



C.M.A.(MD).Nos.2044 to 2046 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)Nos.2044 to 2046 of 2013

and

M.P(MD) Nos.2, 2 and 2 of 2013

C.M.A.(MD) No.2044 of 2013:

The Branch Manager,
National Insurance Company Limited,
24, Kamaraj Bazaar,
Bodinayakkanur,
Theni District.

... Appellant/2nd Respondent

-VS-

1. Sevathamani

... 1st Respondent/Petitioner

2. S.Pushpam

... 2nd Respondent/1st Respondent

3. Ashok Kumar

... 3rd Respondent/3rd Respondent

4. The Branch Manager,
Oriental Insurance Company limited,
6-A, Lasans Road, Ganesh Complex,
II Floor, Cantonment,
Tiruchi – 1.

... 4th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and award made in M.C.O.P.No.



C.M.A.(MD).Nos.2044 to 2046 of 2013

2595 of 2003, dated 09.07.2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, FTC No.-II, Tiruchirappallai.

For Appellant	: Mr.D.Sivaraman
For R-3	: Mrs.P.Jessi Jeeva Priya
For R-4	: Mr.C.Jawahar Ravindran
For R1 and R2	: No appearance

C.M.A.(MD) No.2045 of 2013:

The Branch Manager,
National Insurance Company Limited,
24, Kamaraj Bazzar,
Bodinayakkanur,
Theni District.

... Appellant/2nd Respondent

-VS-

1. Chinna Ponnu

... 1st Respondent/Petitioner

2. S.Pushpam

... 2nd Respondent/1st Respondent

3. Ashok Kumar

... 3rd Respondent/3rd Respondent

4. The Branch Manager,
Oriental Insurance Company limited,
6-A, Lasons Road, Ganesh Complex,
II Floor, Cantonment,
Tiruchi – 1.

... 4th Respondent/4th Respondent



C.M.A.(MD).Nos.2044 to 2046 of 2013

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and award made in M.C.O.P.No. 2742 of 2002, dated 09.07.2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, FTC No.-II, Tiruchirappallai.

For Appellant	: Mr.D.Sivaraman
For R-3	: Mrs.P.Jessi Jeeva Priya
For R-4	: Mr.C.Jawahar Ravindran
For R1 and R2	: No appearance

C.M.A.(MD) No.2046 of 2013:

The Branch Manager,
National Insurance Company Limited,
Bodinayakkanur,
Theni District.

... Appellant/2nd Respondent

-vs-

1.R.Karuthakannu

... 1st Respondent/Petitioner

2. S.Pushpam

... 2nd Respondent/1st Respondent

3. Ashok Kumar

... 3rd Respondent/3rd Respondent

4. The Branch Manager,
Oriental Insurance Company limited,
6-A, Lasons Road, Ganesh Complex,
II Floor, Cantonment,
Tiruchi – 1.

... 4th Respondent/4th Respondent



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and award made in M.C.O.P.No. 2752 of 2002, dated 09.07.2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, FTC No.-II, Tiruchirappallai.

For Appellant	: Mr.D.Sivaraman
For R-3	: Mrs.P.Jessi Jeeva Priya
For R-4	: Mr.C.Jawahar Ravindran
For R1 and R2	: No appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant as against the common order passed in M.C.O.P.Nos.2595 of 2003, 2742 of 2002 and 2752 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, FTC No.-II, Tiruchirappallai, wherein the first respondents in all the appeals have filed claim petitions before the Tribunal seeking compensation. As against the award passed by the Tribunal, the appellant/second respondent has filed these present appeals.



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2. The Tribunal has awarded a sum of Rs.15,000/- towards compensation in M.C.O.P.No.2595 of 2003, a sum of Rs.3,93,000/- towards compensation in M.C.O.P.No.2742 of 2002 and a sum of Rs.90,000/- towards compensation in M.C.O.P.No. 2752 of 2002 by fixing the liability as against the second respondent. As against the order passed by the Tribunal, the second respondent has filed these appeals by disputing the liability.

3. The brief averments made in the petitions before the Tribunal are as follows:

On 19.09.2002, at about 11.00 a.m, the injured petitioner Mrs.Sevathamal and other two persons were sitting under the Tamarind Tree at Trichy to Manapparai main road near Maravanur Kottappatty sub road. At that time, the Lorry bearing Registration No. TN-69-7504 belonging to the first respondent in the claim petition was proceeded from Trichy to Manaparai and the tanker Lorry bearing Registration No.TN-32-Z-2799 belonging to the third respondent in the claim petition was proceeded in the opposite side. Both the vehicles have collided with each other and thereby the Tanker Lorry over turned and dashed against the Tamarind Tree and the petitioners sustained injuries. The mother of the petitioner in M.C.O.P.No.2752 of 2002,



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namely, Anchammal died on the spot and other petitioners sustained injuries. Thereby, the petitioners who sustained injuries and the legal heirs of the deceased Anchammal are claiming compensation.

4. The brief averments made in the counter filed by the appellant/ second respondent are as follows.

The petitions are not maintainable either in law or on facts and the same are liable to be dismissed. The second respondent denied the age, income and occupation of the petitioners and the deceased. The accident had took place only due to the negligence on the part of the driver of the third respondent and thereby the respondents 1 and 2 are not liable to pay any compensation to the petitioners. It is only the respondents 3 and 4 are liable to pay the compensation to the petitioners.

