**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated: 10.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

**C.M.A.(MD)Nos.1319,1320 and 1321 of 2016**

**C.M.A.(MD)No.1319 of 2016**

The Branch Manager
National Insurance Company Ltd.,
5A, Sub Collector Office Road
Opposite to District Court Building,
Dindigul ..Appellant/Respondent No.2

.vs.

1. Muniasamy(Died) ..Respondent No.1/Petitioner
2..P.Balan ..Respondent No.2/Respondent No.1
3.K.Mariappan ..Respondent No.3/Respondent No.3
4. The Branch Manager
Royal Sundaram Alliance Insurance Co Ltd
Tirunelveli ..Respondent No.4/Respondent No.4
5.Saroja
6.Devi
7. Revathi
8.Kannan ..Respondents 5 to 8

**Prayer** : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decrettal order passed in MCOP No. 1443 of 2013 dated 08.01.2016 on the file of the Motor Accident Claims Tribunal /II Additional District Judge, Tirunelveli

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|---|---|
| For Appellants | : Mr.A.S.Mathialagan |
| For R2& R3 | : No appearance |
| For R4 | : Mr.Srinivasa Raghavan |
| For R5 to R8 | : Mr.R.Krishnan |

**C.M.A.(MD)No.1320 of 2016**

The Branch Manager
National Insurance Company Ltd.,
5A, Sub Collector Office Road
Opposite to District Court Building,
Dindigul ..Appellant/Respondent No.2

.vs.

1. Arumuga Perumal ..Respondent No.1/Petitioner
2..P.Balan ..Respondent No.2/Respondent No.1
3.K.Mariappan ..Respondent No.3/Respondent No.3
4. The Branch Manager
Royal Sundaram Alliance Insurance Co Ltd
Tirunelveli ..Respondent No.4/Respondent No.4

**Prayer** : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decrettal order passed in MCOP No. 1444 of 2013 dated 08.01.2016 on the file of the Motor Accident Claims Tribunal /II Additional District Judge, Tirunelveli

For Appellants : Mr.A.S.Mathialagan
For R1 : Mr.R.Krishnan
For R2& R3 : No appearance
For R4 : Mr.Srinivasa Raghavan

**C.M.A.(MD)No.1321 of 2016**

The Branch Manager
National Insurance Company Ltd.,
5A, Sub Collector Office Road
Opposite to District Court Building,
Dindigul ..Appellant/Respondent No.2

.vs.

1. Dhanalakshmi ..Respondent No.1/Petitioner No.1
2..Jeyalakshmi ..Respondent No.2/Petitioner No.2
3. Satees Kumar ..Respondent No.3/Petitioner No.3
4. P.Balan ..Respondent No.4/Respondent No.1
5. K.Mariappan ..Respondent No.6/Respondent No.4
6. The Branch Manager
Royal Sundaram Alliance Insurance Co Ltd
Tirunelveli ..Respondent No.5/Respondent No.3

**Prayer** : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decrettal order passed in MCOP No. 970 of 2013 dated 08.01.2016 on the file of the Motor Accident Claims Tribunal /II Additional District Judge, Tirunelveli

For Appellants : Mr.A.S.Mathialagan

For R1 to R3 : Mr.R.Krishnan

For R4 : Mr.Srinivasa Raghavan

For R4 and R5 : No appearance

**COMMON JUDGMENT**

These Civil Miscellaneous Appeals have been filed as against the common order passed in M.C.O.P.Nos. 970 of 2013,1143 of 2013 and 1444 of 2013 dated 08.01.2016 on the file of the Motor Accident Claims Tribunal/II Additional District Court, Tirunelveli, wherein, the claimants have filed these petitions for compensation as against the respondents 2 to 4 and the appellants herein.

2. The Tribunal has awarded a sum of Rs.4,60,000/- in M.C.O.P.No. 970 of 2013, Rs.3,26,191 in M.C.O.P.No.1443 of 2013 and in M.C.O.P.No.1444 of 2013 a sum of Rs.4,47,550/- towards compensation. As against the award passed by the Tribunal the present appeals have been preferred by the appellant/second respondent Insurance company.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

**4. The brief facts of the petition averments in M.C.O.P No.970 of 2013 are as follows:**

On 29.04.2012 early morning at about 4.00 clock when the deceased Narayanasamy was proceeding in a TATA Ace bearing Reg.No. TN 69 4404 as load man near Verupachi to Ottanchathiram road, at that time a lorry bearing Reg. No. TN 31 4509 came in a rash and negligent manner and dashed against the TATA Ace van, thereby Narayanasamy who travelled as a load main in the said vehicle died on the spot and others also sustained injuries. The accident occurred due to the rash and negligent driving of the lorry driver and the police have registered a case as against the TATA Ace driver. The first respondent lorry was insured with second respondent/Insurance company and the third respondent vehicle i.e., Tata Ace was insured with the fourth respondent/Insurance Company . The deceased was aged about 39 years on the date of occurrence and he was working as load man and earning a sum of Rs.10,000/- per month. Therefore the petitioner's claim a sum of Rs.9,00,000/- towards compensation.

