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C.M.A.No.835 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 20.03.2023

JUDGMENT DELIVERED ON: 15.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.835 of 2020

The Divisional Manager,
M/s. National Insurance Company Ltd.,
Vellore.

...Appellant

Vs.

1. Ramu
2. Sivakumar
3. Ganapathy

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Decree and Judgment dated 19th September, 2018, passed in M.C.O.P. No.389 of 2015 by the Hon'ble Motor Accidents Claims Tribunal, (Special Sub. Court), at Tirupattur.

For Appellant : Mr.J. Michael Visuvasam

For Respondents : No appearance



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JUDGMENT

The appeal is filed by the Insurance Company challenging both negligence as well as quantum of compensation awarded by the Claims Tribunal.

2. The parties are herein referred to, as they are ranked before the Tribunal.

3. The brief facts necessary for the purpose of deciding the case are as follows:

On 17.11.2015, while the claimant was traveling in a Auto rickshaw, a JCB vehicle driven by its driver in a rash and negligent manner, came from the Western side of the main road and dashed against the Auto. Due to the impact, the claimant sustained grievous injuries.

4. According to the claimant, the accident occurred due to rash and negligent driving of the driver of both the vehicles. According to the claimant, being a Coconut peeler and Cattle seller, he was earning Rs.15,000/- per month, out of the aforesaid business and was maintaining his



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family. The claimant therefore filed the claim petition claiming a sum of Rs.5 lakhs as compensation for the injuries sustained by him in the accident.

5. The first respondent, owner of the JCB vehicle remained ex-parte and the second respondent, owner of the Auto also remained ex-parte before the Tribunal. The third respondent, insurer of the Autorickshaw contested the claim petition by filing a detailed counter affidavit disputing the negligence, liability and quantum of compensation.

6. According to the Insurance company, the accident had occurred only due to the negligence on the part of the driver of the JCB vehicle and therefore the Insurance company was not liable to compensate the claimant.

7. Before the Claims Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.11. The disability certificate was marked as Ex.P.12. by the Court Suo Motu. On the side of the third respondent, R.W.1 and R.W.2 were examined and R.1 to R.6 were marked.



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8. The Claims Tribunal, on an assessment of entire evidence on record, rendered the finding of negligence against the driver of the JCB vehicle. The Claims Tribunal, inspite of such finding on negligence, mulcted the liability on the appellant Insurance company, on the ground that the insurance policy covered passengers in the Auto. On the quantum of compensation, the Claims Tribunal adopted multiplier method and awarded compensation of Rs.12,79,600/- together with 7.5% interest from the date of claim petition till the date of deposit.

9. Aggrieved by the impugned award of the Claims Tribunal, the Insurance company has filed the above appeal.

10. The learned counsel for the appellant/Insurance Company submitted that the Claims Tribunal grossly erred in mulcting the liability on the Insurance company, inspite of its finding on negligence. The learned counsel submitted that, in the absence of proof of negligence of the driver of the autorickshaw, the liability could not be mulcted on the appellant Insurance company which is the insurer of the Auto in which the claimant was travelling as a passenger. On the issue of quantum, the learned counsel



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submitted that the adoption of multiplier method by the claims tribunal was not sustainable, as the injuries sustained by the claimant were not such as to attract the adoption of the multiplier method.

11. The second respondent did not contest the claim petition and the notice sent in this appeal to the second respondent was received by the wife of the second respondent and in the appeal also, the second respondent did not appear either in person or through counsel

12. I have heard the learned counsel for the appellant/Insurance Company and have perused the materials placed on record.

13. It is seen that the claimant was travelling in a Autorickshaw as a passenger and at that time, a JCB vehicle belonging to the second respondent and driven by its driver in a rash and negligent manner, dashed against the Auto, causing grievous injuries to the claimant. In the claim petition, the claimant pleaded that the negligence of the drivers of both the vehicles, had resulted in the accident, but in the cross-examination, P.W.1. has categorically stated as follows:



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"என் மீது மோதிய ஜேசிபி எனக்கு எதிரே வந்து என்னை மோதிவிட்டது. பெரியமேட்டுரிலிருந்து பிரதான சாலைக்கு வந்து என் மீது மோதிவிட்டது. ஜேசிபி தான் எந்த சிக்னலும் கொடுக்காமல் வந்து என் மீது வந்து மோதிவிட்டது என்றால் சரிதான். ஆட்டோ ஓட்டுநர் கவனமாகத்தான் ஓட்டிச் சென்றார் என்றால் சரிதான். விபத்து ஜேசிபி ஓட்டுநரின் ஆஜாக்கிரதையால் ஏற்பட்டதாக ஜோலார்பேட்டை காவல் நிலையத்தில் வழக்கு பதியப்பட்டுள்ளது என்றால் சரிதான்."

14. From the above evidence of P.W.1, it is clear that the accident had occurred only due to the negligence of the driver of the JCB vehicle. It is also pertinent to note that the claimant, for the reasons best known to him, had not impleaded the insurer of the JCB vehicle. Apart from the evidence of P.W.1, the FIR filed by one of the passengers of the Auto also clearly establishes that the accident occurred only due to the negligence of the JCB driver. The third respondent marked Ex.R.1 to Ex.R.4, which shows that the charge sheet was issued against the JCB driver who admitted the offence and paid fine in STC 517/2022.

15. It is further pertinent to note that the third respondent examined the driver of the Auto as R.W.2., who though admitted that he drove the auto



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speedily nevertheless, stated that it was the JCB driver's rash and negligent driving that caused the accident. In the light of the admission of P.W.1, the evidence of R.W.1 and in the absence of examination of the JCB driver as a witness, I hold that the negligence of the driver of the JCB caused the accident. Therefore, the finding of the Claims Tribunal on negligence is confirmed.

16. The next issue that arises for consideration is as to whether the appellant/Insurance Company could be mulcted with the liability for the negligence of the driver of the second respondent (JCB vehicle)

17. The claim petition is filed under Section 166 of the Motor Vehicles Act, which is fault liability. In the absence of proof of tortious act by the driver of the auto, the owner/insured cannot be held vicariously liable.

18. I find that the reasoning of the Claims Tribunal for mulcting the liability on the Insurance Company, is totally perverse. Just because the JCB was not insured, the liability could not be mulcted on the appellant/Insurance company, that too, without a finding of negligence against the auto driver.



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Therefore, the finding of the Claims Tribunal on the issue of liability is set aside.

19. As this Court has held in favour of the appellant/Insurance company on the issue of negligence and liability, the quantum of compensation awarded by the Claims Tribunal is not interfered with.

20. In the result, the appeal is allowed. The appellant/Insurance Company is exonerated of the liability and the second respondent alone is liable to pay the compensation of Rs.12,79,600, along with 7.5% interest from the date of petition till the date of deposit to the first respondent. There shall be no order as to costs.

15.06.2023

dsn

Speaking Order: Yes/No

Neutral Citation: Yes/No

Index: Yes/No



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To
1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Tirupattur.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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N.MALA.J.,

dsn

Pre-delivery Judgment in C.M.A.No.835 of 2020

Judgment Delivered on
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