



C.M.A.Nos.2426, 2428 and 2430 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2426, 2428 and 2430 2019

and

C.M.P.Nos.11084, 11086 and 11088 of 2019

C.M.A.No.2426 of 2019:

United India Insurance Company Limited,
Motor Third Party Claims Hub,
No.134, 4th Floor, Silingi Buildings,
Greams Road,
Chennai - 600 006.

... Appellant / 2nd Respondent

Vs.

1. Selvi,
W/o.Veera Raghavan

... 1st Respondent / Petitioner

2. Murugan

... 2nd Respondent / 1st Respondent

C.M.A.No.2428 of 2019:

United India Insurance Company Limited,
Motor Third Party Claims Hub,
No.134, 4th Floor, Silingi Buildings,
Greams Road,
Chennai - 600 006.

... Appellant / 2nd Respondent



C.M.A.Nos.2426, 2428 and 2430 of 2019

Vs.

1. Srirangam
W/o.Subramani

... 1st Respondent / Petitioner

2. Murugan

... 2nd Respondent / 1st Respondent

C.M.A.No.2430 of 2019:

United India Insurance Company Limited,
Motor Third Party Claims Hub,
No.134, 4th Floor, Silingi Buildings,
Greams Road,
Chennai - 600 006.

... Appellant / 2nd Respondent

Vs.

1. Anusuya
W/o.Rajendran

2. Rajendran
S/o.Thangavel

... Respondent 1&2 / Petitioners

3. Murugan

... 3rd Respondent / 2nd Respondent

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 30.11.2017 made in M.C.O.P.No.4672, 4673 and 4674 of 2012 on the file of the Motor Accidents Claims Tribunal, Court of Small Causes, Special Sub Judge - I, Chennai.



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For Appellant
in all C.M.As : Mr.P.Sankaranarayan

For Respondents : Mr.K.Sivakumar for R1
R2 - died (steps due)
in C.M.A.Nos.2426&2428 of 2019

Mr.K.Sivakumar for R1 and R2
R3 - died (Steps due)
in C.M.A.No.2430 of 2019

COMMON JUDGMENT

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.Nos.4672, 4673 and 4674 of 2012 filed by the claimants, the Insurance Company has come before this Court challenging the same by filing the present civil miscellaneous appeals.

2. The claim petitions were filed by the dependents of the deceased persons in M.C.O.P.Nos.4672, 4673 and 4674 of 2012 wherein common award was passed by the Tribunal awarding compensation of Rs.5,15,000/ each to the claimants.



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3. The claimants have filed the claim petitions claiming compensation of a sum of Rs.23,00,000/- each. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.4 were examined and Exs.P1 to P9 were marked. On the side of the respondents, R.W.1 to R.W.3 were examined and Exs.R1 to R7 were marked. The Tribunal, considering the oral and documentary evidence, adduced by the claimants and the Insurance Company, awarded a sum of Rs.5,15,000/- each as compensation.

4. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal failed to note that the claimants have not even marked a copy of the FIR to prove the accident and negligence as the marking of the FIR would prove the negligence on the part of the deceased persons in riding the motorcycle. However, the appellant / Insurance Company has marked the Investigation Report through their officer as Ex.R3 to establish that the rider of the motorcycle was negligent. The Tribunal also failed to note that the Insurance Company had examined RW2- Junior Assistant from RTO to prove that the deceased Thooyavan



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who was driving the motorcycle did not have a valid driving licence and that the vehicle was also not insured. He further submitted that the three persons have travelled in one motorcycle and the same was the sole cause for the accident. He also contended that the Tribunal erred in fixing the contributory negligence on the driver of the lorry when the fact remains that the lorry driver had parked the vehicle only on the extreme left side of the road. Raising the above grounds, the learned counsel for the appellant / Insurance Company submitted that the accident had occurred solely due to the negligence on the part of the deceased persons and the Tribunal had erred in awarding a compensation of Rs.5,15,000/- each to the claimants. Hence, the learned counsel prays for setting aside of the award passed by the Tribunal.

5. The driver of the lorry remained ex-parte before the Tribunal.

6. The learned counsel appearing for the respondents / claimants submitted that the Tribunal had taken into consideration the fact that the



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lorry was parked without flashing any indication thereby the lorry was not visible to the deceased persons. Therefore, the element of contributory negligence cannot be put against the deceased persons because the lorry driver was not put on the distress flashers indicating breakdown of the lorry nor he has put up the red reflective triangles 100 meters away from the vehicle in both front and rear to indicate about break down of the lorry to warn the other vehicle drivers plying on the road. Therefore, the Tribunal after considering the above said aspects arrived at a conclusion that both the deceased persons as well as lorry driver contributed equally for the accident and their liability is fixed in the ratio of 50% : 50% and awarded a sum of Rs.5,15,000/- each to the claimants which is justifiable and hence, the learned counsel for the respondents seeks for dismissal of the appeals.

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



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8. It is seen that the accident had occurred on 01.02.2011 at about 7.00 p.m when the deceased Thooyavan in M.C.O.P.No.4672 of 2012 was riding a motorcycle bearing Registration No.TN-21-AF-4474 together with the deceased Arumugam in M.C.O.P.No.4673 of 2012 and deceased Jeyaraj in M.C.O.P.No.4674 of 2012 from Oragadam to Ganganachery Kandigai, near Golden Weighing Bridge, at that time, a lorry bearing Registration No.TN-04-J-4632 was parked on the center of the road without any parking signals and due to darkness, the motorcycle dashed against the lorry and caused the fatal accident. Since there is no contra evidence to disprove the accident, the Tribunal has rightly come to a conclusion that the accident had occurred due to rash and negligent act of the driver of the lorry. That apart, the lorry involved in the accident had a valid insurance issued by the appellant / Insurance Company at the time of the accident. Therefore, the insurer is liable to pay the compensation. The Tribunal had gone into the age and monthly income of the deceased persons had fixed the compensation which appears to be just and fair. Since the element of contributory negligence fixed as against the driver of the lorry is not disproved to the



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sufficient extent by the Insurance Company even before the Tribunal, this Court is of the considered view that the award passed by the Tribunal in all the three cases is just and fair.

9. Finding no merits to interfere with the impugned award, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.11.2023

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal,
Court of Small Causes,
Special Sub Judge - I,
Chennai.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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vji

**C.M.A.Nos.2426, 2428 and 2430 2019
and
C.M.P.Nos.11084, 11086 and 11088 of 2019**

23.11.2023