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C.M.A.Nos.2828 and 2829 of 2014 and
M.P.Nos.1 and 1 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :14.12.2022

Judgment Pronounced on :19.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2828 and 2829 of 2014
and
M.P.Nos.1 and 1 of 2014

The Branch Manager,
National Insurance Company Limited,
Vijay Pla Building, 2nd Floor,
C-32, 2nd Avenue,
Anna Nagar, Chennai.

... Appellant in both C.M.As

vs.

Sarojini1st Respondent in C.M.A.No.2828 of 2014

Selvi1st Respondent in C.M.A.No.2829 of 2014

2.S.J.Geetha

3.Branch Manager,
The Oriental Insurance Company Limited,
A.A.Complex, First Floor,
189, Kumaran Road,
Tiruppur.

4. Prakash ... Respondents in both C.M.As

PRAYER in C.M.A.No.2828 of 2014: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2010 and made in M.A.C.T.O.P.No.151 of 2007 on the file of Additional District Court cum Motor Accident Claims Tribunal, Fast Track Court No.V, Coimbatore at Tiruppur.



C.M.A.Nos.2828 and 2829 of 2014 and
M.P.Nos.1 and 1 of 2014

PRAYER in C.M.A.No.2829 of 2014: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2010 and made in M.A.C.T.O.P.No.153 of 2007 on the file of Additional District Court cum Motor Accident Claims Tribunal, Fast Track Court No.V, Coimbatore at Tiruppur.

C.M.A.No.2828 of 2014:-

For Appellant	: Mr.S.Vadivel
For R1, 2 &4	: No appearance
For R3	: Mr.J.Vijaya Raghavan

C.M.A.No.2829 of 2014:-

For Appellant	:Mr.S.Vadivel
For R1	:Mr.S.Kaithamalai Kumaran
For R2 & R4	:No appearance
For R3	:Mr.M.J.Vijayaraghavan

COMMON JUDGMENT

Both the cases arise out of the same accident and hence common judgment have been passed by the Tribunal.

C.M.A.No.2828 of 2014:-

The first respondent herein who suffered injury in the road transport accident on 27.12.2006, has filed an application claiming compensation for the injury on the right shoulder and on the right eye. The Tribunal has held that both the vehicle drivers are at negligence and



C.M.A.Nos.2828 and 2829 of 2014 and
M.P.Nos.1 and 1 of 2014

accordingly fixed the contributory negligence at 65:35 being the driver of the van having registration No.TN 39 C 1688 and driver of the van having registration No.TN 01 AC 0468 and awarded a sum of Rs.24000/- as compensation. The appeal has been preferred by the appellant/Insurance Company on the point of negligence alone.

2. The learned counsel for the appellant/Insurance Company contended that the Tribunal ought not to have been negligent in the ratio of 65:35 instead of fixing the entire negligence on the part of the driver of the van bearing Registration No.TN 39C 1688 and since 20 persons travelled in the van.

3. After perusing the evidence of R.W.2 and R.W.3 and also taking note of the fact that the claimant has travelled as a passenger in the claimant has suffered injury while the other vehicle is only a goods van.

4. The Tribunal, on consideration of the oral evidence of P.W.1 and P.W.2 and also taking note of the evidence of P.W.3 and R.W.2 Chandran and Ex.R2 rough sketch, have rightly come to the conclusion that 65:35 contributory negligence has been fixed and hence I do not find any error in this said finding and the apportionment in the contributory negligence for the accident.



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C.M.A.Nos.2828 and 2829 of 2014 and
M.P.Nos.1 and 1 of 2014

5. Accordingly, this Civil Miscellaneous Appeal No.2828 of 2014 is dismissed. No costs. I find the award of the Tribunal is Rs.24,000/- which is only meagre, but the Insurance Company has filed this appeal and such attitude of the Insurance Company is hereby deprecated.

C.M.A.No.2829 of 2014:-

The First respondent-Selvi who suffered injury is the person who was travelling in the passenger van having registration No.TN 39C 1688 from Melmaruvathur to Tiruppur. She worked as Tailor in a Baniyan Company at Tiruppur at the time of the accident. She had suffered permanent disability to show the permanent disability during the trial she examined as P.W.2 Doctor, P.W.3 Doctor Senthilkumar and marked Ex.P9, P10 and P11 and P13,. The Tribunal, on consideration of both oral and documentary evidence, fixed the disability at 28% and other incidental accident and medical expenses works out to a sum of Rs.82,000/- and the same is hereby awarded. The accident has taken place due to the contributory negligence of both the driver of the passenger van and the goods van and fixed the contributory negligence in the ratio of 65:35.



C.M.A.Nos.2828 and 2829 of 2014 and
M.P.Nos.1 and 1 of 2014

2. Accordingly, I find that there is nothing on record to interfere with the above said finding of the Tribunal. Hence, C.M.A.No.2829 of 2014 is dismissed.

3. In the result, both the above Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected M.Ps are closed.

19.01.2023

nvi

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation : Yes/No

To

1. The Additional District Court cum Motor Accident Claims Tribunal,
Fast Track Court No.V, Coimbatore at Tiruppur
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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C.M.A.Nos.2828 and 2829 of 2014 and
M.P.Nos.1 and 1 of 2014

RMT.TEEKAA RAMAN, J.,

nvi

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C.M.A.Nos.2828 and 2829 of 2014 and
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19.01.2023