

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.572 and 2345 of 2015
and M.P.Nos.1,1 of 2015

Royal Sundaram Alliance
Insurance Company Limited
Bus plaza, 3rd floor, 5G
Lawson road, Cantonment
Trichy-1.

.. Appellant in both CMAs/
2nd Respondent in MCOP
Nos.618&629 of 2010

Vs.

Prabhu

.. 1st Respondent in C.M.A.No.572/2015
/Petitioner in MCOP No.618/2010

Balasubramani

.. 1st Respondent in C.M.A.No.2345/2015
/Petitioner in MCOP No.629/2010

2.M/s.Road Carriers of India
No.374, Chenoy Trade Centre
Park Lane, Secunderabad
Hyderabad, Renga Reddy, Andhra Pradesh

3.A.Latha

4.M/s.Bharti AXA General Insurance Company Limited
By its competent authority, No.180
P.P.Chavadi, Theni main road
Madurai-16.

.. 2 to 4 Respondents in both CMAs./
1,3,4th Respondents in both MCOP's

Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.02.2014 made in M.C.O.P.Nos.618 and 629 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

In both CMAs.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.T.Gobinath

R2 : exparte

For R3 : Mr.R.Subramanian

For R4 : Mr.S.Arunkumar

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

These Civil Miscellaneous Appeals are filed against the common award dated 28.02.2014 made in M.C.O.P.Nos.618 and 629 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

2.Both the appeals are arising out of the same accident and common award and hence, they are disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

4.The appellant is second respondent/Insurance Company in M.C.O.P.Nos.618 and 629 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur. The claimants filed the above said claim petitions claiming a sum of Rs.4,00,000/- and Rs.5,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 22.04.2010.

5.According to the claimants, the driver of the car, in which they were travelling has given signal for overtaking trailer lorry and proceeded left to right side of the road, but unfortunately the driver of the trailer lorry, came to the right side and suddenly applied brake. At that time, the car was very close to trailer lorry and the driver of the car tried in order to avoid dashing against the trailer lorry, turned back to the right side of the road as well as right side of the lorry and the left side of the car dashed on the right back side of the trailer lorry and caused heavy damage to the car. Due to the said impact, both the claimants sustained injuries. The accident occurred only due to the negligence on the part of the trailer lorry belonging to the first respondent, insured with the second respondent and hence, the respondents 1 and 2 are liable to pay

the compensation to the claimants.

6.The first respondent/owner of the lorry remained exparte before the Tribunal.

7.The second respondent/Insurance Company filed counter statement and contended that the accident occurred only due to the negligence on the part of the driver of the car belonging to the third respondent, insured with the fourth respondent. F.I.R. was lodged only against the driver of the car. The driver of the car dashed against the back side of the lorry by driving in a rash and negligent manner and denied their liability to pay the compensation to the claimants.

8.The third respondent/owner of the car filed counter statement and contended that the accident occurred due to the rash and negligent driving by the driver of the trailer lorry and if any compensation is payable to the claimants, the respondents 1 and 2 are only liable to pay the same.

9.The fourth respondent/Insurer of the car filed counter statement and contended that the accident occurred due to the rash and negligent driving by the driver of the trailer lorry belonging to the first respondent and therefore, the respondents 1 and 2 alone are liable to pay the compensation to the claimants and the respondents 3 and 4 are not liable to pay compensation.

10.Before the Tribunal, both the claimants examined themselves as P.W.1 and P.W.2 and examined the Doctor as P.W.3 and marked seventeen documents as Exs.P1 to P17. The second respondent examined record clerk of the Government Hospital, Perambalur, as R.W.1 and marked three documents as Exs.R1 to R3.

11.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligence of both the drivers of the trailer lorry belonging to the first respondent, insured with the second respondent and the car belonging to the third respondent insured with the fourth respondent and awarded a sum of Rs.1,86,000/- and Rs.2,95,000/- respectively, as compensation to the claimants and directed the respondents 2 and 4 to pay 50% compensation each awarded by the Tribunal to the claimants.

12.Aggrieved by the said award dated 28.02.2014 made in M.C.O.P.Nos.618 and 629 of 2010, the second respondent/Insurance Company has come out with the present appeals challenging the portion of the award fixing 50% negligence on the part of the driver of the lorry belonging to the first respondent and insured with them.

13.The learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal erred in fixing 50% negligence on the part of the driver of the trailer lorry and only the driver of the car is solely responsible for the accident. The Tribunal failed to appreciate the evidence and erroneously held that negligence on the part of the driver of the car is only 50%. F.I.R. is registered only against the driver of the car and in any event, the amount awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

14.Per contra, the learned counsel appearing for the claimants contended that there is no error in the award of the Tribunal. The amounts awarded by the Tribunal are meagre and the same are liable to be enhanced.

15.The learned counsel appearing for the respondents 3 and 4 separately contended that the accident occurred only due to rash and negligent driving by the driver of the trailer lorry, as he came from left to right side and suddenly applied brake and caused the accident. The amounts awarded by the Tribunal are excessive and prayed for dismissal of the appeals.

16.Heard the learned counsel appearing for the second respondent as well as the claimants and respondents 3 and 4 and perused the materials available on record.

17.It is an admitted fact that the car belonging to the third respondent driven by its driver dashed against the right back side of the trailer lorry belonging to the first respondent. According to the claimants and respondents 3 and 4, the driver of the trailer lorry came to the right side suddenly and applied brake, while the driver of the car was trying to over take the lorry. According to the claimants and respondents 3 and 4, the driver of the car gave signal for overtaking the trailer lorry, but to prove their contention, they have not examined the driver of the car. The driver of the car is the best person to prove that he gave signal for overtaking the trailer lorry and the trailer lorry suddenly came to right side of the road and the driver applied sudden brake. The claimants and the respondents 3 and 4 have not denied that F.I.R. was registered only against the driver of the car. It is not the case of the claimants and respondents 3 and 4 that the driver of the car attempted to overtake the trailer lorry only after giving signal to the driver of the trailer lorry. From the award of the Tribunal, it is seen that in the accident register maintained by the hospital, the cause of accident is shown as the car dashed against the back side of the trailer lorry and caused the accident. The respondents 1 and 2 also have not examined the driver of the trailer lorry to deny the contention

of the claimants and respondents 3 and 4 that he drove the trailer lorry suddenly to the right side of the road and applied sudden brake.

18.Considering the entire materials on record, the negligence fixed by the Tribunal is liable to be modified as 40% on behalf of the driver of the trailer lorry and 60% on behalf of the driver of the car. The compensation awarded by the Tribunal is not excessive and the same is confirmed. Therefore, the second respondent is directed to deposit Rs.74,400/- and Rs.1,18,000/- (i.e. 40% of the award amount) in M.C.O.P.Nos.618 and 629 of 2010 respectively with interest at the rate of 7.5% per annum from the date of petitions till the date of realisation, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/first respondents in both the CMAs. are permitted to withdraw their respective award amount with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The second respondent/Insurance Company is permitted to withdraw the excess amount, if any lying in deposit to the credit of M.C.O.P.Nos.618 and 629 of 2010, if the entire award amount has already been deposited by them.

19.In the result, both the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
The Principal District Judge, Perambalur.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+2 cc's to M/s.M.Krishnamoorthy, Advocate, Sr.No. 83178,83179
+1 cc to M/s.S.Arunkumar, Advocate, Sr.No. 83230
+1 cc to M/s.R.Subramanian, Advocate, Sr.No. 83296
+1 cc to M/s.T.Gobinath, Advocate, Sr.No. 83948

C.M.A.Nos.572 and 2345 of 2015
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CSL/09.05.2019