

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.Nos.1369 to 1371 of 2016 and C.R.P.No.2016 of 2016
and
C.M.P.Nos.10492 to 10495 and C.M.P.Nos.6794 to 6796 of 2017

Royal Sundaram Alliance Insurance Co.Ltd.,
Sundaram Towers, No.46, Whites Road,
Royapettai,
Chennai - 600 014....Appellant in all CMAs and Petitioner in CRP

Vs.

1. Palaniyathal
2. Thangavel
3. K.Geetha
4. Selvaraj
5. Zaheer Hussain
6. The New India Assurance Co.Ltd.,
M.L.Complex, 1st Floor, 10-11,
Church Road,
Dharapuram 638 656 Respondents (in CMA.No.1369 of 2016)
(4th and 5th respondents remained exparte)

1. Ramalingam
2. Parvatham
3. Selvaraj
4. Zaheer Husssain
5. Thangavel
6. Palaniyathal
7. Geetha
8. The New India Assurance Co.Ltd.,
M.L.Complex, 1st Floor, 10-11,
Church Road,
Dharapuram 638 656. Respondents (in CMA.No.1370 of
2016)
(3rd and 4th respondents remained exparte)

1. Palaniyathal
2. Selvaraj
3. Zaheer Hussain

4. The New India Assurance Co.Ltd.,
M.L.Complex, 1st Floor, 10-11,
Church Road,
Dharapuram 638 656.... Respondents (in CMA.No.1371 of 2016)
(2nd and 3rd respondents remained exparte)

1. Thangavel
2. Selvaraj
3. Zaheer Hussain. Respondents (in CRP.No.2016 of 2016)
(2nd and 3rd respondents remained exparte)

Common Prayer: These Civil Miscellaneous Appeals filed under section 173 of Motor Vehicles Act, 1988 and the CRP.NO.2016 of 2016 filed Under Article 227 of Constitution of India to set aside the judgment and decree passed in M.C.O.P.Nos.243 of 2012, 277 of 2012, 294 of 2012 and 240 of 2012 respectively, dated 16.09.2014, on the file of Motor Accident Claims Tribunal (Special District Judge) at Erode.

For Appellant : Mr.M.Krishnamoorthy
(in all CMAs and CRPs)

For Respondents: Mr.S.Thangavel for R-1 to R-3
Mr. J.Chandran for R-6
(CMA No.1369 of 2016)

Mr. D.Raghu for R-1 and R-2
Mr.S.Thangavel for R-5 to R-7
Mr. J.Chandran for R-8
(CMA No.1370 of 2016)
R3 & R4-Exparte

Mr.S.Thangavel for R-1
Mr. J.Chandran for R-4
(CMA No.1371 of 2016)
R2 & R3-Exparte

Mr.S.Thangavel for R-1
(CRP.No.2016 of 2016)
R2 & R3-Exparte

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COMMON JUDGMENT

The appeals as well as the revision petition have been filed by the Insurance Company challenging the finding of the Tribunal on negligence.

2. CMA.No.1369 of 2016 has been filed as against the judgement passed in MCOP No.243 of 2012 on the file of Motor Accident Claims Tribunal (Special District Judge) at Erode,

dated 16.09.2014.

3. 2. C.M.A.No.1370 of 2016 has been filed, as against the award passed in MCOP No.277 of 2012 on the file of Motor Accident Claims Tribunal (Special District Judge) at Erode, dated 16.09.2014.

4. C.M.A.No.1371 of 2016 has been filed, as against the award passed in MCOP No.294 of 2012 on the file of Motor Accident Claims Tribunal (Special District Judge) at Erode, dated 16.09.2014.

5. C.R.P.No.2016 of 2016 has been filed by the Insurance Company as against the award passed in MCOP.No.240 of 2012, on the file of Motor Accident Claims Tribunal (Special District Judge) at Erode, dated 16.09.2014.

