

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3337 of 2010
and M.P.No.1 of 2010

Royal Sundaram Alliance
Insurance Co.Ltd.,
Chennai Branch
No.46, Whites Road
Chennai-14

..Appellant/2nd respondent

Vs

1.V.Swaminathan Balaji 1st Respondent/Petitioner

2.Paul Anthonyraj

3.Vasanthi Surendran

4.United India Insurance Co. Ltd.,
Ganga Griha, 2nd floor
No.6, Nungambakkam High Road
Chennai-600 034

..Respondents 2 & 4/Respondents 1,3 & 4

Civil Miscellaneous Appeal filed against the order and decree dated 16.07.2010 passed in M.C.O.P.No.64 of 2010 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Erode.

For appellants : : Mr.N.Vijayaraghavan
for Respondents : : Mr.I.C.Vasudevan for R1.
Mr.S.Arunkumar for R4.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/2nd respondent, challenging the judgment and decree dated 16.07.2010 passed in M.C.O.P.No.64 of 2010 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Erode.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 24.08.2003, at about 18.00 hours, while the petitioner was proceeding as pillion rider in the two wheeler bearing Reg.No.TN-09-AA-3690 in

NH-47 Kovai to Avinasi Main Road, while going from South to north at Neelampur, the vehicle bearing Reg.No.TN-39-V-8154 came in the opposite direction at high speed, dashed against the two wheeler in which the petitioner was proceeding, causing him multiple fracture in his left knee, left eyebrow and injuries all over the body. The accident occurred due to negligence of the offending vehicle driver only. The Petitioner was aged 19 years and was studying Engineering course. Due to the injury suffered, the petitioner is unable to attend to his normal work. Thus, the Petitioner sought for a sum of Rs.3,50,000/- as compensation from the respondents who are the owners and insurer of both the vehicles involved in the accident.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company viz., the insurer of the vehicle bearing Reg.No.TN-39-V-8154 contends that the accident does not occur in the manner alleged by the petitioner. The petitioner who suffered injury in the accident filed a false case against the driver of the said vehicle bearing Reg.No.TN-39-U-8154. The accident occurred only due to rash and negligent driving of the rider of the two wheeler bearing Reg.No.TN-09-AA-3690, in which the petitioner travelled as a pillion rider. The accident occurred as a result of two moving vehicles colluding head on. The rider of both the vehicles have contributed to the accident. The claim of the petitioner is exorbitant. The age, avocation and income of the petitioner is disputed. Thus, the 2nd respondent sought for dismissal of the petition.

4. The 4th respondent who is the insurer of the two wheeler in which the petitioner travelled as a pillion rider filed its counter contending that the rider of TN-09-AA-3690 is not responsible for the accident; whereas the other vehicle involved in the accident bearing Reg.No.TN-39-V-8154, three persons travelled and as such, rider of the said vehicle alone caused the accident since he lost control of the vehicle driven by him. The vehicle bearing Reg.No.TN-09-AA-3690 was not insured with the 4th respondent. As such, they are not liable to pay any compensation. Hence, the 4th respondent sought for dismissal of the petition against them.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.12 to prove his claim. On the side of the respondents, R.W.1 and R.W.2 deposed and produced documents Ex.R.1 to Ex.R.4 to contradict the claim of the petitioner. The Tribunal, after analysing the evidence available on record, held that the negligence of the 1st respondent vehicle driver alone caused the accident and the respondents 1 and 2 alone are liable to pay compensation of Rs.2,39,940/- to the petitioner and dismissed the petition against respondents 3 and 4. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance

company has come forward with the present appeal.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the appellant/2nd respondent-Insurance company contends that the Tribunal failed to appreciate the evidence properly and consequently passed an award wrongly fixing negligence on the 1st respondent. The learned counsel further pointed out that in the connected claim petitions in MCOP.Nos.457/2004 and 462/2004 as evidenced by Ex.R.1 to Ex.R.3 order copies, liability was apportioned at 60% : 40% ratio on the 2nd and 4th respondents. He further pointed out that the said award was complied with and no appeal was filed against the said order, either by the petitioner/claimant or by the 4th respondent-Insurance company herein. Thus, the 2nd respondent/Insurance company sought for modifying the liability aspect and to fix 60 : 40 ratio apportionment of the negligence as done in the connected claim petitions. Thus, the 4th respondent/Insurance company sought for allowing the appeal on that ground.

