



C.M.A.(MD).Nos.1304 and 1305 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.12.2023

PRONOUNCED ON : 03.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)Nos.1304 and 1305 of 2016

C.M.A.(MD)No.1304 of 2016:-

The Divisional Manager,
The Royal Sundaram Alliance Insurance Co. Ltd.,
“Sundaram Towers”
45 & 46 Whites Road,
Chennai 600 014.

... Appellant

Vs.

1.K.Periyasamy
2.K.Yadav Kumar
3.P.Natarajan
4.The Divisional Manager,
Oriental Insurance Co. Ltd.,
73/B-1, Salai Road,
Lakshmi Complex,
Thillai Nager, Trichy.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated



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13.04.2016 made in M.C.O.P.No.507 of 2009 on the file of the Motor Accident Claims Tribunal (III Addl. Sub Judge), Trichy.

For Appellant	: Mr.S.Srinivasa Raghavan
For R4	: Mr.C.Karthick
For R1	: Mr.N.Sudhagar Nagaraj
For R2 & R3	: No Appearance

C.M.A.(MD)No.1305 of 2016:-

The Divisional Manager,
The Royal Sundaram Alliance Insurance Co. Ltd.,
“Sundaram Towers”
45 & 46 Whites Road,
Chennai 600 014. ... Appellant

Vs.

1.Ravichandran
2.K.Yadav Kumar
3.P.Natarajan
4.The Divisional Manager,
Oriental Insurance Co. Ltd.,
73/B-1, Salai Road,
Lakshmi Complex,
Thillai Nager, Trichy. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 13.04.2016 made in M.C.O.P.No.506 of 2009 on the file of the Motor Accident Claims Tribunal (III Addl. Sub Judge), Trichy.



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For Appellant	: Mr.S.Srinivasa Raghavan
For R4	: Mr.C.Karthick
For R1	: Mr.N.Sudhagar Nagaraj
For R2 & R3	: No Appearance

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals have been filed as against the common judgment and decree in M.C.O.P.Nos.506 and 507 of 2009 on the file of the Motor Accident Claims Tribunal (III Addl. Sub Judge), at Tiruchirappalli dated 13.04.2016. Challenging the award passed by the learned Tribunal, the appellant insurance company has filed these appeals.

3.The brief facts leading to filing of these Civil Miscellaneous Appeals are as follows:-

(i)On 12.01.2008, at about 04.15 a.m., the injured claimant in M.C.O.P.No.506 of 2009 was driving a lorry bearing Registration No.KL-01-C-7074. While the injured claimant was travelling in Trichy-Madurai National Highway 45 feet road near Aanaikkal, another lorry bearing registration No.TN-25-H-3499 which came in opposite direction, which was driven by its driver in a rash and negligent manner lost control over his vehicle and dashed against lorry bearing Registration No.KL-01-



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C-7074 driven by the injured claimant. As the result of which, the lorry driver who is claimant in M.C.O.P.No.506 of 2009 sustained multiple injuries. However, the opposite side driver and cleaner died on the spot in the said accident. A case was registered by Valanadu Police Station in Crime No.6 of 2008 under Sections 279, 338 and 304(A) of IPC against the injured lorry driver. The injured claimant in M.C.O.P.No.506 of 2009 sustained right pelvic bone fracture, right thigh bone compound fracture, right foot and ankle fracture with deep lacerated crush injury and angle peeled off, deep lacerated injury on his right elbow, right chest and also deep cut and lacerated injuries on his left hand and deep abrasions on his hip and skin avulsion with open wound and had tenderness and swelling over the left femur and he had deep abrasions over his right elbow and lacerated injury over the left foot and has severe head injuries and he has contusion on his chest, neck, hip and other multiple grievous injuries all over the body. Hence, the injured driver filed M.C.O.P.No.506 of 2009 claiming a compensation of Rs.4,00,000/-.