5**. The brief facts of the petition averments in M.C.O.P No. 1443 of 2013 are as follows:**

On 29.04.2012 early morning at about 4.00 a.m., when the injured Muniyasamy was proceeding in a TATA Ace bearing Reg.No. TN 69 AZ 4404 as load man near K Verupachi to Ottanchathiram road, at that time a lorry bearing Reg. No. TN 31 4509 came in a rash and negligent manner and dashed against the TATA Ace van, thereby Muniyasamy who travelled as a load main in the said vehicle sustained injuries. The accident occurred due to the rash and negligent driving of the lorry driver and the police have registered a case as against the TATA Ace driver. The first respondent lorry was insured with third respondent/Insurance company and the second respondent vehicle i.e., Tata Ace was insured with the fourth respondent/Insurance Company . The injured was aged about 50 years on the date of occurrence and he was working as load man and earning a sum of Rs.10,000/- per month. The petitioner incurred a sum of Rs.40,000/- towards medical expenses and Rs.20,000/- towards transport charges. Therefore the petitioner claims a sum of Rs.6,00,000/- towards compensation.

**6. The brief facts of the petition averments in M.C.O.P No. 1444 of 2013 are as follows:**

On 29.04.2012 early morning at about 4.00 a.m., when the injured Arumugaperunal was proceeding in a TATA Ace bearing Reg.No. TN 69 AZ 4404 as load man near K Verupachi to Ottanchathiram road, at that time a lorry bearing Reg. No. TN 31 4509 came in a rash and negligent manner and dashed against the TATA Ace van, thereby Arumugaperumal who travelled as a load main in the said vehicle sustained injuries. The accident occurred due to the rash and negligent driving of the lorry driver and the police have registered a case as against the TATA Ace driver. The first respondent lorry was insured third respondent/Insurance company and the second respondent vehicle i.e., Tata Ace was insured with the fourth respondent/Insurance Company . The injured was aged about 50 years on the date of occurrence and he was working as load man and earning a sum of Rs.10,000/- per month. The petitioner incured a sum of Rs.2,90,000/- towards medical expenses and Rs.20,000/- towards transport charges. Therefore the petitioner claims a sum of Rs.10,00,000/- towards compensation.

7.**The brief averments of the counter filed by the second respondent/National Insurance company in all the cases are as follows:**

The claims petitions are not maintainable either in law or on facts. The accident occurred only due to the negligence on the part of the driver of the car and the First Information Report also registered as against the driver of the car, therefore this respondent/Insurance company being a insurer of the lorry is not liable to pay any compensation to the petitioners.

8**. The brief averments of the counter filed by the fourth respondent/Royal Sundaram Insurance Company in all the petitions are as follows:**

The petitions are not maintainable either in law of facts. The Tata ace vehicle is a load auto goods vehicle and the seating capacity is two in all but more than five persons travelled in the load auto vehicle and thereby the petitioners travelled goods vehicle as gratuitous passengers. The petitioners have not travelled as load man in the said van. The accident was not occurred due to negligence on the part of the driver of the Tata Ace vehicle and there is no permanent disability to the petitioners. The claim of the petitioners are too high, hence the petitions are liable to be dismissed.

9. Before the Tribunal all the petitions have been heard together and joint trial was conducted and then common order was passed. In order to prove the case of the petitioners, before the Tribunal the petitioners have examined P.W.1 to P.W.5 and marked exhibits Exs.P.1 to Ex.P.16 and on the side of the respondent they have examined R.W.1 to R.W.3 and also marked Exhibits Ex.R.1 and R.2.

10. After hearing both sides and evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.3,68,000/- in MCOP No.970 of 2013, Rs.3,21,191 in MCOP NO.1443 of 2013 and in MCOP No.1443 of 2013 a sum of Rs.4,47,550/- by fixing liability of 50% each as against both the insurance company of the vehicles.

11. As against the award passed by the Tribunal the Insurance company/second respondent in MCOP Nos.970,1443 and 1444 of 2013 has preferred these present appeals on various grounds.

