



C.M.A.(MD) Nos.500 & 501 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.500 & 501 of 2018

and

C.M.P.(MD)Nos.5951 & 5952 of 2018

In C.M.A(MD)No.500 of 2018:

The United India Insurance Company Limited,
Represented by its Branch Manager.

... Appellant

Vs.

1.Kaspar,
2.Arumugam.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.09.2017 passed in M.C.O.P.No.110 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.

For Appellant : Mr.J.S.Murali

For Respondents :
for R1 : Mr.N.Madhavagovindan
R2 : No appearance



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In C.M.A.(MD)No.501 of 2018:

The United India Insurance Company Limited,
Represented by its Branch Manager.

... Appellant

Vs.

1.Vanakka Mary,
2.Arumugam.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.09.2017 passed in M.C.O.P.No.111 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.

For Appellant : Mr.J.S.Murali

For Respondents :
for R1 : Mr.N.Madhavagovindan
R2 : No appearance

COMMON JUDGMENT

The first respondents in both the appeals were injured in the same accident and had filed claim petitions, which were tried together and a common award was passed by the Tribunal and hence, these appeals are taken up together.

2. The first respondents in both the appeals are husband and wife, respectively. They had filed claim petitions that while they were travelling in a TATA Magic vehicle on 04.05.2015 at 4.00 p.m., a Tipper Lorry



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bearing registration No.TN-40-E-2820 came in a rash and negligent manner and caused a collision, as a result of which, they sustained grievous injuries; and that while they were taken to the hospital in an ambulance bearing registration No.TN-20-G-1155, a private bus, bearing registration No.TN-63-AA-5777, insured with the appellant, came in the wrong direction and caused another collision, as a result of which, they sustained further injuries.

3. It appears that the claimants had filed separate claim petitions against the owner of the Tipper lorry and the insurer, namely, National Insurance Company, for the injuries sustained by both of them in the first accident and against the private bus and the insurer, namely, the appellant, for the injuries sustained by both of them in the second accident. The Tribunal had tried all the claim petitions together (4 in number) and passed a common award, by which, 50% liability was fastened on the appellant, who is the insurer of the vehicle, which caused the second accident and 50% liability on the National Insurance Company, which was the insurer of the vehicle, which caused the first accident.

4. The instant appeals have been filed challenging the fixation of



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50% liability on the private bus, which is insured with the appellant.

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5. The learned counsel for the appellant/Insurance Company submitted that the claimants ought not to have filed two different claim petitions; that unless both the offending vehicles were impleaded in a single petition, there was a possibility of conflict of judgment and that a consolidated approach would not have been possible and hence, the claim petitions ought not to have been entertained by the Tribunal.

6. The learned counsel further submitted that the quantum of compensation awarded by the Tribunal is excessive.

7. The learned counsel for the claimants/first respondent in both the appeals, per contra, submitted that though separate claim petitions were filed against two vehicles and the respective insurance companies, all the claim petitions were tried together and therefore, no prejudice was caused to the appellant; and that considering the nature of the injuries, the award of the Tribunal is just and reasonable.

8. Though notice to the owner of the vehicle/second respondent in both appeals was served, none has entered appearance.



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9. The points for consideration in the instant appeals are as follows:

'a. Whether the Tribunal was right in fixing 50% liability on the appellant to pay compensation for the injuries suffered by the first respondent in both appeals?

b. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?'

10. As regards the first question, it is seen that admittedly, the first respondent in both the appeals had sustained injuries in two accidents on the same day. As regards the first accident, they had filed M.C.O.P.Nos. 108 and 109 of 2015, respectively, arraying the owner of the offending vehicle, namely, Tipper lorry and insurance company as the respondents. As regards the second accident, they had filed separate claim petitions in M.C.O.P.Nos.110 and 111 of 2015, respectively, which are the subject matter of the instant appeals, arraying the owner of the offending vehicle, namely, private bus and the appellant/Insurance Company as the respondents. Though the learned counsel for the appellant is right in submitting that the claimants ought to have filed a consolidated claim petition arraying the owner of the both offending vehicles and their respective insurance companies as respondents to enable the Tribunal to



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apportion the liability, this Court is of the view that since the Tribunal has decided all the claim petitions together, no prejudice has been caused to the appellant in this regard.

11. Admittedly, both the claimants had sustained injuries due to the first accident and also the second accident. However, it is impossible for the Doctors or even for the claimants to state as to which of the injuries, they had sustained in the first accident and which injuries they had sustained in the second accident. In such circumstances, this Court is of the view that the finding of the Tribunal holding that the vehicle involved in the first accident is liable to pay 50% of the compensation and the appellant, who is the insurer of the vehicle involved in the second accident, is liable to pay 50% of the compensation is in accordance with law and hence, need not be interfered with. Therefore, the first question is answered accordingly.

12. As regards the quantum of compensation, this Court is of the view that the first respondent in C.M.A.(MD)No.500 of 2018 (Claimant in M.C.O.P.No.110 of 2015) had established that he had suffered grievous injuries, including rib fracture, hemorrhage, cerebral Edema and fracture



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in the spinal cord. He had produced the bills to show that he had spent Rs.2,77,360/- towards medical expenses. The Tribunal has, thus, held that he is entitled to a total compensation of Rs.3,79,860/- including the compensation under other conventional heads, out of which, the appellant is liable to pay 50%. Hence, this Court is of the view that there is no infirmity in the quantum of compensation awarded by the Tribunal and the same is liable to be confirmed.

13. As regards the first respondent in C.M.A.(MD)No.501 of 2018 (Claimant in M.C.O.P.No.111 of 2015) had established that she had suffered cerebral oedema, left fronto temporal contusion and right distal radius fracture and she had spent nearly Rs.2,72,010/- towards medical expenses. By including the compensation under the other conventional heads, the Tribunal had awarded Rs.4,09,510/-, out of which, 50% had to be paid by the appellant. Hence, there is no infirmity in the said quantum of compensation awarded by the Tribunal.

14. The appellant as stated earlier that it would be liable to 50% of the compensation amount, that is, Rs.1,89,930/- for the first respondent in C.M.A.(MD)No.500 of 2018 and Rs.2,04,755/- for the first respondent in



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C.M.A.(MD)No.501 of 2018, with interest at a rate of 7.5% p.a.

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15. In view of the above, the appellant/Insurance Company shall deposit the aforesaid compensation with the interest @ 7.5% p.a., from the date of the claim petition till the date of realization (excluding the period of dismissal for default, if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

16. On such deposit, the first respondent in both appeals/claimants are entitled to withdraw the aforesaid amount and costs, less the amount already withdrawn, if any, by filing appropriate applications before the Tribunal. The first respondent in both appeals/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

In the result, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd



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To:

1.Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court, Sivagangai.

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



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SUNDER MOHAN, J.

apd

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