



C.M.A.Nos.1624, 1626 & 1627 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1624, 1626 & 1627 of 2020
and C.M.P.Nos.11946, 11961 & 11969 of 2020

C.M.A.No.1624 of 2020

The Branch Manager,
Reliance General Ins.Co.Ltd.
Sri Lakshmi Complex, 1st Floor, Bharathi Street,
Swarnapuri, Salem-4 ... Appellant/II Respondent

Vs

1.Sivagami ... I Respondent/Petitioner
2.Nirmala ... II Respondent/I Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Decree and Judgment dated 18th December 2019 passed in M.C.O.P.No.1441 of 2018, by the Hon'ble Motor Accident Claims Tribunal, II Special Sub Court at Salem.



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C.M.A.No.1626 of 2020

The Branch Manager,
Reliance General Ins.Co.Ltd.

Sri Lakshmi Complex, 1st Floor, Bharathi Street,
Swarnapuri, Salem-4

... Appellant/II Respondent

Vs

1.Ramesh

... I Respondent/Petitioner

2.Nirmala

... II Respondent/I Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Decree and Judgment dated 18th December 2019 passed in M.C.O.P.No.1440 of 2018, by the Hon'ble Motor Accident Claims Tribunal, II Special Sub Court at Salem.

C.M.A.No.1627 of 2020

The Branch Manager,
Reliance General Ins.Co.Ltd.

Sri Lakshmi Complex, 1st Floor, Bharathi Street,
Swarnapuri, Salem-4

... Appellant/II Respondent

Vs

1.Hariharan (Minor)
Rep by father Ramesh

... I Respondent/Petitioner

2.Nirmala

... II Respondent/I Respondent



C.M.A.Nos.1624, 1626 & 1627 of 2020

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Decree and Judgment dated 18th December 2019 passed in M.C.O.P.No.1439 of 2018, by the Hon'ble Motor Accident Claims Tribunal, II Special Sub Court at Salem.

For Appellants ... M/s.C.Bhuvanasundari
(In all CMAs)

For Respondents ... No appearance for R1 & R2

COMMON JUDGMENT

All the appeals arise out of single accident.

2. Challenging the impugned award dated 18.12.2019, passed by the Motor Accident Claims Tribunal, II Special Sub Court, Salem, the appellant-Insurance Company has filed the present Appeal.

3. It is the case of the claimants that on 05.07.2018, when the claimant in M.C.O.P.No.1440 of 2018 was riding the Motor Cycle bearing Reg.No.28.AE.3975 along with wife and minor son as pillion riders who are the claimants in M.C.O.P.Nos.1441 & 1439 of 2018 respectively, the Motor Cycle bearing Reg.No.TN-25-AR-4275 belonging to the respective second



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respondent, insured with the appellant, came in the opposite direction in a rash and negligent manner dashed against the Motor cycle of the claimants thereby the claimants sustained grievous injuries all over their body. Immediately after the said accident, the claimants were taken to Maruthi Hospital, Namakkal for treatment and they are still taking treatment. For the injuries suffered by the claimants, they have filed respective claim petitions claiming compensation.

4. Before the Tribunal, the claimants 2 & 3 examined themselves as P.W.1 & P.W.2 and examined the doctor as P.W.3 and marked Ex.P-1 to Ex.P-16. On the side of the respondents R.W.1 & R.W.2 were examined and no documents were marked. After considering all the oral and documentary evidence, the Tribunal has awarded a sum of Rs.4,09,805/-, Rs.3,29,039/- and Rs.27,000/- in M.C.O.P.Nos.1439, 1440 & 1441 of 2018 respectively. Insofar as the compensation awarded in M.C.O.P.No.1439 of 2018, in view of the fact that 20% contributory negligence was fixed on the claimant, the Tribunal has directed payment of a sum of Rs.2,63,231/, which is the 80% compensation to be paid by the Appellant-insurance company. Aggrieved by the negligence as



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well as the quantum of compensation fixed by the Tribunal, the appellant-insurance company has filed the present appeals.

