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C.M.A.Nos.2667 and 2986 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.Nos.2667 and 2986 of 2019
and C.M.P.Nos.13221 and 16020 of 2019**

Prayer in C.M.A.No.2667 of 2019

Oriental Insurance Company Limited,
Branch Office, No.59, Raja Street,
Gobichettipalayam,
Erode District.

... Appellant

Vs.

1.Madhappan

2.K.S.Duraisamy

3.The Divisional Manager,
New India Assurance Company Limited,
No.92, G.N.Chetty Road,
T.Nagar, Chennai.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989, against the judgment and decree dated 01.02.2019 made in M.C.O.P.No.499 of 2017, on the file of the Motor Accident Claims Tribunal (Additional District Court), Hosur.



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For Appellant : Mr.K.Vinod
For Respondents : Mr.C.Munusmay for R1
R2-NDW vide endorsement made in
EB
Mr.R.Sivakumar for R3

Prayer in C.M.A.No.2986 of 2019

The Divisional Manager,
New India Assurance Company Limited,
92, G.N.Chetty Road, T.Nagar,
Chennai.

... Appellant

Vs.

1.Madhappan

2.K.S.Duraisamy

3.The Oriental Insurance Company Limited,
Branch Office, No.59, Raja Street,
Gobichettipalayam,
Erode District.

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Reg.No.TN 29 B 3000 belonging to the deceased Ramajayam and insured with the third respondent to unload the goods, in which, the deceased Ramajayam was also traveling. At that time, a lorry bearing Reg.No.TN 33 1899 belonging to the first respondent and insured with the second respondent was parked in the highway. In the absence of any indication towards parking such as thorny, stones, leaves, trees or fire placed nearby the parked vehicle, the claimant lost control of his vehicle and though he tried to stop the vehicle, he hit the parked vehicle and thereby, he sustained fatal injuries and the said Ramajayam died. The driver Madhappan was admitted in Kovai Medical Centre and Hospital Limited, Coimbatore as in-patient and underwent treatment for the injuries sustained by him. The claimant filed a claim petition before the Tribunal claiming compensation of Rs.20,00,000/-.

4. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Ex.P1 to Ex.P8 were marked and on the side of the respondents, no witness was examined and no document was marked. The



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award copy passed in M.C.O.P.No.756 of 2014 on the file of the Special Motor Accident Claims Tribunal, Krishnagiri, by the legal heirs of the deceased Ramajayam was marked as Ex.R1.

5. The Tribunal, after going through the materials placed on record and the exhibits marked before the Tribunal, came to a conclusion that the claimant was entitled for a compensation of Rs.15,76,880/- in total. Since no documentary proof was filed to prove the income of the claimant, the Tribunal fixed the monthly income of the claimant at Rs.9,000/- and based on the wound certificate, the disability was fixed as 55% and worked out the compensation accordingly. Since the claimant was the driver of the lorry bearing Reg.No.TN 29 B 3000 which involved in the accident, the Tribunal came to a conclusion that the accident occurred during the course of the employment and since the driver of the first respondent vehicle had no valid driving license, the Tribunal directed the second respondent to pay 50% of compensation on behalf of the first respondent to the claimant and then recover the same from the first respondent, namely, the owner of the



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parked vehicle and that the third respondent/New India Assurance Company Limited was also directed to pay the remaining compensation (i.e.,) 50%. Challenging both the liability as well as the quantum of compensation, the present appeals have been filed by both the appellants.

6. The learned counsel appearing for the second respondent/Oriental Insurance Company Limited [with whom the parked vehicle was insured] submits that C.M.A.No.2667 of 2019 has been filed mainly on the ground that the Tribunal failed to appreciate that the accident had occurred due to rash and negligent driving of the lorry bearing Reg.No.TN 29 B 3000. As per FIR, the driver/claimant was prosecuted for such accident. That apart, even in the present case, in Ex.P1/FIR, it has been clearly mentioned that the accident occurred due to rash and negligent driving of the lorry driven by the claimant. However, the Tribunal has fixed 50% liability on the second respondent/ Oriental Insurance Company Limited, which is not justifiable one.



