



C.M.A.No.4013 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4013 of 2019

and

CMP.No.22668 of 2019

The National Insurance Company Ltd.,
Branch Office-II,
Mettur Road,
Palaniyappa Complex, Erode.

... Appellant

..Vs..

1.Shankar
2.V.Vetrivel
3. The Managing Director,
Tamilnadu State Transport
Corporation Ltd.,
Periyamilguparai, Trichy.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 01.10.2015 made in MCOP.No.158 of 2005 on the file of the Motor Accidents Claims Tribunal (Sub-Court) Dharmapuri.

For Appellant
For Respondents

: Mr.D.Bhaskaran
: Mr.M.Murali Vinodh for R3
No appearance for R1 & R2



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JUDGMENT

This appeal has been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 01.10.2015 in M.C.O.P.No.158 of 2005 passed by the Motor Accidents Claims Tribunal, (Sub-Court) Dharmapuri.

2. The facts of the case briefly are as under:

On 26.12.2003 at about 3.45 p.m., when the first respondent/claimant boarded in the TNSSTC Bus bearing Regn.No.TN-45-N-1766 belonging to the 3rd respondent, at Trichy, proceeding towards Thirupuraithurai Sivan Temple, to Karur High way near Jeeyapuram Jeeyar Mandapam, a milk van bearing Regn.No.TN-23-AB-1248 belonging to the first respondent and insured with the 2nd respondent, came in the opposite direction. Due to rash and negligent driving of both the drivers of the bus and the milk van, there was an head on collision between both the vehicles, resulting in heavy damages to both the vehicles at their front portion. The claimant who seated behind the driver seat of the bus, sustained multiple



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grievous injuries, admitted at Government Head Quarters Trichy as in-patient and then he has taken treatment at Bone setting Hospital, Nallampatty. Thereafter, the claimant seeks compensation of Rs.5,00,000/- before the Tribunal. After trial, the claimant was awarded a sum of Rs.2,04,000/- as compensation, fixing entire negligence on the appellant/Insurance Company and thus directing the appellant/Insurance company and 2nd respondent jointly and severally to deposit a sum of Rs.2,04,000/- to the claimant as compensation. Being aggrieved over the aforesaid award, the appellant/Insurance Company has filed the present appeal.

3. The learned counsel for the appellant would submit that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case. It has wrongly erred in coming to the conclusion on the basis of FIR. It failed to consider the fact that two vehicles had head on collision and the manner of accident. It has also failed to note that the driver of Corporation of the Bus has not come into witness box to adduce evidence on negligence aspect. It failed to note that the claimant clearly deposed



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evidence that the drivers of both the vehicle was equally responsible for the accident. It has failed to see that in the absence of rebuttal evidence ought to have held that the driver of both vehicles were equally responsible and apportioned the liability equally. He further submitted that in the said accident, number of claims arisen in which the Tribunal fixed negligence in the ratio of 50% : 50% on the Transport Corporation and the Insurance Company respectively. Whereas only in the instant case, the entire negligence has been fixed on the appellant/Insurance Company instead of fixing liability at 50%. Considering the fact that two vehicles were involved in an opposite directions and head on collision, evidence of claimant, manner of accident and awards made in connected cases on negligence, the Tribunal ought to have held that the Insurance Company is liable to pay only 50% and the Transport Corporation is liable to pay 50%. It failed to note that PW2 doctor has issued certificate without conducting necessary examination and without reflecting the correct position and the same is unsustainable in view of Judgment reported in 1999 (8) Supreme 401. It has erred in granting Rs.1,60,000/- towards disability. It failed to note that no material was placed to prove that the claimant had taken treatment after



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initial course of treatment. It failed to consider the period of accident and erred in granting Rs.4000/- per 1% disability. The appellant/Insurance Company is not entirely liable to pay compensation. Hence, he prays to allow the appeal.

4. The learned counsel for the third respondent has submitted that the driver of the bus has driven the vehicle in a slow and cautious manner and he is not responsible for the accident. Hence the third respondent Transport Corporation is not liable to pay any compensation to the claimant/first respondent. Hence, he seeks dismissal of the appeal.

5. Heard the learned counsel for the appellant and the learned counsel for the third respondent and perused the entire materials on record.