5. Learned counsel appearing for the Appellant-Insurance Company submitted that though the Accident had happened on 05.07.2018, however, the FIR has been registered only on 09.07.2018 which is after a lapse of five days. Though the First Information Report and Investigation Report, clearly states that the said accident had occurred purely due to the negligence on the part of the claimant in M.C.O.P.No.1440 of 2018 who drove the vehicle in a rash and negligent manner which was the cause for the accident for which, the criminal case has been registered against the said claimant, the Tribunal without properly appreciating the evidence, has fastened the negligence against the respective 2nd respondent which is wholly unsustainable. Further, the compensation awarded by the Tribunal is also highly excessive which is liable to be interfered with. Accordingly, he prayed for allowing the appeals.



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6. Though notice was served on the respondents 1 & 2 and their name printed in the causelist, none appeared on behalf of the respondents today. Considering the pendency of the Appeal which is of the year 2018, this Court is inclined to dispose of the same based on the materials available on record.

7. This Court heard the learned counsel appearing for the Appellant-Insurance Company and perused the materials available on record.

8. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. However, the Insurance Company had challenged its liability to the extent of 80% to pay on account of the negligence fixed on the 2nd respondent on the ground that the FIR was filed after a delay of five days, which is clearly an afterthought with an intention to get compensation from the insurance company. After elaborately considering all the oral and documentary evidence, the Tribunal has passed an award based on the evidence of P.W.1 and P.W.2.



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9. It is the case of the Insurance Company that at the relevant point of time, the FIR was registered only against the claimant. It is to be pointed out that it has been the consistent view of the Courts that FIR may not contain all the details. It is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case. Further FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. 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)*.

10. In this regard, the decision of the Apex Court in the case of *National Insurance Company Ltd., Bs. Chamundeswari and Ors* reported in



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Manu/SC/0751/2021 has been relied on, wherein the Apex Court has held as under :-

“ 8. It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going on in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 & PW-3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which recorded before the Tribunal has to be given weightage over the contents of the First Information Report. In the Judgment, relied on by the Appellant's counsel in the case of Oriental Insurance Co. Limited V. Premlata Shukla and Ors. MANU/SC/7705/2007 (13) SCC 476, this Court has held that proof of rashness and negligence on the part of the driver of the vehicle is therefore, sine qua non for maintaining an application under Section 166 of the Act. In the said Judgment, it is held that the factum of an accident could also be proved from the First Information Report. In



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the Judgment in the case of Nishan Singh and Ors v. Oriental Insurance Co.Limited MANU/SC/0463/2018 : 2018 (6) SCC 765, this Court had held, on facts, that the same, was driven negligently by not maintaining sufficient distance as contemplated under Road Regulations, framed under Motor Vehicles Act, 1988. Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record. Having regard to evidence in the present case on hand, we are of the view that both the judgments relied on by the learned counsel for the Appellant, would not render any assistance in support of his case.”

11. Keeping the aforesaid decision in mind, when this Court analyzes the evidence of P.W.1, it reveals that P.W.1 has clearly spoken about the manner in which the 2nd respondent had driven the vehicle, which is in a rash and negligent manner. Though the respondent presses the FIR into play, however, the ocular evidence of P.W.1, is not broken by the documentary evidence, viz., the FIR and in such circumstances, the ocular evidence has to be given primacy over the FIR and the FIR being not a substantive piece of evidence, the said document cannot outweigh the ocular testimony of P.W.1



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and, therefore, the negligence would necessarily have to be fastened on the 2nd respondent, as the person, who had caused the accident, which the Tribunal has rightly done so and, therefore, the finding on the said aspect does not required to be interfered with.

