards passed by the tribunal, these Civil Miscellaneous Appeals stand **allowed in part**. No costs. Consequently, the connected Miscellaneous petitions are closed.

19.12.2023

skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To:

1. The Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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and
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