



WEB COPY



C.M.A(MD)Nos.691 and 692 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2023

Pronounced on : 01.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)Nos.691 and 692 of 2020

C.M.A(MD)No.691 of 2011

The Oriental Insurance Company Limited,
through its Divisional Manager,
Divisional Office,
No.6/B, Bangur Dharmasala Building,
West Veli Veethi, Madurai Town,
Madurai District.

... Appellant / 2nd respondent

Vs.

1.Surya

... 1st respondent / petitioner

2.Ammal Engineering College,
represented by its Correspondent,
Lanthai, Atchunthanvayal Post,
Ramanathapuram Taluk,
Ramanathapuram District.

... 2nd respondent / 1st respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No.45 of 2015, dated 24.06.2020, on the file of the Motor Vehicle Accidents Claim Tribunal cum Sub Judge, Paramakudi.



C.M.A(MD)Nos.691 and 692 of 2020

C.M.A(MD)No.692 of 2011

The Oriental Insurance Company Limited,
through its Divisional Manager,
Divisional Office,
No.6/B, Bangur Dharmasala Building,
West Veli Veethi, Madurai Town,
Madurai District.

... Appellant / 2nd respondent

Vs.

1.Tamilarasi

... 1st respondent / petitioner

2.Ammal Engineering College,
represented by its Correspondent,
Lanthai, Atchunthanvayal Post,
Ramanathapuram Taluk,
Ramanathapuram District.

... 2nd respondent / 1st respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No.46 of 2015, dated 24.06.2020, on the file of the Motor Vehicle Accidents Claim Tribunal cum Sub Judge, Paramakudi.

For Appellant : Mr.E.Chandrasekaran

For R1 : Mr.D.Senthil

For R2 : No appearance

(in both CMAs)



WEB COPY



C.M.A(MD)Nos.691 and 692 of 2020

COMMON JUDGMENT

C.M.A(MD)No.691 of 2020 is filed against the judgment and decree passed in M.C.O.P.No.45 of 2015 on the file of the Subordinate Judge, Paramakudi. The appellant is the second respondent. The first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition.

2.C.M.A(MD)No.692 of 2020 is filed against the judgment and decree passed in M.C.O.P.No.46 of 2015 on the file of the Subordinate Judge, Paramakudi. The appellant is the second respondent. The first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition.

3.Brief substance of the claim petition in M.C.O.P.No.45 of 2015 is as follows:

On 01.08.2014, when the petitioner and another person, boarded a TVS Scooty bearing registration number TN 65 P 1300 before moving the vehicle, a bus bearing registration number TN 65C 5836, came in a rash and negligent



C.M.A(MD)Nos.691 and 692 of 2020

manner, overtaking a car dashed against the motorcycle. The petitioner sustained injuries. He was taken to Paramakudi Government Hospital for treatment. After getting first aid, he was admitted in Madurai Rajaji Government Hospital and he took treatment as inpatient for 20 days. He undergone surgery. Steel plate was affixed and then he took treatment as outpatient. The petitioner sustained permanent disability and he claimed a sum of Rs.4,00,000/- as compensation.

4.Brief substance of the petition in M.C.O.P.No.46 of 2015 is as follows:

In the above said accident, the petitioner sustained injury, she was given first aid in the Paramakudi Government Hospital. Then she was admitted in Government Rajaji Hospital, Madurai as inpatient. She undergone surgery and steel plate was affixed. She was doing agriculture in her own land and she used to go for doing agricultural coolie work in other lands. She was earning Rs.6,000/- per month and she claimed a sum of Rs.3,00,000/- as compensation.



C.M.A(MD)Nos.691 and 692 of 2020

5. Brief substance of the counter filed by the second respondent in both the claim petitions is as follows:

The accident has happened only due to the rash and negligent driving of the minor by name Surya. The manner of accident was suppressed. The first respondent driver drove the vehicle in a slow and cautious manner. It was the minor Surya who was rash and negligent and who travelled with two pillion riders, lost his control and fell on the right side portion of the bus and he invited the accident. The two wheeler was not having proper insurance and the rider of the two wheeler was not having valid driving licence. The First Information Report was wrongly given in the name of the bus driver. The petitioners have to prove their age, avocation, income, nature of injuries, treatment particulars. The claim is excessive.

6. A joint trial was conducted in both the cases. In the joint trial, in M.C.O.P.No.45 of 2015, one witness was examined and eleven documents were marked on the side of the petitioner. In M.C.O.P.No.46 of 2015, one witness was examined and nine documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. One witness was examined as Court witness and one



C.M.A(MD)Nos.691 and 692 of 2020

document was marked as Ex.C1. A common judgment was pronounced by the Tribunal. The Tribunal has awarded a sum of Rs.1,95,000/- as compensation in M.C.O.P.No.45 of 2015 and has awarded Rs.2,35,000/- as compensation in M.C.O.P.No.46 of 2015.