12. Insofar as the quantum of compensation arrived in M.C.O.P.No.1439 of 2018, the Tribunal has awarded a sum of Rs.3,00,000/- towards “Pain and Suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability” and the Tribunal has awarded another sum of Rs.1,00,000/- under the very similar head "discomfort and inconvenience, etc.," which cannot be sustained. Therefore, this Court is of the view that a sum of Rs.1,00,000/- which has been awarded under the heads “discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization” shall stand deleted and to that extent, the impugned award in M.C.O.P.No.1439 of 2018 stands modified.



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13. Insofar as the compensation awarded in M.C.O.P.No.1440 of 2018, the Tribunal has awarded a sum of Rs.54,000/- under the head permanent disability and compensation towards pain and suffering also stands within its fold. While so, the Tribunal has awarded another sum of Rs.25,000/- under the separate head “Pain and suffering”. Since, the compensation cannot be granted twice for similar purpose, the sum of Rs.25,000/- awarded under under pain and suffering shall stand deleted and to that extent, the impugned award in M.C.O.P.No.1440 of 2018 stands modified.

14. Insofar as the compensation awarded in M.C.O.P.No.1441 of 2018 to the tune of Rs.27,000/-, this Court, on perusal of entire materials available on record, feels it just and reasonable and hence, the same stands confirmed. Further, the compensation awarded under other heads is also just and reasonable which does not require any interference.



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15. In the above circumstances, the impugned award passed in

M.C.O.P.No.1439 of 2018 stands modified as under:-

S. No	Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
1.	Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability	Rs3,00,000/-	Rs. 3,00,000/-
2.	Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization	Rs.1,00,000/-	-
3.	Medical and incidental expenses during the period of hospitalization	Rs.9,805/-	Rs.9,805/-
	TOTAL	Rs.4,09,805/-	Rs.3,09,805/-

16. The impugned award passed in M.C.O.P.No.1440 of 2018 stands modified as under:-



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S.No	Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
1.	Permanent Disability (18% * Rs.3,000/-)	Rs.54,000/-	Rs.54,000/-
2.	Pain and suffering	Rs.25,000/-	-
3.	Loss of amenities	Rs.25,000/-	Rs.25,000/-
3.	Medical expenses	Rs.1,39,039/-	Rs.1,39,039/-
4.	Loss of income during the treatment period	Rs.45,000/-	Rs.45,000/-
5.	Transport expenses	Rs.10,000/-	Rs.10,000/-
6.	Nutrition	Rs.20,000/-	Rs.20,000/-
7.	Attender charges	Rs.10,000/-	Rs.10,000/-
8.	Loss of damages to clothing	Rs.1,000/-	Rs.1,000/-
	TOTAL	Rs.3,29,039/-	Rs.3,04,039/-

17. Accordingly, C.M.A.No.1624 of 2020 stands dismissed and the compensation amount awarded in **M.C.O.P.No.1441 of 2018** to the tune of **Rs.27,000/-** stands confirmed while C.M.A.Nos.1626 & 1627 of 2020 are partly allowed and the impugned Award of the Tribunal insofar as **M.C.O.P.No.1440 of 2018**, is modified by reducing the compensation amount from **Rs.3,29,039/-** to **Rs.3,04,039** of which, the amount to be paid by the Appellant-Insurance Company is quantified at **Rs.2,43,231/-** which is 80% of the reduced amount. Insofar as **M.C.O.P.No.1439 of 2018**, the compensation



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amount stands reduced from **Rs.4,09,805/- to Rs.3,09,805/-**. The Appellant-Insurance Company is directed to deposit the respective amounts as awarded by this Court to the credit of M.C.O.P.Nos.1439, 1440 & 1441 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petitions 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. On such deposit being made, the respective 1st respondent/claimants are permitted to withdraw the modified award amount, along with interest and costs. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the respective 1st respondent/claimants through RTGS within a period of two weeks thereafter. There shall be no order as to costs in these appeals. Consequently, the connected miscellaneous petitions are closed.

01.12.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
NHS



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- To
- 1.The Motor Accident Claims Tribunal Cum
II Special Sub Court,
Salem.
 - 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J

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