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C.M.A.Nos.2205 of 2019 and 695 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2205 of 2019 and 695 of 2016

And

C.M.P.Nos.9286 of 2019 and 5696 of 2016

The Divisional Manager,
M/s.National Insurance Company Limited,
Divisional Office,
No.110, Jawaharlal Nehru Street,
Puducheri – 605 001. ... Appellant in C.M.A.2205/2019

The Branch Manager,
The Oriental Insurance Company Limited,
BO Subha Govindam Building,
Imperial Road,
Cuddalore – 607 002. ... Appellant in C.M.A.695/2016

Vs.

1.R.Shankar
2.B.Usha Rani

3.The Branch Manager,
The Oriental Insurance Company Ltd.,
Branch Office,
Imperial Road,
Cuddalore – 607 002.

4.S.P.Palaniappan ... Respondents in C.M.A.2205/2019

1.R.Shankar
2.B.Usha Rani
3.S.P.Palaniappan



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4.The Divisional Manager,
National Insurance Company Limited,
DO, 110 JN St.,
Puducherry – 605 001. ... Respondents in C.M.A.695/2016

Prayer in C.M.A.No.2205 of 2019:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 12.09.2015 in M.C.O.P.No.323 of 2008 passed by the Motor Accidents Claims Tribunal/ II Additional Subordinate Judge) at Cuddalore.

Prayer in C.M.A.No.695 of 2016:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.323 of 2008, dated 12.09.2015 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Cuddalore.

For Appellants : Mr.J.Michael Visuvasam
in C.M.A.No.2205 of 2019

Mr.M.J.Vijayaraghavan
in C.M.A.No.695 of 2016

For Respondents : M/s.Ramya V.Rao for R1
Mr.M.J.Vijayaraghavan for R3
R2 and R7 – Notice Dispensed with
vide order dated 24.08.2023
in C.M.A.No.2205 of 2019

M/s.Ramya V.Rao for R1
Mr.J.Michael Visuvasam for R4
R2 and R3 – No Appearance
in C.M.A.No.695 of 2016



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COMMON JUDGMENT

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These appeals have been filed against the judgment and decree dated 12.09.2015 passed in M.C.O.P.No.323 of 2008 by the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Cuddalore.

2.The brief facts of the case is that on 14.10.2007 at about 17.45 hours the first respondent was travelling in the Bus bearing Registration No.TN-31-M-6819 along with his Mother from Neyveli to Cuddalore in Vridhachalam to Cuddalore Route, near Puthu Koil, T.Palayam. At that time, the driver of the Bus owned by the third respondent in the claim petition and insured with the fourth respondent in the claim petition drove the vehicle in a rash and negligent manner and dashed against a sugarcane loaded Tractor bearing Registration No.TDF-1702 and Trailor bearing Registration No.TN-31-4-7922 owned by the first respondent in the claim petition and insured with the second respondent in the claim petition, which were parked in violation of the traffic rules and regulations in the centre of the road, due to which, the first respondent sustained injuries.

3.Thereafter, the injured claimant/ first respondent filed claim



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petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10 Lakhs. After adjudication, the Motor Accidents Claims Tribunal, awarded a sum of Rs.9,87,250/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and directed the respondents 1 and 2 therein and respondents 3 and 4 therein to deposit the compensation amount in the ratio of 75% and 25% and to pay the costs to the claimant. Aggrieved by the same, the fourth respondent therein has filed C.M.A.No.2205 of 2019 and the second respondent therein has filed C.M.A.No.695 of 2016.

4.The learned counsel appearing for the National Insurance Company submitted that the National Insurance Company is the fourth respondent in the claim petition. The learned counsel further submitted that the driver of the vehicle insured with the National Insurance Company drove the vehicle in a cautious manner with moderate speed. At that time, the driver of the vehicle insured with the Oriental Insurance Company parked the vehicle in the middle of the road without any warning or signal, thereby, the accident happened, however, the Tribunal fastened 25% liability as against the respondents 3 and 4 therein, which is not sustainable one.



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5.The learned counsel appearing for the Oriental Insurance Company submitted that the Oriental Insurance Company is the second respondent in the claim petition. The learned counsel further submitted that the driver of the vehicle insured with the Oriental Insurance Company parked the vehicle on the left side of the road with clear indication, however, the driver of the vehicle insured with the National Insurance Company drove the vehicle in a rash and negligent manner and dashed against the rear side of the tractor, thereby the accident happened. Hence, the entire liability has to be fastened as against the respondents 3 and 4 therein, however, the Tribunal fastened 75% liability as against the respondents 1 and 2 therein, which is not sustainable one.