(ii) While the injured claimant in M.C.O.P.No.507 of 2009 was travelling in Trichy- Madurai National Highway 45 feet road near



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Aanaikkal, another lorry bearing registration No.TN-25-H-3499 which came in opposite direction was driven by its driver in a rash and negligent manner and had uncontrollable break neck speed. As a result of which, the said lorry driver lost control over his vehicle and dashed against the against the lorry bearing Registration No.KL-01-C-7074 which came in the opposite direction, driven by the injured claimant. The injured petitioner in M.C.O.P.No.507 of 2009 was travelling as a substitute driver in the lorry bearing registration No.KA-01-C-7074 and he sustained fracture on his chest ribs, deep cut injury on his center head, deep lacerated with cut injuries on his hip and lower back and cut injury on his left forearm and his left ear with abrasions and both legs were crushed. That apart he sustained contusion on his chest, neck, hip and other multiple grievous injuries all over the body. He filed M.C.O.P.No. 307 of 2009 claiming a compensation of Rs.1,00,000/-.

4.Refuting the allegations in the claim petition, the second respondent had filed a counter before the Tribunal and has sought for dismissal of the claim petitions.



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5.The learned Tribunal has framed three common issues in both claim petitions. The learned Tribunal had examined three witnesses as P.W.1, P.W.2, P.W.3 and Ex.P1 to Ex.P20 were marked on the side of the petitioners. Only one witness R.W.1 was examined and Ex.R1 and Ex.R2 were marked on the side of the respondents. After recording the evidence and hearing arguments on both the sides and scrutinizing both the oral and documentary evidence, the learned Tribunal held that the accident happened as the result of rash and negligent driving of the drivers of both the lorries. As the result of which, the learned Tribunal fixed equal liability attributing contributory negligence on both the drivers, thereby, making the respondents 2 and 4 insurance companies as equally liable to compensate the claimants in each of M.C.O.Ps respectfully.

6.In the instant case, the accident which happened on 12.01.2008 was because of collision of two lorries bearing registration Nos.KA-01-C-7074 and TN-25-H-3499 which were travelling in opposite direction in Trichy - Madurai National Highway 45 feet road near Aanaikkal. The lorry bearing registration No.KA-01-C-7074 was insured with the fourth respondent insurance company and lorry bearing registration No.TN-25-



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H-3499 was insured with the appellant insurance company. Though the injured claimants claimed that the accident happened only exclusively due to the rash and negligent driving of the deceased driver and the driver of the vehicle bearing registration No.TN-25-H-3499, the learned Tribunal has meticulously examined Ex.R1 rough sketch and Observation Mahazer and observed that the deceased driver who drove the lorry bearing registration No.TN-25-H-3499 came in a wrong direction and dashed against the lorry driven by the injured who was driving the lorry bearing registration No.KA-01-C-7074, which was insured with the fourth respondent insurance company. Despite the same, the concerned Jurisdictional police has registered a case as against the injured driver, who drove the lorry bearing registration No.KA-01-C-7074. However, neither the owner of lorry bearing registration No.KA-01-C-7074 nor the insurance company had opposed the same.

7.That apart the learned Tribunal has observed that for the purpose of deciding M.C.O.P. filed by the deceased who drove the vehicle bearing registration No.TN-25-H-3499, during mediation, it had been concluded that the accident happened due to the negligence of the driver



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of lorry bearing registration No.KA-01-C-7074. On the basis of which, the said deceased driver has been compensated. However, considering the factum that in mediation normally reliefs are granted without going into facts, circumstances and the merits of the case, the learned Tribunal had concluded that the liability cannot be fixed on the fourth respondent. Hence, the learned Tribunal had held that it is necessary to conclude that the accident had happened only due to the contributory negligence of both the drivers who drove the lorries respectively. Considering the fact that the third respondent had failed to take action against the FIR registered as against his driver and also the contradictions in the rough sketch Ex.R1 prepared by the police, the learned Tribunal had fixed the liability equally on both the drivers bearing registration Nos.KA-01-C-7074 and TN-25-H-3499 respectively. On the basis of various oral and documentary evidence, the learned Tribunal has awarded compensation in both the M.C.O.Ps., as under:-

