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C.M.A.Nos.3386 of 2019 and 2815 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.3386 of 2019 & 2815 of 2021
and
C.M.P.Nos.19874 of 2019 & 16093 of 2021

The Oriental Insurance Co.Ltd.,
Rep. by its Manager,
Divisional Office, D.O.No.1,
No.4, Head Quarters Road, R.V.R. Building,
No.4, Head Quarters Road, R.V.R. Building,
2nd Floor, Coimbatore – 641 018.

... both appeals

Vs.

1. Ramesh
2. A.Samiyappan
3. ICICI Lombard General Ins.Co.Ltd.,
Rep. Units Manager, No.414,
Veersarkar Marg, Near Siddhivinayakka Temple,
Prathadevi – Mumbai – 400 025,
Maharastra State. ... Respondents in C.M.A.No.3386 of
2019

1. Vijay
2. T.Ramesh
3. The Manager,
ICICI Lombard General Insurance Co. Ltd.,
Mumbai – 400 025.
4. A.Samiyappan ... Respondents in C.M.A.No.2815 of 2021



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Prayer in C.M.A.No.3386 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.04.2017 made in M.C.O.P.No.2642 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Judge, Krishnagiri.

Prayer in C.M.A.No.2815 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.12.2019 made in M.C.O.P.No.329 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Judge, Special Sub Judge, Krishnagiri.

C.M.A.No.3386 of 2019:

For Appellant : Mr.S.Arun Kumar

For Respondents : No Appearance [R1 &
R2]
Ms.R.Sreevidhya [R3]

C.M.A.No.2815 of 2021:

For Appellant : Mr.S.Arun Kumar

For Respondents : No Appearance [R1,
R2 & R4]
Mr.Sivakollapan [R3]

COMMON JUDGEMENT

The two appeals have been filed by the insurance company against the judgment and decree passed by the Tribunal vide its order dated



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28.04.2017 in MCOP No.2642/2013 and 18.12.2019 in MCOP No.329/2017. Both the claim petitions were filed by the injured claimants at different points of time in which the Tribunal had granted compensation to the claimants. However, questioning the negligence as also the quantum of compensation awarded, the appellant, who is the insurer of the vehicle belonging to the injured claimant in MCOP No.2642/2013, has filed the above appeals.

2. The parties will be referred to in the same manner as they were arrayed before the Tribunal in the claim petitions.

3. It is the case of the claimants that on 20.05.2012, when the tempo bearing Regn. No.TN-24-L-7663, belonging to the claimant in MCOP No.2642/2013 in which the claimant in MCOP No.329/2017 was travelling as the cleaner, was proceeding, the TATA 909 vehicle bearing Regn. No.TN-47-U-7016, belonging to the 1st respondent and insured with the 2nd respondent, which was proceeding ahead of the vehicle in which the claimants were travelling, stopped in the middle of the road all



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of a sudden as a result of which the vehicle in which the claimants were travelling, inspite of application of sudden brake, dashed against the vehicle ahead resulting in the claimants sustaining grievous injuries. The claimants were hospitalised and had taken treatment. While the claimant in MCOP No.2642/2013 had sustained injuries in which his leg was amputated, severe fractures were suffered by the claimant in MCOP No.329/2017. For the injuries suffered by them and also towards the loss of income incurred by the claimants due to the aforesaid accident, the respective claim petitions were filed by the claimants.

4. Before the Tribunal, the claimant in MCOP No.2642/2013 examined himself as P.W.1 and marked Exs.P-1 to P-12. On the side of the respondents, R.W.s 1 and 2 were examined, but no documents were marked.

5. In respect of the claimant in MCOP No.329/2017, the claimant examined himself as P.W.1 and marked Exs.P-1 to P-12. On the side of the respondents, R.W.1 was examined, but no document was marked. Court exhibit Ex.C-1, viz., the disability certificate was marked



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in respect of the claimant.

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6. While the Tribunal, in MCOP No.2642/2013, fastened the negligence on the vehicle belonging to the 1st respondent and insured with the 2nd respondent and awarded compensation in a sum of Rs.13,64,000/- to the claimant/owner of the vehicle, however, curiously, with regard to the very same accident, in MCOP No.329/2017, the Tribunal fixed the negligence at 50% on each of the vehicle involved in the accident, which were insured with the 2nd and 3rd respondent respectively in the claim petitions and, accordingly, awarded a sum of 1,75,000/- as compensation payable equally by the 2nd and 3rd respondent.

7. Assailing the negligence fixed fully on the 2nd respondent in MCOP No.2642/2013 as also the quantum of compensation awarded and questioning the quantum of compensation awarded in MCOP No.329/2017, the 2nd respondent/insurer of the vehicle belonging to the



1st respondent in the claim petitions has filed the present appeals.

