



C.M.A.No.1806 and 1807 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos. 1806 and 1807 of 2018

C.M.A.No.1806 of 2018

Minor Tamil Selvan
represented by next friend/guardian
and father Sakthi Sabari.

... Appellant

Vs.

1.V.Buddhan

2.Reliance General Insurance,
Shri Lakshmi Complex,
1st Floor, Bharathi Street,
Omalur Main Road, Swarnapuri,
Salem – 636 004.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the fair and decretal order dated 01.07.2014 made in M.C.O.P.No.710 of 2012 on the file of the Motor Accident Claims Tribunal/Special Sub Judge No.I, Salem District.

For Appellant : Mr.S.Vikirdeesh
for Mr.R.Marudhachalamurthy



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For Respondents : No appearance for R1
Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates for R2

C.M.A.No.1807 of 2018

Sakthi Sabari ... Appellant

Vs.

1.V.Buddhan

2.Reliance General Insurance,
Shri Lakshmi Complex, 1st Floor, Bharathi Street,
Omalur Main Road, Swarnapuri,
Salem – 636 004.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the fair and decretal order dated 01.07.2014 made in M.C.O.P.No.709 of 2012 on the file of the Motor Accident Claims Tribunal/Special Sub Judge No.I, Salem District.

For Appellant : Mr.S.Vikirdeesh
for Mr.R.Marudhachalamurthy

For Respondents : No appearance for R1
Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates for R2

COMMON JUDGMENT

These appeals are directed against the Award dated 01.07.2014 passed in M.C.O.P.Nos.710 of 2012 and 709 of 2012 on the file of the Motor Accident Claims Tribunal/Special Sub Judge No.I, Salem District.



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2. For the purpose of convenience, the parties are described as

per their ranking before the Tribunal.

3.The facts in nutshell are as follows :

(i) On 30.11.2009, the claimant (Sakthi Sabari) in M.C.O.P.No.709 of 2012 and his minor son (Tamil Selvan), who is the claimant in M.C.O.P.No.710 of 2012, were travelling in a TATA Indica Car bearing Registration No.TN-07-K-3885 from Pappireddipatty to Samiyapuram Road. When the claimants were proceeding near Malliga Palace Thirumana Mandapam, a bus bearing Registration No.TN-29-AY-9678, came from the opposite direction, driven by the driver of the first respondent in a rash and negligent manner and hit against the claimants' car. Due to the said impact, the claimants sustained grievous injuries. The claimants took first-aid treatment in Government Hospital, Pappireddypatty, and then they were admitted in Sri Gokulum Hospital, Salem for further treatment.

(ii) Seeking compensation against the owner of the bus and its insurer M/s.Reliance General Insurance, the injured claimant (father) filed M.C.O.P.No.709 of 2012, claiming compensation of Rs.8,00,000/-, and the



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injured claimant (minor son) filed M.C.O.P.No.710 of 2012, claiming compensation of Rs.4,50,000/-.

4. The first respondent V.Buddhan remained *ex-parte* before the Tribunal. Resisting the claim petitions, the second respondent/ Insurance Company filed their counter statement disputing the manner of accident, age, place, date and time of accident and alleged injuries sustained by them.

5. To substantiate the case, on the side of the claimants, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P12 were marked and Ex.X1 to Ex.X7 were marked as Court documents. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 and Ex.R2 were marked.

6. The Tribunal, after analysing the entire evidence, found that the accident had occurred only due to rash and negligent driving of the claimant in M.C.O.P.No.709 of 2012 and he is the tort-feasor and came to the conclusion that the first respondent and second respondent/Insurance Company are not liable to pay any compensation and dismissed the claim



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petitions. Challenging the same, the claimants have preferred the present appeals.