12. The learned counsel appearing for the appellants in all petitions would submit that the accident took place due to rash and negligent on the part of the driver of the van and the First Information Report is also registered as

against him. This appellant has examined the driver of the lorry as R.W.1 and he categorically deposed about the manner of accident and negligence on the part of the van driver, inspite of that the Tribunal has fixed liability 50% as against these appellants and 50% as against the Insurance Company of the Tata ace vehicle. Further the Tribunal has erroneously applied the multiplier method where there is no any functional disability to the petitioners. Therefore the award passed by the Tribunal is too high and it is liable to be set aside.

13. The learned counsel appearing for the claimants would contend that the accident took place due to rash and negligence on the part of the driver of both the vehicles and thereby the Tribunal after taking into consideration all the evidences adduced before it has correctly fixed the liability. Further the Tribunal after considering the nature of injuries adopted multiplier method and thereby these appeals are liable to be dismissed.

14. The learned counsel appearing for the fourth respondent/Insurance company would contend that the accident took place due to rash and negligent of both the vehicles. Though the First Information Report has been registered as against the driver of the van the driver of the lorry could have avoided the accident if the driver of the lorry drove the vehicle in a cautious manner. The Tribunal has fastened 50% liability as against the van

driver and 50% as against the lorry driver. Therefore the order passed by the Tribunal is correct and the present appeals are liable to be dismissed.

15. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in these appeals are :

i)whether the appeal in CMA(MD) No. 1319 of 2016 is liable to be allowed or not?

ii)i)whether the appeal in CMA(MD) No. 1320 of 2016 is liable to be allowed or not?

iii)i)whether the appeal in CMA(MD) No. 1321 of 2016 is liable to be allowed or not?

16. In this case it is admitted that both the vehicles involved in the accident and due to that accident one person sustained died and some other persons sustained injuries. According to the first respondent/petitioners the occurrence took place due to the rash and negligence on the part of the drivers of the lorry as well as van but the First Information Report has been registered as against the driver of the van. All the respondents are responsible for compensation to the petitioners.

17. Inorder to prove the negligence the first respondents/petitioners have examined the claimants and they deposed that the accident took place due to negligence on the part of both the vehicles. Further R.W.1 was also examined on the side of the appellant and he deposed that the accident took place due to negligence on the part of the van driver and not on the fault of the lorry driver. Though the First Information Report has been registered as against the driver of the van, the Tribunal has looked into the facts and circumstances and based on the available evidence fixed the negligence as 50% as against the lorry driver and 50% as against the van driver. In this context the Tribunal has relied on Ex.P.2/Motor Vehicle Report of the lorry and further Ex.P.3/ Motor Vehicle report of the Tata ace and also after analysing the Motor Vehicle Inspector Report and after analysing the evidence of P.W.2 and P.W.3 the Tribunal has fixed liability on both the vehicles. Both the vehicles were also damaged. Even assuming that the Tata Ace vehicle was driven by its driver in a rash and negligent manner the driver of the lorry would have avoided the accident if he had driven the vehicle in a cautious manner. But unfortunately both the vehicles dashed against each others and caused injuries to the claimants. Therefore, the Tribunal has fixed liability on both the vehicles equally.

18.This Court also after taking into consideration of all the available evidences fixed the liability as against the drivers of both the vehicles. Therefore the order of the Tribunal in respect of fixing liability is correct and the same is confirmed.

19. As far as quantum is concerned the petitioner in MCOP No.1443 of 2013 sustained grievous injuries and his permanent disability is only 30% but the Tribunal relying upon the judgment of the Hon'ble Supreme Court in adopted multiplier method. To adopt multiplier method there should be total permanent disability or functional disability. In this case there is no functional disability, thereby it is not appropriate to adopt multiplier method,thereby the award passed by the Tribunal is liable to be modified. Considering the nature of injures this Court has taken a sum of Rs.3000/- for 1% disability, hence this petitioner is entitled for a sum of Rs.90,000/- towards permanent disability. Further the petitioner has produced medical bills for a sum of Rs.17,191/-, thereby he is entitled for Rs.17,191/- towards medical bills. The Tribunal in other heads has awarded a sum of Rs. 20,000/- towards extra nourishment, Rs.20,000/- towards loss of comfort, Rs.25,000/- towards loss of future comfort, Rs.20,000/- towards loss of amenities an also awarded a sum of Rs.10,000/- towards pain and sufferings.