8. Learned counsel appearing for the appellant/insurer of the vehicle belonging to the 1st respondent in the claim petitions submitted that with regard to the very same accident, the Tribunal has taken contrary view with regard to negligence, which is erroneous. It is the further submission of the learned counsel that the error is fully on the driver of the van in which the claimants were travelling and fastening liability on the driver of the 1st respondent's vehicle, which was proceeding ahead of the claimants' vehicle, is without any valid reason and cannot be allowed to continue. In this regard, learned counsel, while placing reliance on Ex.P-1 further submitted that the said FIR is not substantiated by the oral evidence of the drivers of both the vehicles, which have been appreciated by the Tribunal. In spite of the said fact, fastening the negligence on the driver of the 1st respondent is without any basis and requires to be interfered with.

9. It is the further submission of the learned counsel that



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insofar as the quantum of compensation is concerned, the compensation awarded under the various heads in MCOP No.329/2017 is excessive. Insofar as the compensation awarded under the head loss of earning power in MCOP No.2642/2013, the same is excessive, as there is no material to fix the notional income of the claimant at Rs.6,500/-, which requires to be reduced. In fine, it is submitted that the compensation awarded under the various heads in both the petitions is excessive and the same requires to be reduced.

10. Learned counsel appearing for the 3rd respondent/insurer of the claimant's vehicle, while fairly submitted that in respect of the very same accident, there cannot be two findings with regard to negligence, further submitted that the Tribunal, in MCOP No.2642/2013 had properly appreciated the materials, more particularly, the non-examination of the drivers of both the vehicles and further pointing to the reasoning for not accepting Ex.P-1, FIR filed by the claimant in MCOP No.2642/2013 with regard to the accident, has gone on to hold that the accident had been caused due to the negligence of the driver of the vehicle



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belonging to the 1st respondent, which was insured with the 2nd respondent/appellant herein and the said finding, being anterior in point of time, the Tribunal, in the later claim petition in MCOP No.329/2017, ought to have accepted the said finding and absolved the 3rd respondent/insurer of the claimant's vehicle. However, the Tribunal has erroneously rendered a finding contrary to the one already rendered and, therefore, the said finding requires to be interfered with. Without prejudice, it is the further submission of the learned counsel that the quantum of compensation awarded to the claimants is excessive and the same requires to be interfered with.

11. In spite of the fact that the first of the appeal has been filed in the year 2019 and the other appeal having been filed in the year 2021 and notwithstanding the fact that notice has been served on the claimants, yet, there is no representation for the claimants and, this Court, considering the pendency of the appeals on Board for too long, in view of the order, which this Court proposes to pass on the basis of the materials available on record, no opportunity is required to the claimants to put



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forth their submissions and, therefore, this Court proceeds to analyse the case on merits.

12. Though notice was served on respondents 1 & 2 in C.M.A.No.3386 of 2019 and respondents 1, 2 and 4 in C.M.A.No.2815 of 2021, no one appeared on their behalf. Considering the period of pendency of the appeals, they are disposed of based on the materials available on record.

13. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing for the parties and perused the materials available on record.

14. Two contentions have been put forth of which the pivotal contention relates to the contrariness in the fixation of negligence in both the judgments. While in MCOP No.2642/2013, the Tribunal has fastened the negligence wholly on the driver of the vehicle belonging to the 1st respondent, which is insured with the 2nd respondent/appellant herein,



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which is anterior in point of time, however, in MCOP No.329/2017, vide its judgment, with regard to the very same accident in which the claimant therein had suffered injuries, the Tribunal had fixed the negligence equally on the driver of both the vehicles and ordered compensation. Insofar as the said finding is concerned, the 3rd respondent/insurer of the claimant's vehicle, had not chosen to file any appeal. In view of the contrariness in the finding, this Court has to find out as to which of the two findings merit acceptance on the basis of the materials available on record.

15. The Tribunal, while appreciating the evidence of P.W.1 in MCOP No.329/2017, who was the cleaner in the vehicle belonging to the claimant, had appreciated the deposition of P.W.1, wherein P.W.1 had deposed that the driver of the claimant's vehicle had driven the vehicle in a rash and negligent manner and while he was following the vehicle belonging to the 1st respondent, which was proceeding ahead, the said vehicle had stopped abruptly all of a sudden resulting in the application of brakes by the driver of the claimant's vehicle, but inspite of the same,



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the vehicle dashed against the vehicle ahead resulting in the accident and causing injuries on the claimants in both the claim petitions.

16. However, while appreciating the materials on record, the reason for fastening the negligence on the appellant herein by the Tribunal has been predicated upon the fact that the drivers of both the vehicles, who are the best judges of the situation have not been examined and resultantly, vehicle, which was proceeding ahead, belonging to the 1st respondent and insured with the 2nd respondent has to be found fault with and, therefore, negligence was fastened on the 2nd respondent to indemnify the 1st respondent.

