

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.A.Nos.2490 and 2491 of 2014
M.P.Nos.1 and 1 of 2014

The ICICI Lombard General Insurance Co. Ltd.,
Salem ... Appellants in both CMAs/
4th Respondent in CMA.2490
of 2014 & CMA.2491 of 2014

Vs.

1.M.Ramamurthy ... 1st Respondent in CMA.2490 of 2014

R.Hemavathy ... 1st Respondent in CMA.2491 of 2014

2.V.Jayaprakash

3.The Manager - Claims,
Cholamandalam MS General
Insurance Company Ltd.,
"Dare House", IInd Floor,
N.S.C. Bose Road, Chennai-1.

4.S.Murugan ... Respondents 2-4 in both CMAs
/1 to 3 Respondents in both CMAs
(Respondents 2 and 4 are set
ex parte in lower Court)

Civil Miscellaneous Appeals filed under Section 173 Motor
Vehicles Act, 1988 against the Judgement and Decrees, dated
30.04.2012, made in M.C.O.P.Nos.26 and 27 of 2010, on the file
of the Motor Accident Claims Tribunal (Subordinate Judge),
Hosur.

For Appellant : Mrs.Sree Vidhya
in both CMAs

For 1st Respondent : No Appearance
in both CMAs

For 3rd Respondent : Mrs.C.Harini
in both CMAs for Mr.N.Vijayaraghavan

COMMON JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J.)

Arising out of an accident, which occurred on 13.06.2009, involving a Innova Car, bearing Registration No.KA 51 M 7895, insured with M/s.Cholamandalam MS General Insurance Co. Ltd., and a Lorry, bearing Registration No.KA 01 C 7968, insured with the ICICI Lombard General Insurance Company Ltd., Salem, two persons, travelling in the Innova Car, sustained injuries.

2. The manner of accident, as deduced from the claim petition, is as follows:

On 13.06.2009, about 7.00 A.M., when the respondents/claimants were travelling in a Innova Car, bearing Registration No.KA 51 M 7895, insured with the 3rd respondent-Insurance Company, driven on a bridge, Krishnagiri-Salem National Highways and attempted to overtake a lorry bearing Registration No.KA 01 C 7968, insured with the appellant-Insurance Company. Without any indication or signal, the lorry driver suddenly swerved the same to the right side of the road and the driver of the car, could not control it, dashed against the back side of the lorry. Due to the accident, the passengers in the car, respondents/claimants sustained multiple injuries. In this regard, a case in Cr.No.1119 of 2009, has been registered against the driver of the Innova Car, for the offences, under Sections 279 and 337 IPC., on the file of B1 Police Station, Dharmapuri. They filed separate claim petitions, claiming compensation, under various heads.

3. As the claim petitions arose out of the same accident, pleadings and evidence, being common, joint trial has been held. On evaluation of oral and documentary evidence, the Claims Tribunal held that both the drivers of Innova Car, bearing Registration No.KA 51 M 7895, insured with M/s.Cholamandalam MS General Insurance Co. Ltd., and Lorry, bearing Registration No.KA 01 C 7968, insured with ICICI Lombard General Insurance Company Ltd., Salem, were negligent in causing the accident, and apportioned negligence, equally on them.

4. Being aggrieved by the finding, fixing negligence, in equal proportion and liability fastened to pay compensation to the injured /claimants, the insurer of the lorry has filed two appeals.

5. Assailing the correctness of the award, Mrs.Sreevidhya, learned counsel for the appellant-Insurance Company submitted that when Exs.P2 and P7 - Motor Vehicles Inspector's Reports, clearly show the damages of the car,

indicating that the driver of the Innova Car, bearing Registration No.KA 51 M 7895, insured with M/s.Cholamandalam MS General Insurance Co. Ltd., 3rd respondent herein, was negligent in causing accident, by hitting lorry from behind, the Claims Tribunal has committed an error in holding that the insurer of the Lorry, bearing Registration No.KA 01 C 7968, is also liable to pay compensation.

6. When Mrs.C.Harini, learned counsel appearing for M/s.Cholamandalam MS General Insurance Co. Ltd., Chennai, 3rd respondent herein, insurer of the Innova Car, bearing Registration No.KA 51 M 7895, was posed with a question, as to whether, the 3rd respondent-Insurance Company has filed any appeal, against 50% negligence, apportioned on the driver of the Car, she submitted that no appeal has been filed against the judgment and decree made in M.C.O.P.Nos.26 and 27 of 2010, dated 30.04.2012. Her submission is placed on record.

Heard the learned counsel appearing for the parties and perused the materials available on record.

7. On the date of accident, near Pappireddypatti Diversion, when the Innova Car, bearing Registration No.KA 51 M 7895, insured with the 3rd respondent-Insurance Company, attempted to overtake a lorry, bearing Registration No.KA 01 C 7968, insured with the appellant-Insurance Company, the lorry swerved it to its right side, without any signal, which lead to an accident. A complaint has been made by the driver of the lorry and a case in Cr.No.1119 of 2009, has been registered against the driver of the Innova Car, for the offences, under Sections 279 and 337 IPC., on the file of B1 Police Station, Dharmapuri.