7. The learned counsel for the appellants/claimants submitted that the both appellants herein are the father and minor son. On the date of accident, the claimant in M.C.O.P.No.709 of 2012 was driving his brother's TATA Indica Car from Pappireddypatty to Samiyapuram and he was accompanied by his son aged about 1-½ years, who is the claimant in M.C.O.P.No.710 of 2012. While they were nearing Malliga Palace Thirumana Mandapam, the first respondent's driver drove the bus bearing Registration No.TN-29-AY-9678 in a rash and negligent manner and dashed against the car. Therefore, the first respondent's driver is the tort-feasor. The accident took place only due to the rash and negligent driving of the driver of the first respondent's bus, however, without proper investigation, the Pappireddipatty Police had registered a case in F.I.R.No.294 of 2009 against the appellant/claimant in M.C.O.P.No.709 of 2012 and charge sheet was also filed against him. The main allegation raised by the Insurance Company is that the appellant/claimant in M.C.O.P.No.709 of 2012 had kept his 1-½ years old child on his lap, due to that, he lost his control, which



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caused the accident. However, to substantiate the same, no evidence is produced and also even in the counter, the first respondent did not reveal the above facts. The Tribunal, without proper appreciation, wrongly came to the conclusion that the appellant/claimant in M.C.O.P.No.709 of 2012 is the tort-feasor and he is not entitled to get any compensation, hence, it would not be proper on the part of the Tribunal in fixing the entire negligence on the part of the appellant/claimant in M.C.O.P.No.709 of 2012 and dismissed both the claim petitions. Aggrieved by the same, the appellants are before this Court by way of appeals.

8. The learned counsel for the second respondent/Insurance Company submitted that the name of the claimant in M.C.O.P.No.709 of 2012 was shown as accused in the F.I.R. The claimant, while driving the car, kept his 1-½ years minor son on his lap and due to that, he lost his control and drove the car in a rash and negligent manner and hit against the first respondent's bus and that the claimants sustained injuries. Hence, the claimant in M.C.O.P.No.709 of 2012 is the tort-feasor. The Tribunal rightly held that the claimants are not entitled to get any compensation, since the claimant in M.C.O.P.No.709 of 2012 is tort-feasor for the accident.



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Therefore, there is no perversity in the findings given by the Tribunal and there is no merit in these appeals and the same are liable to be dismissed.

9. Heard the learned counsel for the appellants and the learned counsel for the second respondent and also perused the materials available on record. Despite service of notice, the first respondent has not chosen to enter appearance either through a counsel or in person.

10. The accident is admitted. Both the appellants travelled in the car is also admitted. The first respondent's bus bearing Registration No. TN-29-AY-9678 was insured with the second respondent/Insurance Company, which is also admitted. Now, the only question that arises for consideration in these appeals is as to whether the liability fixed on the appellant/claimant in M.C.O.P.No.709 of 2012 is sustainable.

11. On perusal of the evidence of the appellant/P.W.1, the driver of the first respondent/R.W.1, officer of the second respondent/R.W.2, F.I.R./Ex.P1, Copy of the final report/Ex.R1, Copy of the MVI Report/Ex.R2, it is seen that there was a head on collision between the car and the bus.



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12. During trial, the driver of the first respondent's bus was examined as R.W.1 and he has stated that when he saw the car, which was coming from the opposite direction with rash and negligent manner, he stopped the bus on the left hand side of the road, however, the driver of the car lost his control and hit the bus. At the time of rescuing, he had noted that the minor claimant was sitting on the lap of P.W.1, therefore, he alleges P.W.1's negligence for the accident. However, the appellant/P.W.1 has stated that the accident had happened only due to rash and negligent driving of the driver of the first respondent.

13. The fact remains that, at the time of the accident, the appellant/claimant in M.C.O.P.No.709 of 2012 and his 1-½ years child alone travelled in the car. Naturally, a child aged about 1-½ years cannot be seated independently in a car, without the aid of elder persons and definitely, the appellant's concentration was on the child and that may not be the sole ground to fix the entire liability on the part of the appellant, unless there is a specific evidence. In the case on hand, there is no specific evidence or materials produced by the second respondent to prove the same. In the complaint, the first respondent has not disclosed anything about the keeping



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of the child on the lap of the appellant and in the counter also, it is not mentioned. Further, on a careful reading of the cross examination of the appellant, the second respondent never put a suggestion before the appellant, while driving the car, he kept his child on his lap and due to that, he lost his control and hit the bus. It is only an after-thought and while R.W.1 was in the witness box, he had given such an evidence. There are no materials to show that from the date of accident, till P.W.1 was in the witness box, the respondents stated or whispered about the keeping of the child on the appellant's lap at the time of accident. Therefore, the Tribunal could not have given a finding on that. Now, the only question that arises for consideration is as to whether the accident occurred only due to negligent and rash driving of the driver of the car or the driver of the bus.

