

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2523 of 2018

1.N.Thanikaivel
2.T.Sumathi

.. Appellants

Vs.

1.B.Hari Babu

2.The Oriental Insurance Co. Ltd.,
Motor Claims Third Party Cell,
115, Prakasam Salai, Chennai - 600 115. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.12.2017 made in M.C.O.P.No.7950 of 2015, on the file of the learned Chief Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Ms.R.J.Radhika

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 07.12.2017 made in M.C.O.P.No.7950 of 2015, on the file of the learned Chief Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.By consent of both the parties, this appeal is taken up for final disposal at the admission stage itself.

3.The appellants are the claimants in M.C.O.P.No.7950 of 2015. They filed the said claim petition on the file of the Chief Judge, Small Causes Court, (Motor Accidents Claims

Tribunal), Chennai, claiming a sum of Rs.25,00,000/- as compensation for the death of their son T.Karthick, who died in the accident that took place on 24.08.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence, holding that the accident occurred due to the rash and negligent driving by both 1st respondent as well as the driver of the unknown lorry, directed the respondents 1 and 2 each to pay a sum of Rs.6,95,400/- as compensation, amounting to Rs.13,90,800/-, to the appellants.

5.The appellants filed the present appeal, challenging the portion of the award fixing 50% of negligence on the rider of the motor cycle and only 50% on the driver of the unknown lorry.

6.Ms.R.J.Radhika, learned counsel appearing for the appellants contended that the Tribunal erred in holding that there is no evidence to fix entire negligence on the rider of the motor cycle. After investigation, Ex.P19, Charge Sheet has been filed against the rider of the motor cycle, the 1st respondent herein. P.W.2 and P.W.4, eye-witnesses have deposed that accident occurred only due to rash and negligent driving by the rider of the motor cycle. In view of the above facts, the award of the Tribunal in fixing 50% negligence on the part of the rider of the motor cycle is to be set aside and prayed for fixing entire negligence on the part of the rider of the motor cycle, the 1st respondent herein.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that First Information Report, Ex.P2 was lodged by the 1st appellant, only against the driver of the unknown lorry and stated that the driver of the unknown lorry was responsible for the accident. At the earliest point of time, it was stated that the accident occurred only due to the negligence of the driver of the unknown lorry. The appellants and 1st respondent colluded together and created documents to show that the 1st respondent is responsible for the accident. R.W.2, Investigator has stated that the accident occurred only due to the negligence of the driver of the unknown lorry, after investigating the matter in detail. The Tribunal erred in fixing 50% of the negligence on the part of the driver of the unknown lorry and submitted that the Tribunal ought to have fixed the entire negligence on the part of the driver of the unknown lorry and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent and perused the materials.

9. From the materials on record, it is seen that originally Ex.P2, FIR was lodged against the driver of the unknown lorry. After investigation, Ex.P19, Charge Sheet was filed against the rider of the motor cycle. To support the contention that only the rider of the motor cycle is negligent and responsible for the accident, the appellants have examined P.W.2 and P.W.4, who are the eye-witnesses. P.W.2 traveled in a motor cycle with one Manikandan, while the 1st respondent and deceased traveled in another motor cycle bearing Reg.No.TN-05-BA-7052, which was involved in the accident. P.W.4 is an independent witness who was standing at the place of accident along with her husband in the bike. Both P.W.2 and P.W.4 have categorically deposed that only 1st respondent drove the motor cycle in a rash and negligent manner and dashed on the backside of the lorry. The 2nd respondent had examined the Senior Assistant in their office and the Investigator as R.W.1 and R.W.2 respectively. They have deposed that only driver of the unknown lorry is responsible for the accident. No acceptable documentary evidence has been produced by them to substantiate their contention. Investigator has not filed any statement recorded by her from the persons whom she examined with regard to nature of the accident. The FIR was not lodged on both of them and more importance must be given to the evidence given by the appellants.