7. Against the award, the appellant preferred these appeals on the following grounds:

On the date of accident, three persons travelled in a TVS Scooty which is against the policy conditions. The rider of the two wheeler by name Surya was a minor and he was not having valid driving licence. The owner of the TVS Scooty and the insurance company were not impleaded as party. The FIR registered against the driver of the bus was closed as mistake of facts. The insurance company has examined the Sub Inspector of Police and he has deposed that three persons travelled in the two wheeler. He has also deposed that the rider of the two wheeler was not having valid driving licence and the case against the bus driver was closed. When two vehicles involved in an accident, the Tribunal ought to have fixed atleast contributory negligence and composite negligence on the claimants.



C.M.A(MD)Nos.691 and 692 of 2020

8.On the side of the appellant, it is stated that the rider of the two wheeler was not having valid driving licence and that there was no insurance for the two wheeler. Three persons travelled in the two wheeler and hence contributory negligence should be fixed on the claimants.

9.On the side of the respondent it is stated that from the observation mahazar and rough sketch, it is clear that the accident was not happened on the Thaar road. The driver of the bus was not examined. The Court witness-police official has admitted that the claimants were just boarding the two wheeler and they have not moved the vehicle and that was the bus which left the thaar road, came to the mud road and dashed against the two wheeler.

10.In the evidence of the Court witness, it is stated that the bus left the road, came to the right side of the road and dashed against the two wheeler and that the same was mentioned in the observation mahazar and rough sketch. A copy of the FIR was marked as Ex.P1. Copy of observation mahazar was marked as Ex.P2. Rough sketch was marked as Ex.P3. Motor vehicles report of both the vehicles were marked as Ex.P4 and Ex.P5. In the deposition of the court witness, it is stated that the FIR was closed as mistake



C.M.A(MD)Nos.691 and 692 of 2020

of fact. Ex.P2 and Ex.P3 reveals that the bus turned to the right side from its path and hit the two wheeler and that the accident has happened only on the mud road. C.W.1 has admitted that the two wheeler was not moving at the time of accident. C.W.1 has deposed that in the complaint, it was mentioned that when the petitioners were trying to board the two wheeler, the accident has happened.

11. P.W.1 has deposed that at the time of accident, himself, one Tamilarasi and the son of Tamilarasi were sitting on the two wheeler. He has admitted that he was not having valid driving licence. But he denied that he was not riding the two wheeler at the time of accident. P.W.1 has deposed that he was just sitting on the two wheeler and was about to ride the vehicle.

12. In the above circumstances, it is decided that the rider of the two wheeler and the petitioners are also liable for contributory negligence. Considering the facts and circumstances of this case, it is decided that both the rider and the pillion rider of the two wheeler and the bus driver are liable for the accident and the contributory negligence on part of the claimant is fixed as 25%.



C.M.A(MD)Nos.691 and 692 of 2020

WEB COPY

13. In M.C.O.P.No.45 of 2015, the Tribunal has fixed the quantum as Rs.1,95,000/- and in M.C.O.P.No.46 of 2015, the Tribunal fixed the compensation as Rs.2,35,000/-. There is no dispute regarding the quantum. There is no cross objection or appeal regarding the quantum. Hence it is decided that the quantum fixed by the Tribunal is reasonable.

14. After deducting 25% towards contributory negligence, the claimants are entitled to Rs.1,46,250/- (in M.C.O.P.No.45 of 2015) and Rs.1,76,250/-(in M.C.O.P.No.46 of 2015) as compensation.

15. Accordingly, C.M.A(MD)No.691 of 2020 (M.C.O.P.No.45 of 2006), are partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.1,95,000/- to **Rs.1,46,250/- (Rupees One Lakh Forty Six Thousand Two Hundred and Fifty only)** which shall carry an interest of 7.5% per annum.

(ii) The appellant/ Insurance Company is directed to deposit the



C.M.A(MD)Nos.691 and 692 of 2020

entire compensation amount i.e., **Rs.1,46,250/-** (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.45 of 2015 dated 24.06.2020 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Pramakudi, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the first respondent / claimant is entitled to **Rs.1,46,250/- (Rupees One Lakh Forty Six Thousand Two Hundred and Fifty only)**, with proportionate interest and costs after following the due process of law, less any amount already received by him.

16. Accordingly, C.M.A(MD)No.692 of 2020 (M.C.O.P.No.46 of 2015), is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.2,35,000/- to **Rs.1,76,250/- (Rupees One Lakh Seventy Six Thousand Two Hundred and Fifty only)** which shall carry an interest of 7.5% per annum.



C.M.A(MD)Nos.691 and 692 of 2020

(ii) The appellant/ Insurance Company is directed to deposit the entire compensation amount i.e., **Rs.1,76,250/-** (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.46 of 2015 dated 24.06.2020 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Pramakudi, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the first respondent / claimant is entitled to **Rs.1,76,250/- (Rupees One Lakh Seventy Six Thousand Two Hundred and Fifty only)**, with proportionate interest and costs after following the due process of law, less any amount already received by him.

01.03.2023

NCC: Yes / No
Index: Yes / No
Internet : Yes / No

pnn



WEB COPY



C.M.A(MD)Nos.691 and 692 of 2020

R.THARANI, J.

pnn

To

- 1.The Motor Accident Claims Tribunal cum Sub Judge, Paramakudi.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

Pre - Delivery Judgment made in
C.M.A(MD)Nos.691 and 692 of 2020

01.03.2023