

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

CMA.No.1862 of 1999

1.Murugesan

2.M/s.United India Insurance Co. Limited
169, Mint road, West Wing, Chennai-79 Appellants/
Respondents 1 & II

Vs

1.A.P.Ramalingam ...1st Respondent/ Petitioner
2.The Managing Director, the State Express
Transport Corporation (TN DIV.I) Limited
Chennai 2nd Respondent/
3rd Respondent

Prayer:- This Civil Miscellaneous Appeal is filed against the judgement and decree, dated 23.3.1999, made in MCOP.No.372 of 1996, by the learned Subordinate Judge (MACT), Kallakurichi.

For Appellants : Mr.D.Bhaskaran

For Respondents : Mr.P.Ganesan
for M/s.C.S.Associates-R1

ORDER

The United India Insurance Company Limited has filed this appeal, challenging the common judgement and decree, dated 23.3.1999, made in MCOP.No.372 of 1996 by the learned Subordinate Judge (MACT), Kallakurichi, in and by which, the Tribunal awarded a sum of Rs.3,50,000/- with interest at 12% p.a as total compensation to the Respondent/claimant and out of the same, ordered a sum of Rs.1,75,000/-, being 50% liability, to be paid by the Appellant Insurance Company.

2. The learned counsel for the Appellants has assailed the impugned award of compensation solely on the ground that the driver of the bus, bearing Reg.No.TCB 6870, belonging to the Respondent Transport Corporation, while overtaking the bullock cart at a great high speed proceeding in front of him, having caused the accident, no liability whatsoever can be saddled with the Insurance Company for the

simple reason that the trailer lorry bearing Reg.No.TMT 2910 had capsized in the said accident. Adding further, he would further submit that when there was no fault attributed against the driver of the said lorry, for which insurance coverage has been made by the Appellant Insurance Company and when there was also no clear finding made, on the basis of the acceptable evidence, holding that the driver of the lorry bearing Reg.No.TMT 2910 has to be held liable for contributory negligence, the apportionment of the liability to the extent of 50% viz. Rs.1,75,000/- on the Appellant Insurance Company having insurance coverage with the lorry is wholly untenable, as the driver of the lorry was not held to be negligent and responsible for the accident. Alternatively, it was further argued that even assuming that the driver of the said lorry had contributed for the occurrence of the accident, it can only be fixed to an extent of 10%. But, this aspect has been completely overlooked. Therefore, the finding recorded by the Tribunal, awarding a sum of Rs.2,40,000/- towards permanent disability suffered by the claimant without properly appreciating the provisions of Section 163A of the Motor Vehicles Act is also liable to be interfered with by this court.

3. Opposing the above said contentions, the learned counsel for the Respondent/claimant urged this court to dismiss the appeal on the ground that when a similar appeal was filed by the Respondent Transport Corporation in CMA.No.1807 of 1999, taking identical contentions and alleging erroneous approach on the part of the Tribunal for passing the very same impugned order, holding that both the Appellant Insurance Company and the Respondent transport Corporation are jointly liable, this court dismissed the said contentions by order dated 27.11.2007, as against which, no appeal has been filed. That shows that the question of liability once again urged by the Appellant Insurance Company only to the limited extent of 50% cannot be once again revisited.

4. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

5. The accident took place on 15.9.1990 at 11.30 p.m. at Chinnamampatty in Kallakurichi-Madras Road, while the injured claimant was travelling in the bus bearing Reg.No.TCB 6870 belonging to the Respondent Transport Corporation from Salem to Madras. As the driver of the bus drove the bus in a high speed when it reached Chinnamampatty in Kallakurichi-Madras Road, it hit against a trailer lorry bearing Reg.No.TMT 2910, which was also coming at a high speed and on account of the impact of collision, the claimant and others sustained grievous injuries. Unfortunately, the driver of the bus succumbed to injuries. The claimant was admitted in the Government Hospital, Kallakurichi and after giving first aid and other preliminary treatment, he was admitted in the Vijaya Nursing Home at Chennai for better treatment and he underwent

6. Considering the cause of the accident, which resulted grievous injuries to the claimant, the Tribunal, after noting down the injuries sustained by him, namely, (1) amputation of 1/3rd right leg, (2) left - both bones fractured, (3) toes of the right leg was crushed and fractured, (4) fracture in the right foot, (5) bone grafting operation and skin grafting operation were done, (6) injury near the nose, came to the conclusion that both the drivers of the lorry and the bus were negligent and responsible for the accident for the reason that both the vehicles were driven by their drivers in a rash and negligent manner and at a high speed, as a result of which, the accident had occurred.

7. The injured claimant, who was a graduate, was employed as Special Officer in the Government Udayapatty Agriculture Cooperative Bank, earning a sum of Rs.3750/- p.m. in 1990. Subsequent to the accident, in view of the afore said injuries, he was also unable to carry on his agricultural activities as he was also owning more than 10 acres of land. In addition to that, he was not able to discharge his duty as a Government Employee. Considering these aspects, the Tribunal has rightly fixed 50% liability each on both the drivers of the bus and the lorry. Aggrieved by such fastening 50% liability on the driver of the bus belonging to the Respondent Transport Corporation, earlier when CMA.No.1807 of 1999 was filed, this court dismissed the same for default. Therefore, when this court had already reached a conclusion that 50% alone has to be saddled with the driver of the bus belonging to the Respondent Transport Corporation, the present appeal seeking discharge of the liability of 50%, once again, cannot be taken up. Therefore, this appeal fails and deserves to be dismissed.

8. In the result, this civil miscellaneous appeal is dismissed. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

Srcm

To:

1.The Subordinate Judge
Motor Accidnet Claims Tribunal Kallakurichi.

1 cc to MR.D.Bhaskaran, Advocate, Sr. 54183
1 cc to M/s. C.S. Associats, Sr. 54403

CMA.No.1862 of 1999

GJ II(CO)

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