6.The learned counsel appearing for the Oriental Insurance Company further submitted that the injured claimant is a practicing Advocate and he had practiced for two years. The claimant due to the accident sustained fracture left clavicle bone, loss of upper anterior teeth (4), lower anterior teeth are mobile (4) and fracture of teeth bone and hence, the Tribunal considered the disability as functional disability and awarded a sum of Rs.8,10,000/- towards loss of earning capacity by adopting multiplier method. When compensation is



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awarded by adopting multiplier method, the Tribunal ought not to have awarded any amount towards loss of amenities, however, in the present case, the Tribunal has awarded a sum of Rs.87,000/- towards loss of amenities which is not sustainable one.

7.The learned counsel appearing for the first respondent claimant fairly submitted that the Tribunal erred in awarding a sum of Rs.87,000/- towards loss of amenities, hence, this Court may delete the amount awarded towards loss of amenities.

8.Heard the learned counsel appearing for the respective Insurance Company as well as the learned counsel appearing for the injured claimant and perused the materials available on record.

9.Admittedly, on 14.10.2007 at about 17.45 hours the first respondent was travelling in the Bus owned by the third respondent in the claim petition and insured with the fourth respondent in the claim petition along with his Mother from Neyveli to Cuddalore in Vridhachalam to Cuddalore Route, near Puthu Koil, T.Palayam. At that time, the driver of the Bus drove the vehicle in a rash and negligent manner and dashed against a sugarcane loaded Tractor and Tractor



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owned by the first respondent in the claim petition and insured with the second respondent in the claim petition, which were parked in the road, due to which, the first respondent sustained injuries.

10. One of the passenger in the Bus made complaint before the law enforcing agency as against the driver of the Tractor, however, the fact remains that the Tractor was parked on the roadside. It is the duty cast upon the driver of the Bus to prove that he drove the vehicle in a cautious manner. In the present case, the driver of the Bus, drove the vehicle in a rash and negligent manner and dashed against the rear side of the parked Tractor. However, in order to strike the balance in between the parties, this Court directs the respondents 1 and 2 in the claim petition and respondents 3 and 4 in the claim petition to deposit the compensation in the ratio of 50% and 50%.

11. Insofar as the quantum of compensation is concerned, the Tribunal after elaborately discussing the factual aspects awarded a sum of Rs.8,10,000/- for loss of earning capacity, Rs.5,000/- for transport to hospital, Rs.5,000/- for special diet, Rs.10,000/- for loss of income (2 months), Rs.27,500/- for pain and sufferings, Rs.5,000/- for attendant charges, Rs.37,750/- for medical expenses, Rs.87,000/-



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for loss of amenities and arrived at a total compensation of Rs.9,87,250/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

12.Since the learned counsel appearing for the first respondent claimant fairly submitted that the Tribunal erred in awarding a sum of Rs.87,000/- towards loss of amenities, this Court deletes the amount awarded towards loss of amenities. The amount awarded under the other heads are just and reasonable and the same are confirmed.

13.Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of earning capacity	Rs.8,10,000/-	Rs.8,10,000/-
2.	Transport to Hospital	Rs. 5,000/-	Rs. 5,000/-
3.	Special Diet	Rs. 5,000/-	Rs. 5,000/-
4.	Loss of Income (2 months)	Rs. 10,000/-	Rs. 10,000/-
5.	Pain and Sufferings	Rs. 27,500/-	Rs. 27,500/-
6.	Attendant Charges	Rs. 5,000/-	Rs. 5,000/-
7.	Medical Expenses	Rs. 37,750/-	Rs. 37,750/-
8.	Loss of Amenities	Rs. 87,000/-	---
	Total	Rs.9,87,250/-	Rs.9,00,250/-



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14.The first respondent claimant is entitled to total compensation of Rs.9,00,250/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The appellants/ respective Insurance Companies shall deposit the modified compensation amount in the ratio 50% : 50%.

15.The civil miscellaneous appeals are allowed on the above terms. The judgment and decree dated 12.09.2015 passed in M.C.O.P.No.323 of 2008 by the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Cuddalore, is modified to the above extent.

16.The respective appellant/ Insurance Companies are directed to deposit the modified award amount before the Tribunal, in the ratio 50% : 50%, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the first respondent/ claimant is permitted to withdraw the modified award amount, along with accrued interest, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellant in C.M.A.No.695 of 2016/ Oriental Insurance Company is permitted to



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withdraw the excess amount, if any, already deposited by them.

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17.The civil miscellaneous appeals are allowed on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

07.11.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accident Claims Tribunal,
II Additional Subordinate Judge,
Cuddalore.



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M.DHANDAPANI,J.
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**C.M.A.Nos.2205 of 2019
and 695 of 2016
And
C.M.P.Nos.9286 of 2019
and 5696 of 2016**

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