S.No.	1	2
M.C.O.P.No.	506 of 2009	507 of 2009
Petitioner's name	Ravichandran	Periyasamy
Head	Compensation awarded	Compensation awarded
(i)Disability:	Rs.1,92,000/-	-



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(ii)Pain and suffering:	Rs.50,000/-	-
(iii)loss of income during treatment:	Rs.30,000/-	-
(iv)Medical Expenses:	Rs.3,59,765/-	Rs.150/-
(v)Extra Nourishment:	Rs.20,000/-	-
(vi)Transportation:	Rs.15,000/-	-
(vii)Attendant charges:	Rs.36,000/-	-
(viii)Loss of amenities:	Rs.1,00,000/-	-
(ix)Mental Agony:	Rs.25,000/-	-
(x)Disfiguration:	Rs.30,000/-	-
(xi)Loss for simple injury:	-	Rs.20,000/-
Total compensation awarded:	Rs.8,57,765/- with interest @ 7.5 % from the date of the claim until the realization and costs.	Rs.20,150/- with interest @ 7.5 % from the date of the claim until the realization and costs.
Compensation to be paid by the appellant	Rs.4,28,882/-	Rs.10,075/-
Compensation to be paid by the fourth respondent	Rs.4,28,882/-	Rs.10,075/-

8.Challenging the said award, the appellant/second respondent insurance company has filed these appeals. The learned counsel



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appearing for the appellant Mr.S.Srinivasa Raghavan categorically submitted that the learned Tribunal has ought to have apportioned the liability exclusively on driver of the third respondent's vehicle and ought not to have directed the appellant/second respondent to compensate the claimants in equal proportions since the negligence was only on the driver of the third respondent and not on the driver of the vehicle owned by the first respondent.

9.The learned counsel appearing for the appellant categorically submitted that FIR that was marked as Ex.P1 was laid only against the first respondent but the learned Tribunal has chosen to conclude that the accident had happened only due to the negligence on the side of both the drivers. Such a finding has to be set aside.

10.That apart the learned counsel appearing for the appellant categorically submitted that in another connected matter in the Workmen Compensation Act, the fourth respondent has agreed to settle entire amount and had also agreed that there is no liability on the part of the appellant and in the said circumstances, the learned Tribunal ought to



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followed the same and directed only the fourth respondent to compensate the claimants. The grant of loss of amenities Rs.1,00,000/-, Rs.25,000/- towards mental agony and Rs.30,000/- for disfiguration are excessive and untenable. Having granted Rs.50,000/- for pain and suffering, the Tribunal ought not to have granted another Rs.25,000/- toward mental agony and that Rs.30,000/- for disfiguration which is not impressive considering the nature of injuries sustained by the injured claimants. On that basis, the learned counsel appearing for the appellant insurance company called for setting aside the fair and decreetal order of M.C.O.P.Nos.506 and 507 of 2009 on the file of the Motor Accident Claims Tribunal at Tiruchirappalli.

11.The learned counsel for the fourth respondent Mr.C.Karthick vehemently submitted that the evidence of eye witness of the said accident deposed by P.W.1 and P.W.3 explaining the manner of the accident could itself facilitate in judging as to factum of negligence on the part of the drivers of both the vehicles involved.



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12.The learned counsel for the fourth respondent categorically submitted to consider the version of the claimants in both the claim petitions elaborating the rash and negligent driving of the driver who drove the vehicle bearing registration No.TN-25-H-3499 and as the result of which, the accident happened.