10. In the present case, as already stated, P.W.2 and P.W.4 who are the eye-witnesses have deposed that the 1st respondent-driver of the motor cycle was solely responsible for the accident. The Tribunal has not given any reason for not considering the evidence of P.W.2 and P.W.4 and has not given reason for not accepting their evidences. By not considering and not accepting the evidences of P.W.2 and P.W.4 coupled with Ex.P19 - Charge Sheet, when appellants have proved by examining eye-witnesses that only 1st respondent by riding motor cycle in a rash and negligent manner dashed against the lorry, the award of Tribunal fixing 50% of the negligence on the part of the driver of the unknown lorry is liable to be set aside. I hold that the rider of the motor cycle is solely responsible for the accident.

11. In view of the above finding, the 2nd respondent-Insurance Company is directed to deposit the entire compensation of a sum of Rs.13,90,800/- with proportionate interest and costs awarded by the Tribunal, directly to the credit of M.C.O.P.No.7950 of 2015, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are entitled to withdraw the award amount as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn, if any, with interest by making necessary application before the Tribunal. No costs.

12.In the result, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

krk/gsa

To

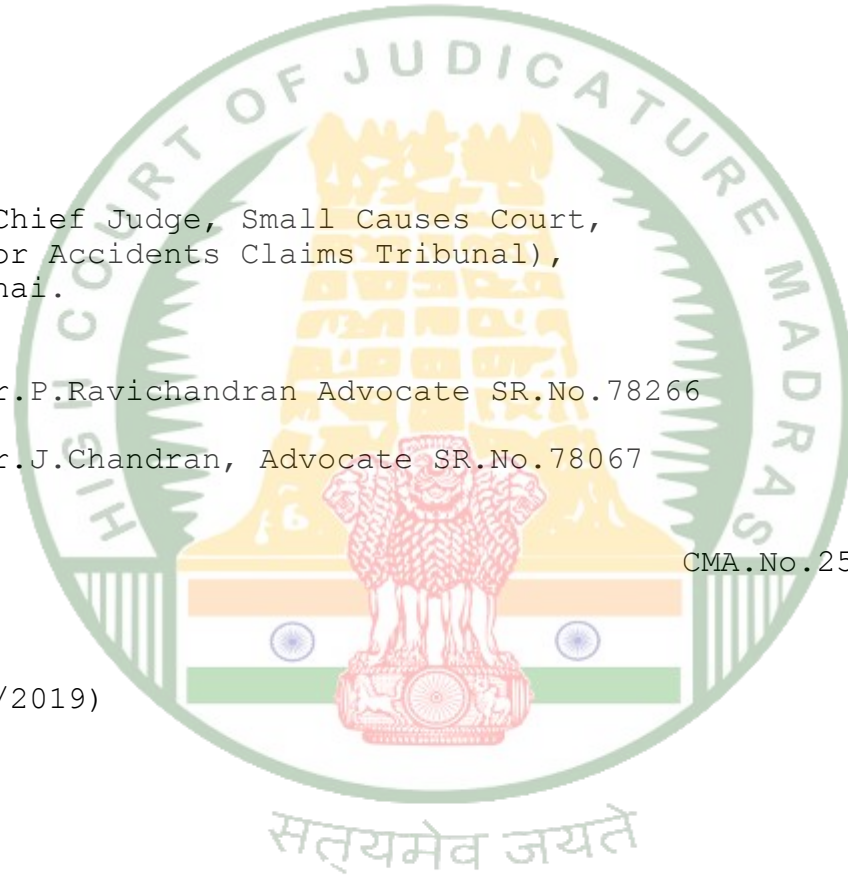
The Chief Judge, Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai.

+1cc to Mr.P.Ravichandran Advocate SR.No.78266

+1cc to Mr.J.Chandran, Advocate SR.No.78067

CMA.No.2523 of 2018

RGN (CO)
GMY (25/01/2019)



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