8. On the other hand, the learned counsel for the petitioner/injured claimant contends that he is entitled for entire compensation amount and the finding of the Tribunal is based on the evidence available on record. The Petitioner/claimant contended that there is no merit in the appeal filed by the 2nd respondent/Insurance company seeking apportionment, as such, the appeal has to fail. Thus, the Petitioner/claimant sought for dismissal of the appeal.

9. The appeal is filed only on the issue regarding apportioning the liability on the basis of negligence between the driver of the two vehicles involved in the accident. The fact that the petitioner was travelling as pillion rider in the two wheeler bearing Reg.No.TN-09-AA-3690 belonging to the 3rd respondent and insured with the 4th respondent was admitted. The involvement of the vehicle bearing Reg.No.TN-09-AA-3690 in the accident and collision with other vehicle bearing Reg.No.TN-39-V-8154, insured with the 2nd respondent is also admitted. The Police registered Ex.P.1-FIR against the 1st respondent vehicle driver only. The learned counsel for the 2nd respondent/Insurance company contended that in connected MCOP.Nos.457 and 462 of 2004 relating to the same accident, the Tribunal fixed negligence at the rate of 60 : 40 on the 1st and 3rd respondent vehicle drivers. In the present case also, the Petitioner has suffered injury in the same accident only. Admittedly, both the two wheeler and lorry involved in the accident were moving in the opposite direction; they dashed against each other resulting in head on collision. Apart from Ex.P.1-FIR registered against the 1st respondent vehicle driver, there is no material available on record to show that any charge

sheet was filed on completion of investigation and the accused was convicted in the criminal case. As such, considering the above said facts and also the admission of both the insurers that they have complied with the award passed in MCOP.Nos.457 and 462 of 2004, it will be appropriate to apportion negligence at the ratio of 60 : 40 on the 1st and 3rd respondent vehicle drivers.

10. It is also admitted by both sides that no appeal was filed against the award passed in MCOP.No.462 and 457 of 2004. It is clear from Ex.R.1 and Ex.R.3 copy of the orders passed in MCOP.Nos.462 of 2004 and 457 of 2004 that the Tribunal, on the basis of available evidence fixed negligence on the 1st and 3rd respondent vehicle drivers at the ratio 60 : 40. As stated earlier, no appeal was filed against them. The award was complied with by both the insurance company. In such circumstances, as rightly pointed out by the learned counsel for the 2nd respondent/Insurance company, in the present case also, as the vehicle involved was one and the same as in the above said MCOPs and as the vehicles were on the move at the time of the accident, it will be appropriate to apportion negligence as 60% : 40% on the 1st and 3rd respondent vehicle drivers. As such, the conclusion of the Tribunal fixing 100% negligence on the 1st respondent vehicle driver is set aside. The negligence on the drivers of 1st and 3rd respondent is fixed at 60% : 40%. Thus, the insurer of the said vehicles, who are the 2nd and 4th respondents are liable to pay the award amount at the rate of 60 : 40.

11. Neither the 2nd respondent-Insurance company nor the petitioner/claimant or the 4th respondent/Insurance company are agitating over the quantum of the award passed by the Tribunal. As such there is no need to revisit the manner of arriving the quantum of the award amount fixed by the Tribunal as compensation to the petitioner. The quantum of Award passed by the Tribunal is confirmed.

12. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed to the extent of modifying the apportionment of negligence as stated above.

(ii) The quantum of award amount passed by the Tribunal is confirmed.

(iii) The negligence is now modified as 60 : 40. Therefore, the 2nd and 4th respondents viz., the appellant and 4th respondent herein are directed to pay the award amount in the ratio of 60 : 40 along with proportionate interest within a period of four weeks from the date of receipt of a copy of this order. The award amount will carry interest at the rate of 7.5% per annum from the date of petition till date of realisation. The

appellant herein is permitted to withdraw the excess amount, if any, in deposit.

(iv) The Petitioner in MCOP.No.64/2010/1st respondent herein, is permitted to withdraw the award amount along with accrued interest, by filing appropriate application before the Tribunal. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal
Chief Judicial Magistrate Court, Erode.

+1cc to Mr.N.Vijayaraghavan, Advocate sr.no.29297

+1cc to Mr.I.C.Vasudevan, Advocate sr.no.29108

+1cc to Mr.S.Arunkumar, Advocate sr.no.29156

C.M.A.No.3337 of 2010

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nr 25/06/2018



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