



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

**C.M.A.Nos.1484, 2760, 2761, 2763 and 2764 of 2018
and C.M.P.Nos.20998, 21001, 21011 of 2018 and 9303 of 2019**

The New India Assurance Company Ltd.,
D.O. at Salem, 480, Sakkalai Road, Karaikudi,
D.O. at Premier Complex,
Yercaud Junction Main Road,
Salem.

... Appellant in all the appeal

-vs-

1.T.Saravanan

2.S.Senthilkumar

3.Seetharaman

... Respondents in CMA. No. 1484 of 2018

1. S.Sudhakar

2. S.Senthilkumar

3. Seetharaman

... Respondents in CMA. No.2760 of 2018

1. Minor Ajoy

2. S.Senthilkumar

3. Seetharaman

... Respondents in CMA. No.2761 of 2018

1. M.Senthilkumar

2. S.Senthilkumar

3. Seetharaman

... Respondents in CMA. No.2763 of 2018



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1. Seetharaman

2. S.Senthilkumar

... Respondents in CMA. No.2764 of 2018

Prayer in CMA.No.1484 of 2018:- Civil Miscellaneous Appeal Petition filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in MCOP.No.153 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Salem, dated 06.07.2016.

Prayer in CMA.No.2760 of 2018:- Civil Miscellaneous Appeal Petition filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in MCOP.No.151 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Salem, dated 06.07.2016.

Prayer in CMA.No.2761 of 2018:- Civil Miscellaneous Appeal Petition filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in MCOP.No.150 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Salem, dated 06.07.2016.

Prayer in CMA.No.2763 of 2018:- Civil Miscellaneous Appeal Petition filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in MCOP.No.154 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Salem, dated 06.07.2016.

Prayer in CMA.No.2764 of 2018:- Civil Miscellaneous Appeal Petition filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and



decree in MCOP.No.152 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Salem, dated 06.07.2016.

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For Appellant :Mr.M.Krishnamoorthy in all CMAs

For Respondents :Mr.V.Kumaravelan for R1 in all CMAs
R2 - No appearance in all CMAs

Mr.C.Rajasekaran
for R3 in CMA.No.1484 of 2018

R3- No appearance in
CMA.Nos.2760, 2761 & 2763 of 2018

COMMON JUDGMENT

These appeals have been filed seeking to quash the judgment and decree in MCOP.No.151 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Salem, dated 06.07.2016.

2. The case of the claimants is that on 26.05.2007, the claimants along with other persons were travelled in the Trax jeep bearing Reg. No.PY 01 E 5950 as a passenger. The jeep was driven by its driver, which was insured with the appellant herein in a rash and negligent manner on the Dharmapuri to Salem main road. At about 14.30 hours when the jeep was proceeding near Thoppur over bridge, at that time, a lorry bearing Reg. No.TN 33 Q 6616 was came from opposite direction which was driven by its driver in a rash and negligent manner, hit against the jeep and caused accident. Due to the accident, the



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claimants sustained injuries and taken to the hospital, Salem. Thereafter, the first respondent/claimants have filed separate claim petitions for the injuries sustained by them before the Motor Accidents Claims Tribunal as against the insurer and owner of the vehicle. Before the Tribunal, 6 witnesses were examined and 25 documents were marked on the side of the claimants. On the side of the insurance company, one witness was examined and two documents were marked. The Tribunal, considering the pleadings, oral and documentary evidence, stated that the accident had occurred due to the rash and negligent driving of the lorry driver and since the lorry was insured with the appellant herein directed the appellant to accept the responsibility of the compensation to the claimants respectively. Questioning the liability and the quantum of compensation, the present appeal has been filed by the Insurance company.

3.The learned counsel appearing for the appellant Insurance company vehemently submitted that the Tribunal was in error fixing the negligence only on the lorry driver. The witnesses have deposed that the jeep driver had crossed the lane and attempted to overtake the vehicle before it. During that process, the driver of the jeep lost his control and dashed against the lorry owned by the first respondent. Soon after the accident, the first respondent has lodged an FIR before the Theevattipatti Police Station in Cr. No.229 of 2007 for the offences



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punishable under Section 279, 337 IPC. However, the learned Tribunal has fixed negligence only on the first respondent who is the owner of the lorry owner and therefore, made appellant herein liable to pay compensation, being the insurer of the lorry.

4. The learned counsel drew the attention to the place of occurrence that the jeep had dashed against the lorry on the right side. It is the case of the witnesses that the jeep had crossed the lane and tried to overtake the vehicle and in the process, lost control of the vehicle and dashed against the on coming lorry. Therefore, the learned counsel tried to impress upon the Court that the jeep driver had also contributed for this accident.

5. The learned counsel has also drew the attention of this Court to compensation awarded under various heads in each of the original petitions and contented that the amount awarded under each head are excessive and the same needs reduction.

6. The learned counsel appearing for the claimants submitted that after considering the oral and documentary evidences, the Tribunal has awarded compensation to the claimants which is perfectly in order and the same does not



warrant any interference.

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7. Heard the learned counsel appearing for either side and perused the materials available on record.

8. The basic principles Governing in award of compensation in motor accident claim is the claimants should prove the negligent and only then, the question of fastening the liability would arise. In this case, the evidence of witnesses is crystal clear. The driver of the jeep had crossed the lane and he had attempted to overtake a vehicle and lost his control on the vehicle and dashed on coming lorry and this caused the accident. Therefore, the third respondent is also contributed for this accident to an extent for 50%. The Tribunal has grossly erred in fixing the negligence only on the lorry driver. It should also be noted that soon after the accident, an FIR was lodged against the jeep driver by none other than the first respondent herein. The Police have also duly registered the case in Cr. No.229/2009 for the offence under Section 279 and 337 IPC. The Tribunal has observed that the claimants have failed to produce the aftermath of filing of FIR; whether charge sheet has been filed or trial has happened. The Tribunal ought not to have travel so far. The mere fact that the first respondent crossed the lane, tried to overtake the vehicle and dashed against the on coming



vehicle would show that he has clearly contributed for the accident. The lorry driver should also been careful and ought to have either slow down the vehicle or applied breaks and thus, averted the accident. Therefore, he has also contributed equally to the accident. Therefore, this Court holds both the drivers of the lorry as well as the jeep equally responsible for the accident.

9. Therefore, this Court is inclined to modify the award passed by the Tribunal as follows:

1. The appellant, being insurer of the first respondent vehicle, is directed to deposit 50% of compensation awarded by the Tribunal in each case to the credit of the respective MCOP Nos.153,151,150,154 and 152 pf 2008 on the file of the Motor Accident Claims Tribunal, Salem, less the amount already deposited, if any, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment.

2. Insofar as the balance 50% of the compensation amount fixed by the Tribunal, the claimants are granted liberty to recover the same from the third respondent who is the owner of the vehicle, in the manner known to law, if the third respondent owner fails to deposit the said amount to the credit of the said respective MCOPs' along with interest within a period of four weeks from the date of receipt of this judgment.

3. On such deposit, the Tribunal shall deposit the same to the bank



account of the claimants through RTGS within a period of two weeks thereafter. No costs."

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10. With the above modification, all the CMAs' are partly allowed.

Consequently, connected miscellaneous petitions are closed.

06.11.2024

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Index: Yes/No

NCS : Yes/No

To

The Motor Accident Claims Tribunal (Principal Subordinate Judge) at Salem



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M.DHANDAPANI,J.

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