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C.M.A.Nos.936 of 2022
and 3725 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.936 of 2022
and 3725 of 2019

C.M.A.No.936 of 2022:

The Manager
National Insurance company Limited
Paramathi Road, Namakkal,
Namakkal District - 637 001

.. Appellant

Vs.

1.Vinodh

2.Thiru Murthi

3.Manager

United India Insurance Company Limited,
No.77, Oriental Complex,
A.A.Street, Salem - 636 001.

4.Elayaraja

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment passed in MACTOP No.306 of 2013 dated 26.09.2018 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.



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For Appellant : Mrs.N.B.Surekha

For Respondents : Mr. C.Thangaraju for R1
R2-NDW

Mr.C.Paranthaman for R3

No appearance for R4

C.M.A.No.3725 of 2019:

Vinoth

...Appellant

Vs.

1.Thirumoorthy

2. Manager

United India Insurance Company Limited,

No.77, Oriental Complex,

A.A.Street, Salem - 636 001.

3.Ilayaraja

4. Manager

National Insurance company Limited

Paramathi Salai, Namakkal,

Namakkal District - 637 001

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment passed in MCOP No.306 of 2013 dated 26.09.2018 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Thangaraju

For Respondents: Notice returned for R1

Mr.C.Paranthaman for R2

Mrs.N.B.Surekha for R4

No appearance for R3



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COMMON JUDGMENT

WEB COPY While the appeal in C.M.A.No.936 of 2022 has been filed by the Insurance Company questioning the negligence and the quantum of compensation awarded by the Tribunal as excessive, the appeal in C.M.A.No.3725 of 2019 has been filed by the claimant challenging the compensation awarded by the Tribunal.

2. Since the issue in both the appeals are one and the same, the same are disposed by way of this common order.

3. For the sake of brevity, the parties are referred to as per their ranking in C.M.A.No.936 of 2022.

4. Brief facts which are necessary for disposal of these appeals are as follows:-

On 26.05.2013 at about 02.00 P.M when the claimant was travelling in a Tata Ace vehicle bearing Regn.No.TN49AB 3403 which was carrying Mango load, a lorry bearing reg.No. TN 60 5448 which was driven by its driver in a rash and negligent manner without observing the road traffic rules and dashed against the said load vehicle. As a result of which, the claimant sustained multiple injuries all over his body. Immediately, he was taken to

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Namakkal Government Hospital and thereafter, he was shifted to Maruthi

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Hospital, Namakkal. The 2nd and 4th respondents are the owners cum drivers of the lorry and the 3rd respondent/appellant Insurance Company is the insurer of the 1st respondent's lorry. The law enforcing agency registered a case against the 2nd respondent/Thiru Moorthi who is the driver of the lorry bearing Reg.No.TN 60 5448 under Sections 279 and 337 of IPC. Under these circumstances, the claimant had filed a petition in MCOP.No.306 of 2013, claiming compensation of Rs.10,00,000/- for the injuries sustained by him due to the said accident.

5. Before the Tribunal, in order to prove the case, the first respondent/claimant examined three witnesses viz., PW1 to PW3 marked 16 documents as Exs.P1 to P16. On the side of the respondents, three witness were examined as RW1 to RW3 and three documents were marked as Ex.R1 to R3. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.1,93,900/- as compensation to the claimant under various heads and fixed 50%

contributory negligence against the appellant and the 1st respondent and 50%
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contributory negligence against the 3rd & 4th respondents. Aggrieved by the said award, the appellant/insurance company filed this appeal before this Court, questioning the contributory negligence and liability fixed by the tribunal.

6. The learned counsel for the appellant submitted that the eyewitness who travelled as a co-passenger along with the claimant was examined as PW3. He clearly deposed that the accident happened only because of the negligence of the lorry bearing Registration No. TN-60-5448. The FIR was also filed against the lorry driver. However, the Tribunal by ignoring this important evidence, wrongly held that both drivers equally responsible, even though the owner of the lorry and the insurer did not present any witness to deny the claimant's version.

7. The learned counsel for the appellant further submitted that the Tribunal instead relied on the evidence of RW1/Investigating Officer, and Exhibit B1/ final report, which claimed the claimant himself was driving the TATA ACE and was negligent. Based on this, the Tribunal held that the claimant as a tortfeasor, but still awarded compensation to the complainant. Learned counsel for the appellant further submitted that if the Tribunal



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believed the claimant was fully at fault, it should have rejected the claim.

But, the Tribunal wrongly picked only one part of the police report to rely on, ignoring other facts. Therefore, the findings of the Tribunal are not legally correct, and therefore, the appellant herein should be exonerated from the contributory negligence fixed on them and the appeal is deserved to be allowed.

