



C.M.A.Nos.3014 and 3015 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 30.10.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**C.M.A.Nos.3014 and 3015 of 2017**

Anjali

W/o.Veeramani

... Appellant / Petitioner  
in C.M.A.No.3014 of 2017

Veeramani

S/o.Thangavel

... Appellant / Petitioner  
in C.M.A.No.3015 of 2017

**Vs.**

1. A.Nisar Ahmed

2. The New India Assurance Company  
No.45, Moore Street,  
Chennai - 600 092.

3. K.Padmanaban  
S/o.Krishnaswamy

... Respondents / Respondents  
in both CMAs

**COMMON PRAYER :** Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree made



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by the Claims Tribunal and enhance the award against the respondents 1 and 2 instead of the third respondent herein in M.C.O.P.No.811 and 812 of 2013 on the file of the Motor Accident Claims Tribunal, Small Causes Court - IV, Chennai dated 12.01.2017.

|                                 |   |                                                                 |
|---------------------------------|---|-----------------------------------------------------------------|
| For Appellant<br>in both CMAs   | : | Mr.K.Sakthivel<br>for Mr.K.A.Balasubramanian                    |
| For Respondents<br>in both CMAs | : | Mr.J.Michael Visuvasam for R2<br>Not ready notice for R1 and R3 |

### **COMMON JUDGMENT**

These appeals are filed by the claimants in M.C.O.P.Nos.811 and 812 of 2013 to set aside the award passed by the Motor Accident Claims Tribunal, Small Causes Court - IV, Chennai and to enhance the award against the respondents 1 and 2 instead of the third respondent.

2. The claimants suffered injuries as a result of the accident that occurred on 24.12.2012, wherein the appellant in C.M.A.No.3015 of 2017 was driving an auto bearing Registration No.TN-07-V-2326 and the appellant in C.M.A.No.3014 of 2017 travelled as an occupant and when



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they were proceeding from their house to Thuraipakkam, at Thuraipakkam Pillaiar Koil Street-OMR road junction, the appellant / driver stopped the auto on the left side. While they were getting down from the auto, a car bearing Registration No.TN-09-BE-2157 (driven by the driver of the first respondent) came from behind the auto and dashed against the auto, due to which the claimants sustained grievous injuries, after a few seconds of the accident, a car bearing Registration No.TN-09-AA-7917 (driven by the driver of the third respondent herein) hit against the car driven by the first respondent. Owing to the collusion, the claimants suffered grievous injuries and thereby, they filed claim petitions in M.C.O.P.Nos.811 and 812 of 2013 on the file of the Motor Accident Claims Tribunal, Small Causes Court - IV, Chennai.

3. The Tribunal after considering the facts and circumstances of the case and the evidence placed on record came to the conclusion that the accident occurred due to rash and negligent driving of the offending vehicles driven by the respondents 1 and 3. The Tribunal after taking into



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consideration of the evidence of R.W.1 - S.I of Traffic Investigation Wing came to the conclusion that the negligence is attributable to the offending vehicle which was driven by the driver of the third respondent in a very rash and negligent manner among all the vehicles and thereby, fixed the entire liability on the vehicle bearing Registration No.TN-09-AA-7917 which belongs to the third respondent.

4. Since both the respondents 1 and 3 remained *ex-parte* before the Tribunal, the claimants are before this Court by filing the present civil miscellaneous appeals to enhance the compensation awarded by the Tribunal by fixing liability against the respondents 1 and 2.

5. The learned counsel appearing for the appellants relies upon the judgment of the Hon'ble Supreme Court in the case of ***Khenyei vs. New India Assurance Co. Ltd.*** reported in ***2015 (9) SCC 273***, wherein it was held that, if any part of composite negligence on the part of the respondents, they are liable to pay entire compensation. The Tribunal has not adopted the



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principles laid down in the aforesaid judgment and hence, the award is liable for modification.