6. The main contention raised in all the appeals is that the finding of the Tribunal in holding that the driver of the car as well as the lorry are equally responsible for the accident is not correct. It is pointed out that the First Information Report has been lodged as against the driver of the car and charge sheet has been filed only as against the driver of the car and, therefore, the Tribunal should have fixed the negligence only on the driver of the car and, accordingly, the insurer of the car, viz., the New India Assurance Company alone should have been made liable to pay the compensation and no liability should have been fastened on the insurer of the lorry, viz., the appellant herein.

7. It is contended that the driver of the car alone was negligent and had he been vigilant, for which he had last opportunity, the accident could have been avoided. It is further pointed out that P.W.3, in his evidence, has admitted that though he wanted to avoid the accident he could not do as the car tried to overtake the lorry in terrific speed and hit against the lorry.

8. In order to appreciate these contentions, it is necessary to consider the manner of accident and the findings rendered by the Tribunal.

9. It is the case of the claimant that on 18.10.2010 at about 5.30 a.m., R.Karthikeyan, N.Viswanathan and Palaniyathal were travelling in the car bearing registration No.TN.38 K 1137 which was going from Aravakurichi to Erode, driven by one Thangavel. While nearing Kollukatumedu, the car hit against the lorry bearing registration No.TN-36-Y8086 which has been parked on the road without any signal. The said lorry was parked, without any signal or indication and the lorry was parked in a non-parking area.

10. The issue to be considered is whether the accident was on account of the negligence on the part of the drivers of both vehicles, viz., car and lorry or only on the part of the driver of a particular vehicle.

11. A perusal of the order passed by the Tribunal reveals that the complaint has been lodged by P.W.2, Palaniyathal, who is the claimant in MCOP No.294 of 2012. On the basis of the said complaint, a case has been registered against P.W.3, Thagavel, who is the petitioner in MCOP No.240 of 2012 and who was the driver of the car, which met with the accident. The Tribunal has also relied upon Ex-P-2, the rough sketch and the Observation Mahazar, Ex-P3.

12. Insofar as the contention of the learned counsel for the appellant that the finding on negligence should have been only on the part of the car driver and not on the part of the lorry driver is concerned, the Tribunal has considered the evidence of the insurer of the car, viz., New India Assurance Company, where it was stated that the accident could have taken place only on account of the negligence on the part of the lorry driver, while the appellant contended that the accident had occurred only on account of the driver of the car.

13. The lorry driver has been examined R.W.1, who is also the 1st respondent in all the claim petitions and his evidence was that at the time of accident, in the road running north to south, he had parked the lorry on the right hand side corner of the road by putting dangerous lights and it is only the car driver who came in a rash and negligent manner and hit against the lorry. The above explanation of R.W.1 has come out during his cross-examination by P.W.3.

14. It is not in dispute that the accident happened in respect of the vehicles plying on the road from south to north direction. The accident had taken place slightly on the left hand side of the road. This Court perused the rough sketch as also the observation mahazar. If really the lorry had been parked on the mud side of the road on the extreme right side, as spoken to by the appellant, the place of accident would not be as is noted in the sketch. The rough sketch contradicts the evidence placed on behalf of the appellant. In such circumstances, the Tribunal, after analysing the evidence in its proper perspective, has fixed the liability equally on the part of both the driver of car as well as on the driver of the lorry taking into consideration the evidence on record which reveals that the lorry was parked in such a manner that the driver of the car could not avoid the accident and, therefore, the mishap had taken place.

15. The Tribunal has also discussed the reasons as to why the lorry had been parked on the right hand side of the road. Further, the Tribunal, relying upon the documentary evidence and considering the evidence of P.W.s 2 and 3 had come to the conclusion that the occurrence had taken place on account of the negligence on the part of the both the drivers, viz., the driver of the lorry as well as the car.