17. From a careful consideration of the aforesaid findings, it transpires that based on materials available on record, more particularly the evidence of P.W.1 in MCOP No.329/2017, a finding has been arrived at, whereas in respect of the finding in MCOP No.2642/2013, the same is not based on any conclusive evidence, but more on mere surmises and conjectures of the Tribunal. The said finding of the Tribunal in MCOP



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No.2642/2013 pitted against the finding recorded in MCOP No.329/2017, definitely the finding in MCOP No.329/2017 deserves to be sustained as it not only shows application of mind by the Tribunal to the materials placed before it but also on the basis of proper appreciation of the materials. Therefore, this Court while sets aside the finding with recorded by the Tribunal in MCOP No.2642/2013 with regard to negligence, affirms the finding with regard to negligence recorded by the Tribunal in MCOP No.329/2017 and, accordingly, the negligence is equally fastened at 50% each on the 2nd and 3rd respondents, the respective respondents in the claim petitions, who are liable to indemnify the insured and, therefore, have to pay the compensation to the claimants.

18. Insofar as the second contention relating to quantum of compensation is concerned, even a bare perusal of the order passed in MCOP No.329/2017, wherein the Tribunal has awarded a sum of Rs.1,75,000/- towards the injuries suffered by the claimant therein, the various heads under which compensation has been awarded, by no stretch, could be termed to be excessive. The only head on which a chunk



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of the compensation is awarded is under disability and to ascertain the disability, the Tribunal had marked Ex.C-1, the disability certificate relating to the injured claimant and fixing the disability at 30%, adopting percentage method, had awarded a sum of Rs.90,000/- by fixing Rs.3,000/- per percentage of disability, which is just and reasonable and could not be stated to be excessive. Therefore, the compensation awarded under the various heads in MCOP No.329/2017 stands confirmed.

19. Insofar as the compensation awarded in MCOP No.2642/2013, this Court had analysed the various heads under which compensation has been awarded. There could be no quarrel with the fact that the leg of the claimant had been amputated. Therefore, towards loss of earning power on account of the disability, the Tribunal had adopted multiplier method, which is the proper course. However, to arrive at the monthly income of the claimant, though the claimant claimed that he was earning a sum of Rs.25,000/- per month by doing fruit business, however, in the absence of any proof to establish the monthly income of the claimant, the Tribunal has fixed the notional income of the claimant at Rs.6,500/-, which is based on the ratio laid down by the apex Court in the



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case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**. Adopting the multiplier of 13, on the basis of the ratio laid down in *Sarla Verma and Ors. v. DTC & Ors.* reported in **(2009) 6 SCC 121**, the Tribunal has arrived at the loss of earning power at Rs.5,07,000/-. The said computation is based on proper application of the various legal precedents, which cannot be found fault with.

20. Under the head medical expenses a sum of Rs.6,12,000/- has been awarded, which is based on medical bills, which is proper and deserves no interference. Towards pain and sufferings and loss of amenities and enjoyment of life, a sum of Rs.1,00,000/- under each head has been awarded. The said sum, by no means could be stated to be excessive, considering the fact that the accident had resulted in amputation of the leg of the claimant resulting in pain and suffering throughout the life of the claimant and also loss of enjoyment. Therefore, the said amounts cannot be said to be excessive. Overall, the compensation awarded under the various heads, on the aforesaid reasoning, are just and reasonable and, therefore, the same does not



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require any interference at the hands of this Court.

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21. Accordingly, the appeals are disposed of in the following

terms :-

i) The negligence fixed by the Tribunal in MCOP No.2642/2013 is erroneous and the same is set aside and negligence at 50% is fastened on each of the insurers, viz., the appellant herein and the 3rd respondent in the claim petitions.

ii) On the basis of the negligence fixed on each of the insurer at 50%, the compensation payable to the respective claimants shall be borne equally by both the appellant herein and the 3rd respondent in the claim petitions.

iii) The compensation payable by the appellant herein and the 3rd respondent in the claim petitions would carry interest at 7.5% per annum from the date of filing of the claim petitions till date of date of deposit;

iv) The appellant herein and the 3rd respondent in the claim petitions are directed to deposit their respective share of compensation, as awarded by the Tribunal and as confirmed by this



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Court, to the credit of the respective claim petitions along with interests and costs within a period of four weeks from the date of receipt of a copy of this order, less the amount, if any, already deposited.

v)On such deposit being made, the Tribunal is directed to transfer the compensation awarded along with interest and costs to the bank account of the respective claimants through RTGS within a period of two weeks thereafter.

vi) Any amount, in excess of the amount awarded by this Court, which is deposited by the appellant herein, the appellant herein is permitted to withdraw the same by filing appropriate application before the Tribunal.

vii) There shall be no order as to costs in these appeals. Consequently, connected miscellaneous petitions are closed.

07.12.2023

Index : Yes / No
Speaking order / Non speaking order
Neutral Citation Case : Yes / No
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- 1.Motor Accidents Claims Tribunal, Special Judge, Krishnagiri.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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