5. The brief averments in the counter filed by the respondents 3 and 4 are as follows:

The petitions are not maintainable either in law or on facts and the same are liable to be dismissed. The respondents denied the age, income and occupation of the petitioners and the deceased. The accident took place only



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due to the negligence on the part of the driver of the first respondent and thereby these respondents are unnecessary parties. Therefore, these respondents are not liable to pay compensation to the petitioners. Hence, these petitions are liable to be dismissed.

6. Before the Tribunal, joint trial was conducted and common order was passed. On the side of the petitioners, P.W.1 to P.W.5 were examined and documents P.1 to P.11 were marked. On the side of the respondents R.W.1 and R.W.2 were examined and documents R.1 and R2 were marked.

7. After hearing both sides and perusing the records, the Tribunal has fixed the liability as against the driver of the first respondent and awarded compensation. As against the liability, the second respondent/Insurance Company has preferred these appeals on various grounds.

8. The learned counsel appearing for the appellant would contend that the accident took place due to the negligence on the part of the driver of the third respondent and the petitioners also in the claim petition, as well as in the evidence categorically pleaded and evidenced before the Tribunal that the



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accident took place due to the negligence on both the drivers. But the Tribunal has fastened the liability only as against the appellant/second respondent. The manner of accident itself shows the negligence on the part of the third respondent. But the Tribunal failed to consider the above said facts and erroneously fixed the liability only as against the driver of the first respondent. Therefore, the order passed by the Tribunal is liable to be set aside.

9. The learned counsel appearing for the fourth respondent would contend that the accident took place due to the negligence on the part of the driver of the second respondent and the F.I.R also registered as against the driver of the second respondent. The complaint was lodged by a third party and he categorically stated about the negligence on the part of the second respondent and on the side of the respondents the driver of the third respondent was examined as R.W.2 and he also deposed about the negligence on the part of the driver of the second respondent and thereafter, the Tribunal has fixed liability only as against the driver of the second respondent. Therefore, the order passed by the Tribunal is in order and the appeals are liable to be dismissed.



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10. This Court after hearing both sides and upon perusing the documents, including the order of the Tribunal, the point for determination in this appeal is whether the accident took place due to the negligence on the part of the driver of the second respondent or the driver of the 4th respondent?.

11. In this case, the first respondents/petitioners have filed claim petitions by pleading that both the drivers of the Lorries are responsible for the accident and P.W.1 also in the chief examination stated that both the vehicles are responsible for the accident. According to the appellant, though P.W.1 and witnesses had deposed against the drivers of the second and third respondents regarding the negligence, the Tribunal has fixed the liability only as against the driver of the second respondent.

12. This Court perused the records and FIR was registered as against the driver of the second respondent, however in the claim petitions and the witnesses on the side of the petitioners have categorically stated that the accident took place due to the negligence on the part of both the drivers of the vehicles. Further, the records show that both the vehicles collided with each other and the tanker lorry was capsized and dashed against the Tamarind Tree



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and the second respondent's Lorry was loaded with iron rods and thereby the accident occurred due to the negligence on the part of both the drivers of the vehicles. But the Tribunal has fixed the liability only as against the second respondent/ first respondent's vehicle. Hence, in respect of the negligence, the award of the Tribunal is liable to be modified to the effect that the accident took place due to the negligence on the part of the drivers of the both vehicles. Therefore, the liability has to be fixed equally against the drivers of both the vehicle and therefore, the appellant/second respondent and the 4th respondent/4th respondent are liable to pay the compensation equally.

13. In this case, there is no dispute in respect of the quantum of the amount awarded by the Tribunal. The first respondents/petitioners have not preferred any appeal as against the quantum of compensation. The appellant/ Insurance Company also is not disputing the quantum. Therefore, without altering the quantum, this Court is inclined to pass orders by fixing liability as against the appellant/second respondent and 4th respondent/4th respondent.



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14. In the result,

(i) C.M.A(MD) No.2044 of 2013 is partly allowed. The order passed by the Motor Accident Claims Tribunal, Additional District Judge, FTC No.-II, Tiruchirappallai, in M.C.O.P.No.2595 of 2003, dated 09.07.2008 is modified to the effect that the respondents 2 and 4 in the claim petition are directed to pay the award amount equally as awarded by the Tribunal along with interest. The fourth respondent is directed to deposit half of the award amount within a period of two months from the date of this order. The appellant/second respondent is at liberty to withdraw the remaining amount after deducting 50% of the amount.

(ii) C.M.A(MD) No.2045 of 2013 is partly allowed. The order passed by the Motor Accident Claims Tribunal, Additional District Judge, FTC No.-II, Tiruchirappallai, in M.C.O.P.No.2742 of 2002, dated 09.07.2008 is modified to the effect that the respondents 2 and 4 in the claim petition are directed to pay the award amount equally as awarded by the Tribunal along with interest. The fourth respondent is directed to deposit half of the award amount within a period of two months from the date of this order. The appellant/ second respondent is at liberty to withdraw the remaining amount after deducting 50% of the amount.



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(iii) C.M.A(MD) No.2046 of 2013 is partly allowed. The order passed by the Motor Accident Claims Tribunal, Additional District Judge, FTC No.- II, Tiruchirappallai, in M.C.O.P.No.2752 of 2002, dated 09.07.2008 is modified to the effect that the respondents 2 and 4 in the claim petition are directed to pay the award amount equally as awarded by the Tribunal along with interest. The fourth respondent is directed to deposit half of the award amount within a period of two months from the date of this order. The appellant/second respondent is at liberty to withdraw the remaining amount after deducting 50% of the amount. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

05.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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- To
1. The Motor Accidents Claims Tribunal,
Additional District Judge, FTC No.-II,
Tiruchirappallai.
 2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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