



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.07.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.(MD).No.1322 of 2015

and

M.P.(MD)No.3 of 2015 &

CMP(MD)No.5722 of 2017

The Branch Manager,
United India Insurance Co. Ltd.,
91, Kamarajar Salai,
Madurai.

.. Appellant /2nd Respondent

Vs.

1.Rajachandrasekar,
rep.by his father Janarthanam Raman ..1st Respondent/ Petitioner

2.Mohan ...2nd Respondent/1st Respondent

(2nd respondent remained ex parte
before the Tribunal)

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree made in M.C.O.P.No.731 of 2009, dated 20.12.2013 on the file of the Motor accidents Claims Tribunal (Subordinate Judge) Melur Camp.

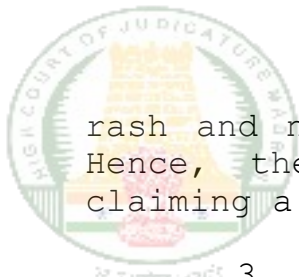
For Appellant : Mr.V.R.Subramaniam
For R1 : Mr.R.M.Anbunithi

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award dated 20.12.2013 passed in M.C.O.P.No.731 of 2009 by the Motor accidents Claims Tribunal (Subordinate Judge) Melur Camp.

2.The case of the claimants in the petition is briefly as follows:

On 16.03.2008, at about 10.15 a.m., the petitioner was riding his Hero Honda motor cycle bearing registration No.TN 58 S 018, near Kodikulam Bharath Petrol Bunk, in Madurai - Melur road, at that time, the first respondent's TVS motor cycle bearing registration No.TN 59 AC 2252 came from the opposite direction in a rash and negligent manner and dashed against the two wheeler of the petitioner. Due to this impact, the petitioner sustained injuries. Immediately, the petitioner was taken to Meenakshi Mission Hospital, Madurai for treatment. This accident had caused on account of the



rash and negligent driving of the driver of the first respondent. Hence, the victim filed a claim petition before the Tribunal claiming a sum of Rs.7,00,000/- as compensation.

3. Before the Tribunal, on the side of the petitioner, P.Ws.1 to 4 were examined and Exs.P1 to P17 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 to R4 were marked.

4. On consideration of the evidence available on record, the Tribunal has awarded a sum of Rs.4,72,486/- with interest at the rate of 7.5% and after deducting 50% for contributory negligence towards the victim, awarded a compensation of Rs.2,36,243/-. Challenging this award, the appeal has been filed by the Insurance Company. The second respondent's vehicle was insured with the appellant. The Tribunal has found that the drivers of both the vehicles are responsible for the accident and so, they are liable to pay 50:50 of the compensation amount.

5. Heard the learned counsel for the appellant and the learned counsel for the first respondent and also perused the materials available on record.

6. At the outset, the learned counsel for the appellant fairly conceded that he is not disputing the quantum of the compensation and he is disputing only the liability. So, the finding of the Tribunal regarding quantum is confirmed. However, the learned counsel for the appellant would submit that the accident is a collision of two motor cycles, namely TN 58 S 018 driven by the petitioner owned by the first respondent and TN 59 AC 2292 was driven by one Pandi, who also filed claim petition in MCOP.No.1974 of 2008 on the file of MACT (IV Additional Subordinate Judge), Madurai, wherein the learned Judge held that the first respondent herein is solely responsible for the accident. But, in this case, the Tribunal has held that the rider of the motor cycle of the second respondent herein has also contributed for the accident, which is incorrect. Under such circumstances, the Tribunal ought to have fixed the liability on the first respondent/petitioner alone and should not have fastened the liability on the second respondent herein. Hence, he prayed for appropriate orders

7. *Per contra*, the learned counsel for the first respondent/claimant would submit that the said Pandi, who is the rider of the first respondent vehicle, who deposed about the negligence before the tribunal, was not cross examined by the Insurance Company and in this regard, nothing has been stated in the findings of the Tribunal. In support of his contention, he would rely upon the following Judgments:-

(i) In the case of **T.O.ANTHONY v. KARVARNAN** reported in **2008 (3) SCC 748**, the Hon'ble Supreme Court has held as under:-

"7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver



denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extend of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.

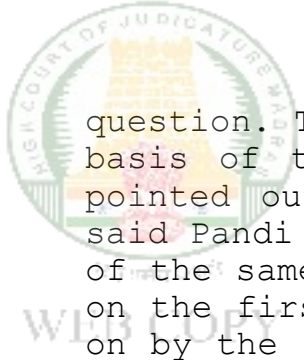
(ii) In the case of **ORIENTAL INSURANCE CO. LTD., v. MOHAMMED HUSSAIN** reported in **2008 (4) CTC 127**, this Court has observed as follows:-

"13. Generally, the judgments of the Criminal Courts are not relevant and admissible in the trial of Civil cases or MCOP cases except to the extent of showing that there was a criminal prosecution and the same resulted in conviction or acquittal. But, it becomes relevant and admissible in case the judgment is based on the plea of guilty not as a judgment of the Criminal Court but as an admission made before the Criminal Court. Admissions are best evidence though not conclusive proof the fact admitted therein. The party against whom such an admission is pleaded, shall have a right to adduce evidence to disprove the fact admitted therein to be false. In this case, the oral evidence of R.W.1 and R.W.2 and the admission incorporated in the judgment of the Criminal Court as evidence by Ex.B1 are enough to hold that the appellant/Insurer has adduced sufficient evidence at its disposal, at last, to dislodge the burden of proof and recast such burden of proof on the opposite party. Curiously, in this case, neither the first respondent/claimant nor the second respondent/owner of the vehicle chose to adduce evidence to discharge the said burden cast on them. Under such circumstances, this Court accepts the contention of the learned counsel for the appellant that the finding of the Tribunal in this regard is erroneous and liable to be interfered with by this Court.

8. Heard the learned counsel for the petitioner as well as the learned Advocate for the first respondent.

9. On a perusal of the judgment, it is clearly seen that as per the exhibits and evidence available before the Court below, it has found that both the vehicles contributed to the accident in

<https://hcservices.ecourts.gov.in/hcservices/>



question. The said fact came to be arrived at by the tribunal on the basis of the materials placed before the Court below. As rightly pointed out by the learned counsel for the first respondent, the said Pandi has not been examined before the Tribunal. In the absence of the same, the appellant cannot pass on the entire liability only on the first respondent herein. In this regard, the judgment relied on by the first respondent also gains much significance. Therefore, this Court is of the considered opinion that the findings of the Tribunal regarding liability that both the drivers of the vehicles are liable to pay compensation as 50:50 is hereby confirmed.

10. The appellant / Insurance Company is directed to deposit the entire award amount along with interest and costs at the rate of 7.5% p.a. within a period of six weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the same with proportionate interest and costs, without filing any formal petition before the Court below.

11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor accidents Claims Tribunal
Melur Camp.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai

+1cc to Mr.N.SATHEESH KUMAR Advocate in SR. NO.68656
SSM
JS/SKN.RSK/SAR.1/28.08.2017/4P-4C

C.M.A. (MD) .No.1322 of 2015

28.07.2017