



WEB COPY



C.M.A.Nos.4648 to 4650 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.4648 to 4650 of 2019

and

C.M.P.Nos.26306, 26311 & 26314 of 2019

C.M.A.No.4648 of 2019

The Divisional Manager,
M/s.Iffco Tokio General Insurance Company Limited,
No.128, Habibullah Road,
Thiyagaraya Nagar,
Chennai – 600 017.

... Appellant in all CMAs

Vs.

1.Anthony Xavier ... 1st Respondent in C.M.A.No.4648 of 2019

2.Solomon ... 1st Respondent in C.M.A.No.4649 of 2019

3.Selvaraj @ Selvam ... 1st Respondent in
C.M.A.No.4650 of 2019

4.Jayaram

5.Johnraja

... Respondents 2 and 3 in
all CMAs

6.The Divisional Manager,
The National Insurance Company Limited,
No.9, Infantry Road,
Near Alangar Theatre, Vellore.

... 4th Respondent in all CMAs



C.M.A.Nos.4648 to 4650 of 2019

Prayer in C.M.A.No.4648 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.1733 of 2017 dated 24.04.2019 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tiruvannamalai.

Prayer in C.M.A.No.4649 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.1734 of 2017 dated 24.04.2019 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tiruvannamalai.

Prayer in C.M.A.No.4650 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.1732 of 2017 dated 24.04.2019 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tiruvannamalai.

For Appellant : Ms.C.Harini
(in all CMAs) for M/s.M.B.Gopalan Associates
For Respondents : Ms.A.Subadra [R1]
(in all CMAs) No appearance [R2 & R3]
Mr.D.Bhaskaran [R4]

COMMON JUDGEMENT

Challenging the award passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, Tiruvannamalai in M.C.O.P.Nos.1733, 1734 and 1732 of 2017 dated 24.04.2019, the insurance company has preferred the above appeals.



C.M.A.Nos.4648 to 4650 of 2019

2. On 02.07.2016 at about 1.00 p.m., the petitioners were riding the Hero Honda motorcycle bearing Reg.No.TN 25 AH 6906, which was insured with the fourth respondent/insurance company, at that time, the Innova Car bearing Reg.No.TN 57 AK 5656, which came in the opposite direction being driving in a rash and negligent manner and hit against the motorcycle, in which the petitioners were travelling, due to which, they were thrown out of the vehicle and sustained grievous injuries, for which, they were admitted in the hospital and took treatment. Therefore, the claimants filed claim petitions claiming a sum of Rs.10,00,000/- each as compensation before the Tribunal for the injuries sustained by them.

3. Before the Tribunal, the claimants examined themselves as P.W.1 to P.W.3 and marked 24 documents viz., Ex.P.1 to Ex.P.24. On the side of the respondents, they have examined three witnesses viz., R.W.1 to R.W.3 and marked one document viz., Ex.R.1 and Court Documents viz., Ex.C.1 to Ex.C.3 were marked. On considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.2,17,000/-, Rs.1,12,500/- and Rs.20,43,316/- as compensation to the claimants. Aggrieved by the same, the present appeals have been preferred by the insurance company.



4. The learned counsel appearing for the appellant submitted that the claimants had travelled in the Hero Honda motorcycle in three in numbers, though the carrying capacity of the said vehicle is only two, which is clearly against the provisions of the Motor Vehicles Act, 1988. However, without fastening any liability or contributory negligence on the part of the claimants, the Tribunal has fastened the entire liability on the appellant by fixing the negligence on the driver of the innova car, which is wholly unsustainable. Further, the compensation awarded in under the various heads are also excessive and the same requires interference. It is further submitted that, though the first respondent in C.M.A.No.4649 of 2019 has not suffered any functional disability, however, the Tribunal has awarded compensation by adopting multiplier method, which is wholly unsustainable and the same requires interference.

5. Per contra, the learned counsel appearing on behalf of the respective first respondent/claimants submitted that though the claimants had travelled in triples in the vehicle, however, they had travelled in a very safe manner and it was only due to the rash and negligent driving of the car, which resulted in the accident, which has been properly appreciated by the Tribunal



C.M.A.Nos.4648 to 4650 of 2019

by perusing the oral and documentary evidence, which were placed before it and compensation was awarded to the claimants, which does not require any interference.

6. Heard the learned counsel appearing for the appellant, the learned counsel appearing on behalf of the respective first respondent and the learned counsel appearing on behalf of the fourth respondent and perused the materials available on record.

7. The manner of the accident is not disputed and so also the fact that the claimants were riding in triples in the motorcycle. The offending vehicle, namely Innova Car had been driven in a rash and negligent manner is also established through oral and documentary evidence of the witnesses, which is submission in unison that the offending vehicle was driven in a rash and negligent manner and had dashed against the motorcycle.