16. A perusal of the findings rendered by the Tribunal clearly reveals that the Tribunal has analysed the evidence available on record threadbare, and had come to the conclusion that the accident had happened due to the negligence on the part of the drivers of both the vehicles. Though contentions have been raised by either side denying negligence on their side, however, learned counsel appearing on either side are not able to point out the discrepancy in the reasoning of the Tribunal with regard to fastening of liability on the drivers of both the vehicles. In such view of the matter, on an analysis of the evidence available on record as also the findings rendered by the Tribunal, this Court is of the considered view that the Tribunal has given clear and cogent reasons for arriving at the said conclusion and, therefore, no interference is called for with the order passed by the Tribunal.

17. In the result, the Civil Miscellaneous Appeals and Civil Revision petition are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

18. The Appellant / Insurance company is directed to deposit its portion of the amount (50% out of the total award) as quantified along with interests and costs, as awarded by the Tribunal, less the amount, if any, already deposited, to the credit of the respective claim petitions, within a period of four weeks from the date of receipt of a copy of this judgement. The ratio of apportionment ordered by the Tribunal is confirmed. On such deposit being made, the Tribunal is directed to transfer the amounts directly to the bank account of the respective claimants through RTGS within a period of two weeks thereafter.

Sd/-
Asst.Registrar (CCC)

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Sub Asst. Registrar

To

1.The Motor Accident Claims Tribunal,
the Subordinate Court Cheyyar.

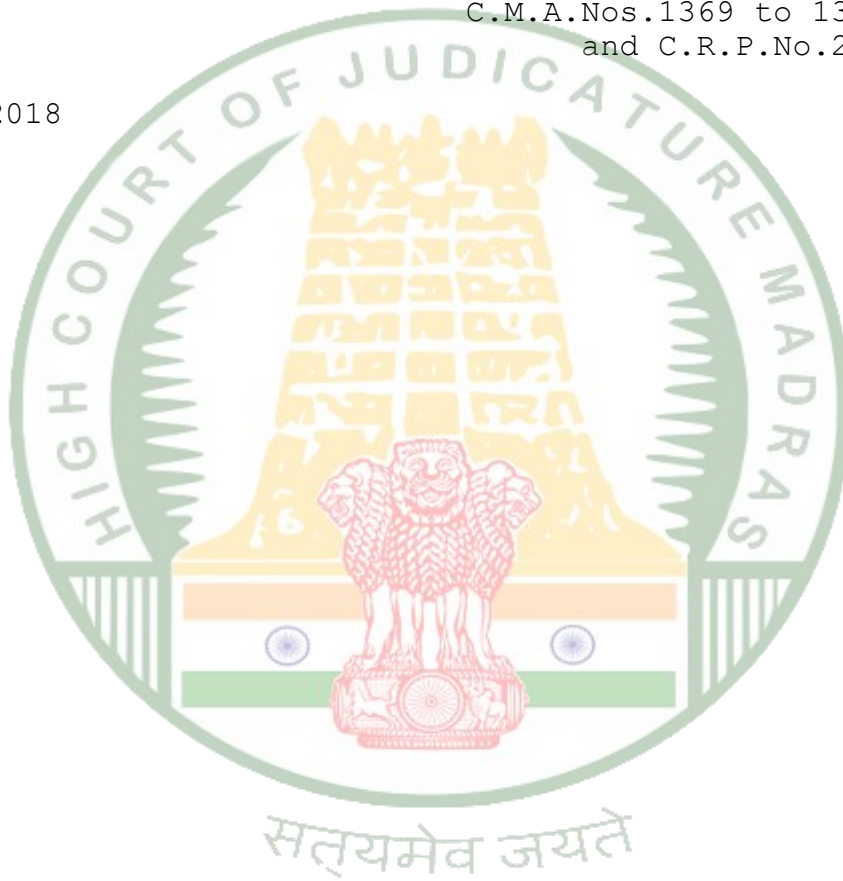
2. The Section Officer
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.M.Krishnamoorthy, Advocate sr.no.62785

+1cc to Mr.J.Chandran, Advocate sr.no.62757

C.M.A.Nos.1369 to 1371 of 2016
and C.R.P.No.2016 of 2016

nr 22/03/2018



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