8. Learned counsel appearing for the 1st respondent/claimant would submit that the claimant travelled as a coolie in vehicle bearing registration

No. TN49 AB 3403 insured with the 3rd respondent/Insurance company.

Learned counsel further submitted that before the tribunal, the claimant/1st respondent clearly deposed that on the date of occurrence, when the claimant travelling in a load vehicle as a coolie, a lorry bearing reg.No. TN 60 5448 which was driven by its driver in a rash and negligent manner without observing the road traffic rules, dashed against the vehicle travelled by the

claimant. As a result of which, the 1st respondent/ claimant sustained multiple injuries all over his body. The tribunal after considering the



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evidence and the documents marked by both sides, concluded that the accident was occurred due to the negligence on the part of the drivers of both the vehicles, and accordingly fixed 50% contributory negligence on the owner of the vehicles and the insurers of the said vehicles.

9. Heard the learned counsel on either side and perused the materials available on record.

10. As far as C.M.A.No.936 of 2022 filed by the Insurance Company-insurer of lorry bearing Registration No.TN-60-5448 is concerned, as rightly contented by the learned counsel, the Tribunal, though relied upon the evidence of RW1 and Exhibit -B1/Charge sheet filed against the claimant, wherein it was stated that the claimant was a tortfeasor, ought not to have fixed the contributory negligence on the part of the appellant-insurance company herein. Further, the tribunal failed to consider the statement of the 3rd respondent insurance company under whom the TATA ACE vehicle bearing registration no. TN 59 B 3403 was registered, and said to have been travelled by the claimant, wherein it was stated that since the claimant did not have a driving licence, he filed a complaint stating that his friend was driving the said vehicle. Whereas, in the final report filed by the police, it



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was stated as untrue. Further, it was also contended that driver of the lorry bearing Registration No. TN 60 5448 insured with the appellant herein was not included before the tribunal.

11. In view of the above facts and circumstances, this Court finds merit in the contention of the appellant. The Tribunal erred in fixing contributory negligence on the part of the appellant-insurance company despite clear evidence, including the charge sheet and the testimony of RW1, indicating that the claimant was the tortfeasor. Moreover, the involvement of the TATA ACE vehicle and the subsequent false claim regarding its driver, as disproved by the final report, further supports the appellant's case. Since, it is proved that the claimant was a tortfeasor at the time of the accident, this Court holds that the owner of the vehicle bearing Registration No. TN 60 5448 and the insurer of the said vehicle, the appellant herein are not liable to pay compensation. Accordingly, the appellant and the 4th respondent are exonerated from the liability fixed by the tribunal. The Civil Miscellaneous Appeal in C.M.A. No.936 of 2022 is deserved to be allowed.

12. Insofar as the contributory negligence fixed on the 2nd and 3rd respondents, namely the owner and insurer of the vehicle bearing
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Registration No. TN 49 AB 3403 in which the claimant travelled, is

concerned, this Court is not inclined to go into the submissions regarding whether the injured claimant was driving the vehicle or not. The primary consideration is whether the 3rd and 4th respondents are liable to pay the compensation as awarded by the Tribunal. As discussed above, and as per the charge sheet, the friend of the injured claimant was driving the vehicle, and his eligibility to drive the said vehicle was not questioned before the Tribunal. Furthermore, the negligence on the part of the driver of the vehicle was proved before the Tribunal. In view of the negligence on the part of the driver, which was the cause of the accident, the insurer and the driver of the vehicle are liable to pay the compensation. Accordingly, the 3rd and 4th respondents are held jointly and severally liable to pay the compensation along with interest, as fixed by the Tribunal.

13. Insofar as CMA No.3725 of 209 filed by the claimant is concerned, even though the claimant/appellant contended that the compensation awarded under the head loss of income for two months at Rs.8,000/- is very less, and the compensation under other heads also require to be enhanced, this court is of the view that the tribunal after detailed consideration of medical reports and other documents relate to the injuries

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sustained by the claimant/appellant, rightly awarded a sum of Rs.1,93,900/-

as total compensation, therefore, the compensation awarded by the tribunal does not require any interference. Accordingly, the appeal filed by the claimant in C.M.A.No.3725 of 2019 is dismissed.

14. In the result, C.M.A.No.936 of 2022 filed by the Insurance Company is allowed with the above terms and CMA No. 3725 of 2019 filed by the claimant is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

15. Since, this Court held that the 3rd & 4th respondents alone are liable to pay compensation to the claimant, this Court directs the 3rd & 4th respondents to pay the entire compensation to the claimant jointly and severally along with interest awarded by the tribunal, after deducting the amount if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same, by filing appropriate application before the Tribunal.

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Index : Yes
Speaking Order : Yes
msv

To
Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.



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M.DHANDAPANI,J.

msv

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