8. Further, it should not be lost sight that the carrying capacity of the motorcycle is only rider plus pillion rider, however, three persons have travelled in the motorcycle, which is against the policy conditions which the



C.M.A.Nos.4648 to 4650 of 2019

vehicle was carrying. Any act in violation of the policy of insurance, definitely a part of the negligence also needs to be fastened on the persons, who had violated the policy of insurance. In such a scenario, the triple riding of the claimants in the motorcycle had also contributed to some extent to the accident and hence, necessary contributory negligence has to be fastened against the claimants. In the above said back drop, on a careful consideration of the oral and documentary evidence, this Court is of the considered opinion that the negligence to an extent of 20% can be sufficiently fastened on the claimants while the rest of the 80% shall stand fastened on the offending vehicle, namely the Innova Car. The issue of negligence is answered on the above terms.

9. Once the aspect of negligence is answered as above, the appellant as the insurer of the offending vehicle, necessarily has to compensate the claimants for the injuries sustained by them in the accident to the extent of 80%.

10. Insofar as the appeal in C.M.A.No.4649 of 2019 relating to M.C.O.P.No.1734 of 2017 is concerned, as per Ex.P.11, the claimant in the



C.M.A.Nos.4648 to 4650 of 2019

said appeal has sustained the following injuries :-

WEB COPY

- 1. A laceration measuring 6x4x3 c.m. in the left thigh with abnormal mobility and suspected fracture in the shaft of femur.*
- 2. A laceration measuring 3x2x2 c.m. in the left leg with abnormal mobility and suspected fracture of both bone in the left leg.*
- 3. Swelling in the left knee.*
- 4. An abrasion measuring 7x3 c.m. in the left forehead.*
- 5. A laceration measuring 3x2x1 c.m. in the left chest.*

11. From the disability certificate/Ex.P.11 issued by the medical board, it is seen that, due to the above injuries sustained by the claimant, he was not able to perform the avocation which he was carrying on before the accident, thereby the Tribunal has held that the claimant has sustained the functional disability at 60% and adopted multiplier method to award compensation to the claimant towards loss of income. Further, though the Tribunal has fixed the salary of the claimant at Rs.11,225/- per month, however, the Tribunal has added 40% towards future prospects, which is wholly unsustainable. Hence, the future prospects awarded by the Tribunal is set aside and the compensation awarded towards functional disability (60%) is modified to a sum of Rs.13,73,940/- (Rs.11,225 x 12 x 17 x 60%).



C.M.A.Nos.4648 to 4650 of 2019

WEB COPY

12. In view the above circumstances, the compensation awarded by the Tribunal in C.M.A.No.4649 of 2019 arising out of M.C.O.P.No.1734 of 2017 is modified as under :-

S.No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Functional Disability (60%)	19,23,516/-	13,73,940/- (reduced)
2	Pain and Sufferings	75,000/-	75,000/-
3	Medical Bills	24,800/-	24,800/-
4	Transportation expenses	10,000/-	10,000/-
5	Extra Nourishment	10,000/-	10,000/-
	Total	20,43,316/-	14,73,740/-

13. In view of the above, the compensation awarded by the Tribunal in all the appeals is modified as follows :-

S.No.	C.M.A.No./ M.C.O.P.No.	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	4648 of 2019/ 1733 of 2017	1,12,500/-	1,12,500/-
2	4649 of 2019/ 1734 of 2017	20,43,316/-	14,73,740/-
3	4650 of 2019/ 1732 of 2017	2,17,000/-	2,17,000/-



C.M.A.Nos.4648 to 4650 of 2019

14. Deducting the amount towards the contributory negligence at 20% on the part of the claimants, the compensation payable to the claimants is fixed at **Rs.90,000/-, Rs.11,78,992/- and Rs.1,73,600/-** respectively, which shall be paid by the appellant/insurance company.

15. In the result, all the Civil Miscellaneous Appeals are allowed in part and the impugned award of the Tribunal is modified in the aforesaid terms. The appellant/insurance company is directed to deposit the above said compensation amount awarded by this Court to the credit of M.C.O.P.Nos.1733, 1734 and 1732 of 2017 respectively 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 six (6) weeks from the date of receipt of a copy of this common judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petitions are closed.

23.11.2023

Index : Yes / No

Speaking order / Non-speaking order



C.M.A.Nos.4648 to 4650 of 2019

Neutral Citation Case : Yes / No
sp

WEB COPY



WEB COPY



C.M.A.Nos.4648 to 4650 of 2019

M.DHANDAPANI, J.,

sp

To

1.The Motor Accidents Claims Tribunal, Special Subordinate Court,
Tiruvannamalai.

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

C.M.A.Nos.4648 to 4650 of 2019

23.11.2023