

qIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2545 to 2547 of 2015
and M.P.Nos.1 to 1 of 2015

United India Insurance Co. Ltd.,
Karur having Divisional Office
At 104-A, Peramanur Main Road,
Salem -7.

.. Appellant in all
C.M.As.

Vs.

1.Paramasivam .. 1st Respondent in
C.M.A.No.2545/2015

1.Jeevarani .. 1st Respondent in
C.M.A.No.2546/2015

1.P.Prasath @ Krishna Prasath .. 1st Respondent in
C.M.A.No.2547/2015

2.R.Mohan Raj

3.The New India Assurance Co. Ltd.,
Shevapet, Salem having Divisional Office,
TPHUB, Sethu Krishna Traders,
near Rajasabari Theater,
Trichy Main Road, Gugai, Salem.

4.B.Raghu

5.V.Palanisamy

6.The New India Assurance Co. Ltd.,
Karur having Divisional Office,
TPHUB, Sethu Krishna Traders,
Near Rajasabari Theater,
Trichy Main Road, Gugai, Salem.

.. Respondents 2
to 6 in all C.M.As.

Common Prayer: These Civil Miscellaneous Appeals are filed
under Section 173 of Motor Vehicles Act, 1988, against the
award and decree dated 06.03.2015 made in M.C.O.P.Nos.2007 to
2009 of 2013 on the file of the Special Sub Court No.1,
(Motor Accident Claims Tribunal), Salem.

For Appellant: Mr.T.Ravichandran (in all C.M.As.)

For R1 : No appearance
(in C.M.A.No.2545 & 2547/2015)

For R1 : Mr.S.P.Yuvaraj
(in C.M.A.No.2546/2015)

For RR3 & 6 : Mr.J.Chandran (in all C.M.As.)

For RR4 & 5 : No appearance (in all C.M.As.)

For R2 :Not Ready in Notice

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed challenging the liability fixed by the award dated 06.03.2015 made in M.C.O.P.Nos.2007 to 2009 of 2013 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Salem.

2.All the appeals are arising out of the common award and same accident. Hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petitions.

3.The claimants/1st respondent herein filed M.C.O.P.Nos.2007 to 2009 of 2013 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Salem, claiming sum of Rs.10,00,000/-, Rs.10,00,000/- and Rs.5,00,000/- respectively as compensation for the injuries suffered by them in the accident that took place on 30.06.2013.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred due to the negligence of both the drivers and fixed negligence of 50% on the driver of the Maruti Omni van belonging to the 1st respondent and 50% on the 3rd respondent, rider of the motor-cycle and awarded a sum of Rs.1,26,000/, Rs.94,000/- and Rs.26,000/- as compensation to the claimants respectively. The Tribunal directed the respondents 1 and 4 to pay 50% each of compensation awarded and dismissed the claim petitions as against the respondents 2 and 6.

5.The 4th respondent-Insurance Company filed the above three appeals, challenging the portion of the award fixing 50% of contributory negligence on the part of the rider of the motor cycle belonging to the 3rd respondent and insured with them.

6.The contention of the learned counsel appearing for the 4th respondent is that the accident had occurred only due to the rash and negligent driving by the driver of the Maruti Omni van belonging to the 1st respondent. FIR was registered only against the driver of the Maruti Omni van. The rider of the motor cycle is not responsible for the accident. The Tribunal failed to consider the fact that FIR was registered only against the driver of the Maruti Omni van. The Tribunal erred in fixing 50% of negligence on the rider of the motor cycle and prayed for setting aside the award fixing 50% negligence on the part of the rider of the motor cycle.

7.Heard the learned counsel for the respondents 2, 4 and 6 in all the claim petitions as well as the claimant in M.C.O.P.No.2008 of 2015 and perused the materials available on record.

8.From the materials on record, it is seen that the claimants have let in evidence to show that the motor cycle was coming in the opposite direction and tried to cross the road. In order to avoid hitting the motor cycle, the driver of the Maruti Omni van turned to left, as a result of which, the Maruti Omni van dashed against the motor cycle, as well as the parked lorry. In the cross examination also, P.W.1 has deposed to that effect. The 4th respondent has not let in any evidence to disprove the evidence let in by the claimants. The Tribunal considering the FIR, rough sketch, Motor Vehicle Inspector's report and evidence of P.W.1 in proper perspective, has held that both the rider of the motor cycle as well as the driver of the Maruti Omni van are responsible for the accident and contributed negligence equally for the accident. From the materials available on record, it is seen that the rider of the motor cycle tried to cross the road and the contention of the 4th respondent-Insurance Company before the Tribunal that the motor cycle was stationed on the left side of the road, is not correct. The Tribunal has given cogent and valid reason to conclude that both the driver of the Maruti Omni van as well as the rider of the motor cycle were equally responsible for the accident and fixed 50% negligence on them. There is no perversity in the award warranting interference by this Court.

9.In the result, all the Civil Miscellaneous Appeals are dismissed and the amount of Rs.1,26,000/, Rs.94,000/- and Rs.26,000/- awarded by the Tribunal as compensation to the claimants respectively in all the claim petitions with interest and costs are confirmed. The 1st respondent as well as the 4th respondent-Insurance Company are directed to deposit 50% each of the award amount with interest and costs,

less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.2007 to 2009 of 2013 respectively. On such deposit, the claimants are permitted to withdraw the award amount with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Special Subordinate Judge-1,
(Motor Accident Claims Tribunal), Salem.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr.J.Chandran , Advocate SR.No. 85823

+1cc to Mr.T.Ravichandran , Advocate SR.No. 85985

+1cc to Mr. S.P.Yuvaraj, Advocate SR.No. 86483

C.M.A.Nos.2545 to 2547 of 2015
and M.P.Nos.1 to 1 of 2015

A.SK(01/05/2019)

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