**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on :28.11.2016
Pronounced on :03.01.2017

CORAM

**THE HON'BLE MR. JUSTICE G.CHOCKALINGAM**

**C.M.A.No.2361 of 2002**

The New India Assurance Co.Ltd.,
No.1090, Poonamallee High Road,
Chennai 600 084. .. Appellant

/vs/

1.Jagatha
2.Chokkammal
3.Veeraraghavan
4.Minor Rajathi
(minor represented
by her mother and next friend
Jagatha)
5.Viswanathan
6.United India Insurance Company Ltd.,
38, Mount Road,
Chennai 600 002.
7.Mohan
(7th respondent is given up as he is not
a necessary party)
8.Susheela .. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the award and decree dated 05.09.2001 passed in M.C.O.P.No.2654 of 1992 on the file of the Motor Accident Claims Tribunal, V Judge, Court of Small Causes, Chennai.

For Appellant :Mr. R.Sivakumar

For Respondents :Mr.P.Sukumar for R6
No appearance- Mr.P.Manavalan
for R1 to R4
No appearance for R5
R7-Given up
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**JUDGMENT**

This Second Appeal is directed against the award and decree dated 05.09.2001 in M.C.O.P.No.2654 of 1992 on the file of the Motor Accident Claims Tribunal, V Judge, Court of Small Causes, Chennai.

2. The brief facts of the case are as follows:-

The claimants, who are the legal heirs of the deceased Murugan, filed a claim petition against the appellant and respondents 5 to 8 for claiming compensation of Rs.2,00,000/-. The Tribunal, after considering the oral and documentary evidence on either side, has directed the appellant/New India Assurance Company and respondents 7 and 8 herein to pay compensation of Rs.1,38,000/- to the claimants. Aggrieved against the award passed by the Motor Accident Claims Tribunal, V Judge, Court of Small Causes, Chennai, the appellant/New India Assurance Company has preferred this Second Appeal.

3. The learned counsel appearing for the appellant/New India Insurance Company mainly contend that the trial Court, without considering the oral and documentary evidence on record, came to a wrong conclusion that the driver of the offending vehicle i.e. 4th respondent/7$^{th}$ respondent herein is responsible for the accident. The trial Court erred not relying upon Ex.R3, sketch, which clearly shows that the accident occurred due to rash and negligent driving of the 5$^{th}$ respondent's driver of the autorickshaw bearing Reg.No.TN 01 C 6217. The autorickshaw bearing Reg.No.TME 1409, which belong to the 8$^{th}$ respondent, is not at all responsible. The trial Court has erroneously fixed the liability on the part of the 7$^{th}$ and 8$^{th}$ respondents and also appellant/ New India Insurance Company. Hence, the award of the Tribunal has to be set aside and the present appeal has to be allowed.

4. The learned counsel appearing for the 6th respondent would mainly contend that after considering the entire evidence and documents adduced on either side, the Tribunal has passed an appropriate order and there is no illegality or infirmity in the award of the Tribunal and hence, the judgment and decree passed by the Tribunal has to be confirmed and the Second Appeal may be dismissed.

5. Heard the learned counsel appearing on either side perused the materials available on record.

6. On a reading of the award, the accident has occurred only by the reason of the deceased Murugan sitting on the driver seat along with the driver of the Autorikshaw bearing Reg.No.TME 1409. However, according to the appellant/New India Assurance Company, the accident had occurred only due to rash and negligence driving of the driver of the vehicle bearing No.TN-01-C-6217, which resulted in causing fatal injury to the occupant of the vehicle, who was insured with the 6th respondent/United India Insurance Company. Therefore, in the criminal proceedings, the driver of the vehicle bearing Reg.No.Tn-01-C-6217 was charge sheeted under Sections 304(A) I.P.C. 184 and 134 (a) and (b) of the Motor Vehicles Act in C.C.No.3073 of 1992 on the file of the learned IV Metropolitan Magistrate, Saidapet.

7. RW1-Mohan the auto driver of the vehicle bearing Reg.No.TME 1409 in his evidence has stated that the driver of the auto bearing Reg.No.TN-01-C 6217 has driven his vehicle in a rash and negligent manner, which resulted in the accident. Similarly, RW2-Ramachandran, who was the Investigating Officer, has stated in his

evidence that after investigation in the criminal case, he arrested the driver of the auto bearing Reg.No.TN-01-C 6217 namely, Sambu and he was produced before the learned IV Metropolitan Magistrate Court, Saidapet. After investigation, charge sheet has also been filed in the above said case in C.C.No.3073 of 1992 before the IV Metropolitan Magistrate Court, Saidapet. R.W.2 in his evidence has categorically stated that the said Sambu the driver of the vehicle bearing Reg.No.TN 01 C 6217 was responsible and liable for occurrence of the accident.

8. The trial Court, without considering the above evidences, which are not controverted by any other witness, has erroneously concluded that the accident has occurred only due to rash and negligent driving of the driver of the vehicle bearing Reg.No.TME 1409. The conclusion arrived at by the Tribunal holding that the driver of the vehicle bearing Reg.No.TME 1409 alone is responsible for the accident, is contrary to the deposition of RW1 and RW2. When the depositions tendered by RW1 and RW2 are not controverted either by examining any other extra witness, in a case of this nature is just and proper that both the vehicles involved in the accident have to be held as responsible and liable for the accident.

9. In such view of the matter, the award passed by the Tribunal directing the 5th respondent/Insurance Company (in the claim petition) to pay the entire compensation amount for and on behalf of the respondents 3 and 4 in the claim petition, is legally not sustainable, since the accident has occurred due to the rash and negligent driving of the drivers of both the vehicles. The judgment and decree of the the tribunal is set aside and the appellant/New India Assurance Company and the 6th respondent /united India Insurance Company are jointly and severally liable to pay the compensation amount in the region of 50% each namely, Rs.69,000/-. This amount is directed to be paid by the appellant/New India Insurance Company and the 6th respondent/United India Insurance Company, within a period of 12 weeks from the date of receipt of a copy of this order. The appellant/New India Assurance Company is permitted to withdraw the excess amount deposited if any, after the deducting the award amount. Insofar as the other aspects, the award of the Tribunal remains unaltered.

10. In the result, the Civil Miscellaneous Appeal is partly allowed as stated above. No costs.

03.01.2017

Index:Yes/No
Internet:Yes/No

To

The Motor Accident Claims Tribunal,
V Judge, Court of Small Causes, Chennai.

**G.Chockalingam, J.**

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**Pre-delivery Judgment made in**
**C.M.A.No.2361 of 2002**

**03.01.2017**

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