8. Before the Tribunal, though the third respondent-Insurance Company has filed a counter, stating that the accident occurred only when the driver of the Innova car attempted to over the lorry, and at that time, the driver of the lorry, swerved it to its right side, without any signal, the appellant-Insurance Company has not examined the driver of the lorry, to dispute the said fact. RW.1, Legal Assistant of the appellant-Insurance Company has not witnessed the accident. Driver of the Toyoto Innova car, was also not examined. Considering the material on record, the Tribunal held that both the both the drivers of Innova Car and Lorry, were negligent, in causing the accident, and apportioned the negligence, equally between them.

9. Though Mrs.R.Sree Vidhya, learned counsel appearing for the appellant-Insurance Company contended that no damages have been found either in the left side portion of the car or in the right side portion of the lorry and as per Exs.P2 and P7,

Motor Vehicles Inspector's Report, all the damages found were only in the back side of the lorry and front side of the car and therefore, the Tribunal should have held that the car driver alone was negligent, by hitting the lorry from behind, it is well settled that the said documents can be taken only as a supportive evidence and it cannot be taken as substantive evidence. No oral evidence by the driver, has been adduced by the insurers, on the aspect of negligence.

10. Registration of FIR is only to set the criminal law in motion. Merely because, the Insurance Company states that the driver of the innova car was responsible for the accident, it cannot be contended the accident occurred only to the negligent act of the driver of the car. FIR can be taken on record as a substantive evidence, as regards the factum of accident. As regards the manner of accident, it is not a solemn statement. Here in this case, both the drivers have failed to adduce evidence. Therefore, on appreciation of the material on record, the Tribunal has rightly held that both the drivers were equally negligent, which does not warrant interference of this Court.

11. During the course of hearing, learned counsel appearing for the 3rd respondent-Insurance Company submitted that 50% of the award amount, with proportionate accrued interest and costs, in each of the claim petitions, have been deposited, to the credit of M.C.O.P.Nos.26 and 27 of 2010, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Hosur.

12. In view of the above, Civil Miscellaneous Appeals are dismissed. The appellant-Insurance Company is directed to deposit the remaining 50% of the award amount, with proportionate accrued interest and costs, to the credit of M.C.O.P.Nos.26 and 27 of 2010, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Hosur, within a period of four weeks, from the date of receipt of a copy of this order. On such deposit, both the respondents/claimants are permitted to withdraw the same, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

skm

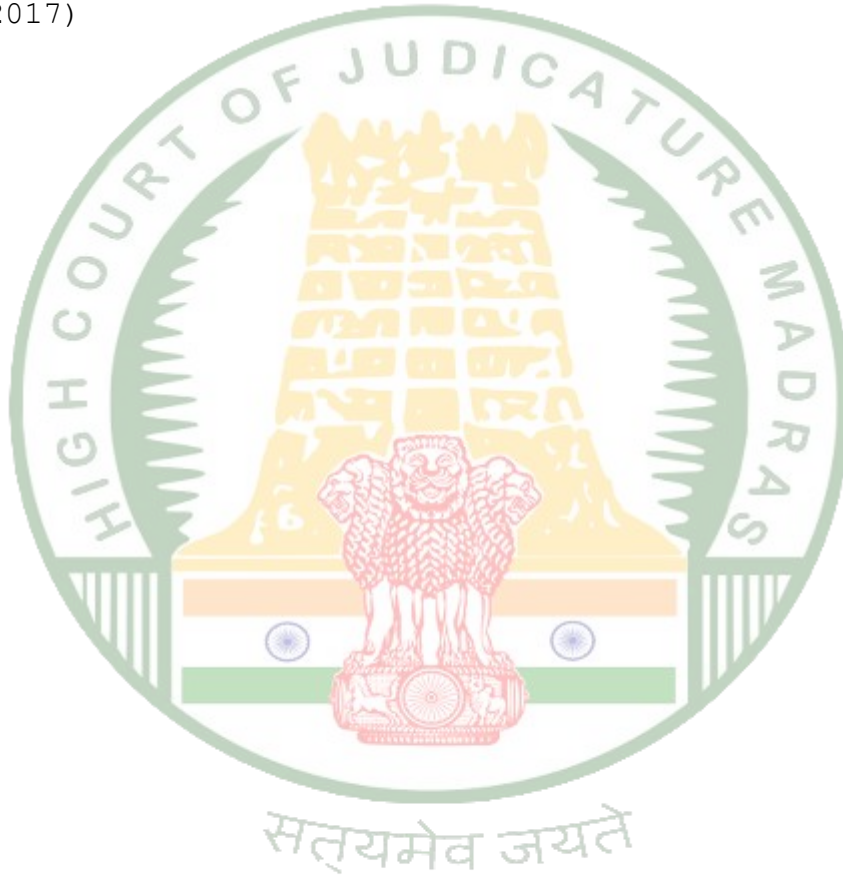
To

The Motor Accidents Claims Tribunal,
(Subordinate Judge),
Hosur.

+lcc to Mrs.R.Srividhya, Advocate, S.R.No.44907

C.M.A.Nos.2490 and 2491 of 2014

SCD(CO)
CA(05/09/2017)



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