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7. The learned counsel appearing for the third respondent/New India Assurance Company Limited submits that the Tribunal has erroneously fixed the negligence as 50:50 and the claimant was a tort-feasor and therefore, he has no right to claim compensation from the third respondent/ New India Assurance Company Limited. That apart, the Tribunal failed to note that the legal heir of the owner of the lorry insured with the third respondent was not made as parties in the claim petition and therefore, the third respondent is not liable to pay compensation and the compensation awarded by the Tribunal is also on the higher side.

8. The learned counsel appearing for the claimant submits that the Tribunal, after considering the exhibits marked before the Tribunal and the submissions made on both sides, had correctly adopted the multiplier method and thereby, awarded the compensation and fixed the liability on both the Insurance Companies. Therefore, the present appeals are to be dismissed.



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9. Heard the learned counsel appearing for the parties and perused the materials available on record.

10. Admittedly, the accident occurred on 25.09.1998 at about 05.45 hours and the lorry bearing Registration No.TN 29 B 3000 driven by the claimant belonging to the deceased Ramajayam and insured with the third respondent dashed against the lorry bearing Registration No.TN 33 1899 belonging to the first respondent and insured with the second respondent, which was parked in the highway road, due to which, the claimant sustained fatal injuries and the deceased Ramajayam had died. A separate claim petition was filed by the legal heir of the deceased Ramajayam in M.C.O.P.No.756 of 2013 and it was disposed of on 05.02.2016 by the Tribunal, against which, C.M.A.No.1938 of 2016 was preferred by the legal heirs of the deceased Ramajayam and C.M.A.No.1962 of 2022 was preferred by the second respondent herein and they were disposed of by this Court on 11.10.2022, wherein, this Court fastened 75%



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negligence on the driver of the lorry bearing Reg.No.TN 33 1899 belonging to the first respondent and fastened 25% liability on the driver of the lorry belonging to the deceased Ramanjayam, who is the claimant herein and exonerated the third respondent Insurance Company herein, since the deceased Ramajayam being the owner of the vehicle. Since the Co-ordinate Bench has already fixed liability on the driver of the lorry of the deceased Ramajayam and the second respondent Oriental Insurance Company, which has attained finality, this Court is bound to follow the same in this case as well. Hence, this Court is inclined to fix 75% liability against the second respondent / Oriental Insurance Company Limited and 25% against the claimant. Since the claimant is a tort-feasor, no liability can be fastened against the third respondent and the liability fastened on the third respondent by the Tribunal is set aside.

11. In respect of quantum of compensation, the accident is in the year 1998 and the notional income fixed by the Tribunal at Rs.9,000/- is highly excessive and a sum of Rs.4,27,680/- awarded under the head 'future



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prospects' is also highly excessive and therefore, a sum of Rs.6,000/- per month is fixing 40% towards future prospects, the monthly income would be Rs.8,400/- (Rs.6,000/- + Rs.2,400/- = Rs.8,400/-). As per the judgment of the Hon'ble Supreme Court of India in the case of *Sarla Verma*, the appropriate multiplier for the age of the claimant is 17, however, the Tribunal has adopted the multiplier of 18. Though the Medical Board has assessed 55% disability, this Court is inclined to fix the disability at 50% and quantifies the compensation towards loss of income at Rs.8,56,800/- (Rs.8,400/- * 12 * 17 * 50/100). The amount awarded under the other heads is just and reasonable and the same is hereby confirmed.

12. Of the compensation of Rs.9,36,800/- deducting 25% towards contributory negligence on the part of the driver of the vehicle, the compensation payable by the second respondent is arrived at Rs.7,02,600/- (Rs.9,36,800/- - Rs.2,34,200/-). The second respondent is directed to deposit a sum of Rs.7,02,600/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit, less the amount



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already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.499 of 2017 on the file of the Additional District Court, Hosur. On such deposit being made, the Tribunal is directed to transfer the same to the bank account of the claimant through RTGS within a period of two weeks thereafter. Insofar as amount, if any, deposited by the third respondent, the 3rd respondent is permitted to file appropriate petition to withdraw the said amount before the Tribunal.

13. Accordingly, C.M.A.No.2667 of 2019 filed by the second respondent is partly allowed and C.M.A.No.2986 of 2019 filed by the third respondent is allowed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

19.11.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

ssb



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To

1. The Motor Accident Claims Tribunal,
Additional District Court,
Hosur.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

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