6. During the trial, on the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and eight documents were marked as Ex.P.1 to Ex.P.8. On the side of the respondents, neither witness was examined nor document was marked.



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7. On perusal of the award, it is seen that the Tribunal has fixed the liability on the appellant/Insurance Company and the second respondent to pay the compensation to the claimant. The second respondent remained exparte before the Tribunal. It is to be noted that the milk van bearing Regn.No.TN-23-AB-1248 was not insured with the appellant at the time of accident. The driver of the van had no driving license to drive the same at that time of the alleged accident. Hence the said van was not used in accordance with the provisions of Motor Vehicles Act. The appellant is not liable to indemnify the owner of the said van for the violation of the statutory provisions which attracts breach of the terms of the policy. The claimant has to prove the allegation regarding the injuries, period of treatment and the expenditures. The claimant is not permanently disabled he is attending his duties regularly.

8. On perusal of records it is seen that the Tribunal has fixed the entire liability on the Insurance Company and it has directed the appellant/Insurance company to pay the compensation to claimants a sum of



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Rs. 2,04,000/- with interest and costs.

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9. When the PW1/claimant has clearly deposed that the driver of both the vehicle were equally responsible for the accident, it is wrong to held that only the driver of the van alone responsible for the accident and fixing entire liability on him. In the event of both the parties are liable for the accident, the ratio of contributory negligence has to be fixed in accordance with the law.

10. The relevant portion of the deposition of PW1 is extracted as follows:

கடந்த 26.12.2003 அன்று திருப்புனிதனார் சிவன் கோயிலுக்கு செல்ல மனுதாரர் 3ம் எதிர்மனுதாரர் அரசு பேருந்து டி.என்.25 என்.1766 என்ற பேருந்தில் பயணித்து திருச்சி-கரூர் தேசிய நெடுஞ்சாலை ஜீயபுரம் ஜீயர் மண்டபம் அருகே மாலை 3.45 மணிக்கு சென்று கொண்டிருந்தபோது எதிரில் வந்த பால் வண்டி டி.என்.23 எபி.1248 வண்டியை அதன் ஓட்டுனர் மற்றும் அரசு பேருந்தின் கவனக் குறைவு மற்றும் இரு ஓட்டுநர்களும்



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பேருந்தையும் வேளையும் அதிவேகமாகவும்
அஜாக்கிரதையாகவும் ஓட்டி வந்து நேருக்கு நேர் மோதி
விபத்து ஏற்பட்டு அதனால் மனுதாரருக்கு தலை மார்பு மற்றும்
உடல் முழுவதும் காயம் ஏற்பட்டு வலதுகால் எலும்பு
உடைந்துவிட்டது.

11. After considering the aforesaid facts and circumstances of the case and on perusal of the entire records and deposition of PW1 and taking note of the fact that the Transport Corporation not challenged 50% negligence made against them in all the connected cases, arisen in this accident, this court is inclined to fix liability at 50% against the Transport Corporation and 50% against the Insurance Company. In other words, the compensation awarded by the Tribunal is modified by changing the ratio on the negligence aspect in which 50% of the award amount shall be borne by the appellant/Insurance Company and the balance 50% of the award amount shall be borne by the third respondent/Transport Corporation. Other aspects of the award of the Tribunal shall remain the same. Since Insurance Company has already deposited the entire compensation amount before the Tribunal, now Transport Corporation is directed to deposit 50% of the



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amount before the Tribunal

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12. In the result,

(i) This Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

(ii) The 3rd respondent /Transport Corporation, is hereby directed to pay the 50% of award amount which works out to Rs.1,02,000/- (Rupees One Lakh and Two Thousand only) together with interest @ 7.5% p.a. from the date of petition till the date of deposit, to the credit of M.C.O.P.No.158 of 2005 on the file of the Motor Accident Claims Tribunal, (Sub-Judge) Dharmapuri, within a period of six weeks from the date of receipt of copy of the Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Index:Yes/No
Internet:Yes/No
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A.A.NAKKIRAN, J.

gv

To

- 1.The Section Officer
V.R.Section, High Court of Madras.
2. The Motor Accidents Claims Tribunal
(Sub-Court) Dharmapuri.

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