6. The learned counsel for the second respondent / Insurance Company denies all the averments made in the claim petitions with respect to the age and occupation of the claimants as well as the period of treatment taken by them. He further submits that the accident had occurred due to rash and negligent driving of the driver of the third respondent and hence, the third respondent's vehicle was alone responsible for the accident. Therefore, there is no need to fix composite negligence. Further, there was no insurance for the third respondent, being the owner, he is liable to pay the compensation to the claimants as awarded by the Tribunal. Further, the learned counsel submits that the award itself is disproportionate to the injuries sustained and enhancement need not be allowed by this Court.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the



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materials placed before this Court.

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8. The ratio with regard to composite negligence has been settled by the Apex Court in ***Khenyei's case*** wherein, the Apex Court held as under:

*"4. It is a case of composite negligence where injuries have been caused to the claimants by combined wrongful act of joint tortfeasors. In a case of accident caused by negligence of joint tortfeasors, all the persons who aid or counsel or direct or join in committal of a wrongful act, are liable. In such case, the liability is always joint and several. The extent of negligence of joint tortfeasors in such a case is immaterial for satisfaction of the claim of the plaintiff/claimant and need not be determined by the court. However, in case all the joint tortfeasors are before the court, it may determine the extent of their liability for the purpose of adjusting inter-se equities between them at appropriate stage. The liability of each and every joint tortfeasor vis a vis to plaintiff/claimant cannot be bifurcated as it is joint and several liability. In the case of composite negligence, apportionment of compensation between tortfeasors for making payment to the plaintiff is not permissible as the plaintiff/claimant has the right to recover the entire*



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*amount from the easiest targets/solvent defendant. "*

9. The Apex Court in the above said judgment has formulated four principles in respect of composite negligence, which could be summarised as under :-

*"(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.*

*(ii) In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.*

*(iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the*



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*apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feisor can recover the amount from the other in the execution proceedings.*

*(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feisors. In such a case, impleaded joint tort feisor should be left, in case he so desires, to sue the other joint tort feisor in independent proceedings after passing of the decree or award."*

10. The aforesaid principles would squarely applicable to the facts of the present case particularly principle No.iii.

11. In the case on hand, the car belonging to the first respondent initially hit the auto, which was followed by the car belonging to the third respondent and, therefore, composite negligence is definitely attributable as laid down in the aforesaid decision. The aforesaid third principle has not been followed by the Tribunal wherein the Tribunal has fixed the entire



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liability on the third respondent who has remained *ex-parte*. It is pertinent to note that, in the present case even the first respondent, i.e., the owner of the offending vehicle has also remained *ex-parte*, thereby leaving the claimants in lurch and the claimants apprehend that the compensation awarded by the Tribunal cannot be claimed against the third respondent. Admittedly, the first respondent's vehicle was insured with the second respondent / Insurance Company, however, the third respondent vehicle was not insured with any of the insurance company and this Court, having held that there is composite negligence on the part of all the offending vehicles, the liability fixed on the third respondent alone is not sustainable.

12. In view of the aforesaid discussions, this Court is inclined to allow the appeals by fixing the liability on both the respondents 1 and 3 equally. The second respondent / Insurance Company and the third respondent are directed to pay 50% compensation each. Accordingly, while modifying the liability fixed by the Tribunal, the award passed by the Tribunal in M.C.O.P.Nos.811 and 812 of 2013 with regard to compensation



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is confirmed.

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13. Accordingly, these Civil Miscellaneous Appeals are allowed with the aforesaid observations and directions. The second respondent / Insurance Company and the third respondent are directed to deposit the amount awarded by the Tribunal in M.C.O.P.Nos.811 and 812 of 2013 along with interest at 7.5% per annum from the date of numbering of the petitions till the date of realization. There shall be no costs in these appeals.

**30.10.2023**

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji/RR

To

1. The Motor Accident Claims Tribunal,  
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Chennai.

2. The Section Officer,

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V.R. Section,  
High Court, Chennai.

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**M.DHANDAPANI, J.**

vji/RR

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