20.Considering the nature of injuries sustained by the injured petitioner, the petitioner is entitled to compensation as follows:

| | | |
|---|---|---|
| 1. | 30% permanent disabilty | Rs.90,000/- |
| 2. | Transport Expenses | Rs.20,000/- |
| 3. | Extra Nourishment | Rs.20,000/- |
| 4. | Loss of amenities | Rs.20,000/- |
| 5. | Pain and sufferings | Rs.50,000/- |
| 6. | Medical Expenses | Rs.17,191/- |
| | **Total** | **Rs.2,17,191/-** |

21. Hence the petitioner is entitled in total a sum of Rs.2,17,191/- rounded to Rs.2,20,000/- towards compensation.

22. As far as quantum in respect of the petitioner in M.C.O.P No. 1444 of 2013 is concerned he sustained grievous injuries and his permanent disability is 40%. But the Tribunal relying upon the judgment of the Hon'ble Supreme Court adopted multiplier method. To adopt multiplier method there should be total permanent disability or functional disability. In this case there is no functional disability thereby it is not appropriate to adopt multiplier method,thereby the award passed by the Tribunal is liable to be modified. Considering the nature of injuries, this Court has taken a sum of Rs.3000/- for 1% disability, hence this petitioner is entitled for a sum of Rs.1,20,000/- towards permanent disability. Further the petitioner has produced medical bills

for a sum of Rs.60,550/-, thereby he is entitled for Rs.60,550/- towards medical bills. The Tribunal in other heads has awarded a sum of Rs.20,000/- towards extra nourishment, towards loss of future comfort Rs.25,000/- towards amenities Rs.20,000/-towards pain and suffering Rs.10,000/-,in total awarded a sum of Rs.4,47,500/-.

23. Considering the nature of injuries sustained by the injured petitioner, this Court is inclined to modify the compensation and hence the petitioner in MCOP No.1444 of 2013 is entitled to compensation as follows:

| | | |
|---|---|---|
| 1. | 40% permanent disability | Rs.1,20,000/- |
| 2. | Transport Expenses | Rs.20,000/- |
| 3. | Extra Nourishment | Rs.20,000/- |
| 4. | Loss of amenities | Rs.20,000/- |
| 5. | Pain and sufferings | Rs.50,000/- |
| 6. | Medical Expenses | Rs.60,550/- |
| | **Total** | **Rs.2,90,550/-** |

24. Hence the petitioner is entitled in total a sum of Rs.2,90,550/- rounded to Rs.3,00,000/- towards compensation.

25. As far as M.C.O.P.No.970 of 2013 is concerned the income of the deceased is fixed as Rs.5000/- per month. Considering the age of the deceased multiplier of 9 was adopted. Since the age of the deceased was 60 years and thereby awarded a sum of Rs.3,60,000/- towards compensation and also awarded a sum of Rs.40,000/- towards loss of consortium and also Rs. 25,000/- each towards loss of love and affection and also awarded Rs.5,000/- towards funeral expenses and Rs.5000/- towards loss of estate in total a sum of Rs.4,60,000/- towards compensation.

26. The Tribunal has correctly fixed the monthly income of the deceased as Rs.5000/- per month and also adopted multiplier of 9, since the deceased was aged about 60 years the Tribunal awarded just compensation under the head of loss of income. Further the Tribunal has awarded a sum of Rs.25,000/- towards love and affection and also awarded a sum of Rs.5000/- towards funeral expenses and also awarded a sum of Rs.5000/- towards loss of estate. As per the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 ACJ 2700, Tribunal can award a sum of Rs. 40,000/- towards consortium and Rs.15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses and also 10 % has to be increased once in three years, thereby the appellants/petitioners are entitled for a sum of Rs.

48,000/- towards consortium, Rs.18,000/- towards funeral expenses, Rs.18,000/- towards loss of estate, in total the petitioners are entitled for a sum of Rs.4,44,000/- (Rs.3,60,000+ Rs.48,000/- +Rs.18,000/- +18,000/-+ Rs.4,44,000/-) rounded to Rs.4,50,000/-

27. In the result:

a) The C.M.A(MD) No. 1319 of 2016 is partly allowed and the award passed by the Tribunal is modified to the effect that the petitioner is entitled for a sum of Rs. 2,20,000/-with interest @ 7.5% per annum.

b) The C.M.A(MD) No.1320 of 2016 is partly allowed and the award passed by the Tribunal is modified to the effect that the petitioner is entitled for a sum of Rs. 3,00,000/-with interest @ 7.5% per annum.

c) The C.M.A(MD) No. 1321 of 2016 is partly allowed and the award passed by the Tribunal is modified to the effect that the first petitioner is entitled to 50% of the award amount and the second and third petitioners are entitled to 25% each of the award amount with interest @7.5% per annum.

28. The Insurance companies are directed to pay the said amount equally within a period of two months from the date of this judgment. On

deposit being made, the petitioners are entitled to withdraw the amount by filing appropriate application.

**10.01.2024**

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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**To:**

1. The Motor Accident Claims Tribunal /
II Additional District Judge, Tirunelveli .

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

**P. DHANABAL,J.**

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C.M.A.(MD)Nos.1319,1320 and 1321 of 2016

10.01.2024