14. Ex.R2/copy of the MVI report shows the nature of damages sustained by the car and the bus, which shows that there was head-on-collision between the car and the bus. To prove the manner of the accident, except P.W.1, R.W.1 and R.W.2, none of the independent witnesses were examined. At the time of accident, the appellant and his 1-½ year old child alone have travelled in the car, and therefore, the appellant could not



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examine any one of the independent witnesses. However, in the first respondent's bus, number of passengers have travelled, but none of them were examined to prove the manner of the accident as stated by the respondents. In the absence of the evidence of the independent witnesses, the entire liability cannot be fixed on the appellant. Hence, both the drivers of the bus and car have contributed their negligence to the accident. Though the learned counsel for the second respondent submitted that F.I.R/Ex.P1 was registered against the appellant/claimant in M.C.O.P.No.709 of 2012, the appellant is only liable for the accident.

15. It is well settled proposition of law that the FIR is not the Encyclopaedia. In the case on hand, to prove the manner of the accident, the second respondent has not let in any independent witness to prove the manner of the accident. This Court, as a final Court of fact finding, while re-appreciating the evidence independently, finds that the accident had happened due to rash and negligent driving of the both the driver of the bus and the car, who are the appellant/claimant in M.C.O.P.No.709 of 2012 and the driver of the first respondent's bus. Hence, both have contributed their negligence. Therefore, the negligence should have been proportionate of the



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ratio of 50 : 50. Since the appellant is the tort-feasor, he is entitled for 50% contribution from the negligence on the part of the first respondent's driver and as such the second respondent/Insurance Company is liable to indemnify the first respondent.

16. As far as the quantum of compensation is concerned, though the appellant/claimant in M.C.O.P.No.709 of 2012 filed the claim petition claiming a sum of Rs.8,00,000/- as compensation, the appellant/claimant in M.C.O.P.No.710 of 2012 filed the claim petition claiming a sum of Rs.4,50,000/- as compensation.

17. On perusal of the evidence of the Doctors/P.W.2 and P.W.3, who had issued disability certificates/Ex.X1, Ex.X4 and Ex.X5, wherein, P.W.2 and P.W.3 have clearly stated that after five years from the date of accident, they have examined the appellants. While examining, P.W.2/Doctor assessed the permanent disability of the appellant/claimant in M.C.O.P.No.709 of 2012 at 35% ; and P.W.3/Doctor assessed the permanent disability of the appellant/claimant in the same M.C.O.P.No.709 of 2012 at 25%. Further, P.W.3/Doctor assessed the permanent disability of



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the appellant/claimant in M.C.O.P.No.710 of 2012 at 20%. However, on a perusal of the entire evidence, it would reveal that it is not total body.

18. Even though, the appellant/P.W.1 has stated that he sustained fracture on his leg and iron rods and plate were fixed in his leg, subsequently, the same were removed, for which, he has spent Rs.1,00,000/-. To substantiate the same, he has produced Hospital bills/Ex.P4 and Ex.P5/Medical bills. The appellant/claimant in M.C.O.P.No.710 of 2012 also sustained multiple injuries, which are grievous in nature and he will require huge amount for plastic surgery and he has also spent amount for his treatment and also produced Hospital Bills/Ex.P10 and Medical Bills/Ex.P11.

19. This Court, as a final Court of fact finding, re-appreciated the entire materials and accordingly, the permanent disability of the claimant in M.C.O.P.No.709 of 2012 is fixed at 15% by fixing a sum of Rs.3,000/- as notional monthly income. Thus, if a sum of Rs.3,000/- is taken as monthly income, the annual loss of income comes to Rs.36,000/-



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WEB CO [3,000x12]. Considering the age of the claimant being 28 years at the time of accident, if multiplier "17" is adopted, the amount comes to Rs.6,12,000/- [36,000x17]. The amount proportionate to 15% disability comes to Rs.91,800/- [6,12,000 x 15%], which will be the just and fair compensation towards "Disability". Further, a sum of Rs.80,816/- is awarded under the head Medical Bills and a sum of Rs.10,000/- is awarded under the head Extra nourishment and also a sum of Rs.1,00,000/- is awarded under the head Expenses spent for removal of plate.