13.The learned counsel for the fourth respondent drew the attention of this Court as to the observation of the learned Tribunal that Crime No.6 of 2008 of Valanadu Police station was registered against the surviving lorry driver only because of the fact that the FIR cannot be registered against the deceased person thereby, implicating the driver who had driven the lorry bearing registration No.KA-01-C-7074. The Motor Vehicles Act, 1988 is a Welfare legislation and in complex case like the instant case, the learned Tribunal has rightly balanced with the facts and circumstances of the case and had fixed contributory negligence on both the drivers who drove the lorries bearing registration Nos.KA-01-C-7074 and TN-25-H-3499 respectively.



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14.In view of the same, the learned counsel for the fourth respondent pressed for dismissal of the appeals.

15.The learned counsel for the injured claimants, Mr.P.Prabhakaran sought for enhancement of compensation by applying the multiplier method.

16.Heard the learned counsel appearing for the appellant Mr.S.Srinivasa Raghavan, learned counsel appearing for the 1st respondent, Mr.P.Prabhakaran and learned counsel appearing for the 4th respondent Mr.C.Karthick and perused the materials available on record.

17.No doubt in the instance case, the accident had happened as the result of collision of two lorries bearing registration Nos.KA-01-C-7074 and TN-25-H-3499, which were travelling in Trichy main National Highway 45 feet road near Aanaikkal in opposite direction.

18.The case on hand is a complex case where after the accident both the driver and cleaner, in lorry bearing registration No.TN-25-



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H-3499 died at the spot of the accident. Obviously the surviving driver who drove the lorry bearing registration No. KA-01-C-7074 was implicated in Crime No.6 of 2008, which was registered in connection with the said accident. The Motor Vehicles Act, 1988 being a welfare legislation, the learned Tribunal had meticulously analyzed the facts and circumstances of the instant case and has critically arrived at a conclusion logically by fixing contributory negligence on drivers of both the vehicles equally.

19.I have no hesitation to concede to the observation made by the learned Tribunal that the factum of having awarded the deceased driver and the cleaner with the compensation need not result in fixing the complete negligence and liability on the fourth respondent singly. Though the learned counsel for the appellant categorically argued that the contradictions in the observation mahazer and rough sketch prepared by Valanadu police cannot be a token of evidence in arriving at a decision in fixing contributory negligence and liability on both the drivers equally, considering the factum that the learned Tribunal has dealt with the issue in hand equitably, I am not inclined to interfere with the



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decision of the learned Tribunal as far as fixing the contributory negligence on both the drivers are concerned.

20.It is pertinent to mention here that the compensation awarded to the deceased drivers and cleaner under the Workman Compensation Act in W.C.No.895 of 2008 before the learned Deputy Commissioner of Labour, Chennai was not on merits but in a compromise arrived at between the parties in the said case. However, taking note of the fact that the learned Tribunal ought not to have granted a sum of Rs.25,000/- for mental agony and having awarded a sum of Rs.50,000/- for pain and suffering, a compensation of Rs.25,000/- granted under mental agony is hereby set aside. That apart taking account of compensation of Rs. 1,00,000/- has been awarded under the head of loss of amenities, the compensation awarded by the learned Tribunal under the head disfigurement is very excessive and unnecessary. Hence, the total amount of Rs.55,000/- shall be reduced from the total compensation of Rs. 8,57,765/- in M.C.O.P.No.506 of 2009. Hence, the total compensation for the petitioner/injured/claimant in M.C.O.P.No.506 of 2009 would be reduced to Rs.8,02,765/-.



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appellant/insurance company and fourth respondent/insurance company are directed to deposit Rs.4,01,382/- each with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant in M.C.O.P.No.506 of 2009 is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. The appellant/insurance company and fourth respondent/insurance company are entitled to withdraw the excess amount, if any. The petitioner/claimant is not entitled for interest for the default period, if there is any.

22.In view of the same, C.M.A.(MD)No.1305 of 2016 is partly allowed and C.M.A.(MD)No.1304 of 2016 is dismissed. There shall be no order as to costs.

03.01.2023

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

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L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Motor Accident Claims Tribunal,
(III Additional Sub Judge), Tiruchirappalli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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