20. The break-up details of the amounts awarded by this Court under various heads are as follows:

<i>S. No.</i>	<i>Heads under which amounts are awarded</i>	<i>Amounts awarded by this Court in Rs.</i>
1.	Disability	91,800
2.	Medical Expenses	80,816
3.	Extra nourishment	10,000
4.	Expenses spent for removal of plate	1,00,000
	Total	2,82,616
	(-)50% contributory negligence	1,41,308
	Compensation payable	1,41,308

21. The permanent disability of the claimant in



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M.C.O.P.No.710 of 2012, who is aged about 1-½ years, is fixed at 10% by fixing a sum of Rs.3,000/- per percentage of disability. The amount proportionate to 10% disability comes to Rs.30,000/- [3,000x10%], which will be the just and fair compensation towards "Disability". Since the claimant in M.C.O.P.No.710 of 2012 is an infant child, the multiplier method would not apply. Further, a sum of Rs.12,329/- is awarded under the head "Medical Bills" and a sum of Rs.10,000/- is awarded under the head "Extra Nourishment" and also a sum of Rs.50,000/- is awarded under the head "Future Medical Expenses".

22. The break-up details of the amounts awarded by this Court under various heads are as follows:

<i>S. No.</i>	<i>Heads under which amounts are awarded</i>	<i>Amounts awarded by this Court in Rs.</i>
1.	Disability (3,000 X 10 %)	30,000
2.	Medical Expenses	12,329
3.	Extra nourishment	10,000
4.	Future medical expenses	50,000
	Total	1,02,329
	(-)50% contributory negligence	51,164.5
	Compensation payable	51,164.5
		(rounded off) 51,165

23. Thus, this Court hereby awards a sum of **Rs.2,82,616/-** as



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compensation for the injuries sustained by the claimant in M.C.O.P.No.709 of 2012 and less contributory negligence 50% on the part of the claimant, the amount comes to **Rs.1,41,308/-** [2,82,616 - 50%] - and hence, the claimant is entitled for a sum of **Rs.1,41,308/-** as compensation.

24. Insofar as the claimant in M.C.O.P.No.710 of 2012 is concerned, this Court hereby awarded a sum of **Rs.1,02,329/-** as compensation and less contributory negligence 50% on the part of the claimant, the amount comes to **Rs.51,164.5/-** [1,02,329 - 50%] and the same is rounded off to **Rs.51,165/-** and hence, the claimant is entitled for a sum of **Rs.51,165/-** as compensation.

25. Thus, a sum of **Rs.1,41,308/-** is awarded to the claimant in M.C.O.P.No.709 of 2012 and a sum of **Rs.51,165/-** is awarded to the



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claimant in M.C.O.P.No.710 of 2012 as compensation, which shall carry interest at 7.5% from the date of claim petitions till the date of deposit. The first respondent is directed to deposit the entire award amount, together with interest and costs, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment and he is permitted to recover the same from the second respondent/Insurance Company. On such deposit, the Tribunal shall credit the compensation to the Bank Account of the claimant in M.C.O.P.No.709 of 2012, by following the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016 (reported in 2016(2) LW 561 – The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). As far as the share of the minor claimant in M.C.O.P.No.710 of 2012 is concerned, the Tribunal shall deposit the same, in a fixed deposit in any one of the Nationalised Bank, till he attains the age of majority. The interest that may accrue in the Bank deposit, shall be withdrawn by the father/guardian of the minor, once in three months directly from the Bank. Both the claimants shall pay necessary Court fee, on the compensation now awarded.



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26. With the above observations and directions, these Civil

Miscellaneous Appeals are partly allowed. There shall be no order as to costs.

04.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To
1.The Motor Accident Claims Tribunal
Special Sub Judge No.I,
Salem District.

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



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P.VELMURUGAN, J.

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