

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2979 of 2018
and C.M.P.No.22578 of 2018

New India Assurance Company Ltd.,
No.12, New Hospital Road,
Gobi.

... Appellant/6th Respondent

Vs.

1.K.Jayakumari 1st Respondent/Petitioner

2.N.Anthonysamy

3.M/s.Operation Mobilisation

Rep. By its Manager,
No.260/9, Anna Nagar West,
Chennai.

4.United India Insurance Company Ltd.,

No.1-A, Thanjavur Main Road,
Tiruverumbur, Tiruchy 620 013.

5.P.Muthukamatchi

6.C.Rathinasamy ... Respondents 2 to 6/
Respondents 1 to 5

(R2, R3, R5 & R6 were set exparte
before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 01.09.2017 made in M.C.O.P.No.1273 of 2007, on the file of Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Tiruppur.

For Appellant : Mr.R.Sivakumar

For R4 : Mr.T.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the liability fastened on them by the award dated 01.09.2017 made in M.C.O.P.No.1273 of 2007, on the file of Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Tiruppur.

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

3.The appellant is 6th respondent in M.C.O.P.No.1273 of 2007, on the file of Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Tiruppur. The 1st respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- for the injuries sustained by her in the accident that took place on 26.05.2007.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligence on respondents 2 and 5, the drivers of the lorry as well as the van respectively, belonging to the respondents 3 and 6 respectively and as insurer of the vehicles, the appellant as well as the 4th respondent are liable to pay 50% each of the sum of Rs.6,09,100/- as compensation to the 1st respondent.

5.Challenging the portion of the award fixing 50% negligence on the part of the 5th respondent and 50% liability on the appellant-Insurance Company, the appellant has come out with this appeal.

6.The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to the rash and negligent driving by the 2nd respondent, driver of the van belonging to the 3rd respondent and insured with 4th respondent-Insurance Company. The police after enquiring parties, lodged FIR against the 2nd respondent, driver of the van. The 1st respondent as P.W.1, contrary to the FIR has deposed that the accident occurred due to the rash and negligent driving by the respondents 2 and 5, the drivers of the van and lorry respectively. The Tribunal erroneously rejected the evidence of R.W.1, Manager of the appellant, based on the minor contradiction in the FIR and his evidence. The learned counsel appearing for the appellant-Insurance Company further contended that the Tribunal ought to have taken note of M.C.O.P.Nos.1271 and 1272 of 2007 and 177 of 2008, filed by other injured persons and the legal heirs of the deceased persons in respect of the very same accident. In the said claim petitions, the Tribunal held that the accident occurred only due to the rash and negligent driving by the driver of the van and the 4th respondent-Insurance Company is liable to pay entire compensation and dismissed the above three claim petitions against the respondents 5 and 6 and the appellant-Insurance Company. The 4th respondent, insurer of the van compromised and settled one of the claim petition in M.C.O.P.No.1274 of 2007, filed by one of the injured person in respect of the same accident before the Lok Adalat and by the order dated 27.04.2016, Lok Adalat directed the 4th respondent to pay the entire compensation and exonerated the appellant-Insurance

Company from paying any compensation. The learned counsel appearing for the appellant-Insurance Company referred to the order of the Lok Adalat dated 27.04.2016 and submitted that the appellant is not liable to pay compensation and prayed for setting aside the award of the Tribunal against the appellant and allowing the appeal.

7.The learned counsel appearing for the 4th respondent-Insurance Company contended that the FIR is not the sole document to fix negligence. The Tribunal has to consider the evidence let in and materials on record and has to come to the conclusion with regard to negligence on the part of the driver of the vehicle involved in the accident. In the present case, P.W.1 has categorically deposed that the accident occurred only due to the rash and negligent driving by the respondents 2 and 5, the drivers of the van and lorry respectively. The Tribunal has rightly rejected the evidence of R.W.1, due to the contradiction. The award passed in the other claim petitions are not binding on the Tribunal while considering another claim petition and submitted that there is no error in the award passed by the Tribunal and award is valid and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the 4th respondent and perused the materials available on record.

9.The learned counsel appearing for the appellant-Insurance Company has contended that FIR is lodged only against the 2nd respondent, driver of the van, after due enquiry by police. As rightly pointed out by the learned counsel appearing for the 4th respondent, the Tribunal has to appreciate all the materials on record, including the FIR and come to a conclusion with regard to negligence. In the present case, apart from M.C.O.P.No.1273 of 2007 filed by the 1st respondent herein, the other persons who traveled in the van also filed claim petitions viz., M.C.O.P.Nos.1271 and 1272 of 2007 and 177 of 2008 for compensation. From the documents filed by the learned counsel appearing for the appellant in the typed set of papers, it is seen that in M.C.O.P.Nos.1271 and 1272 of 2007 and 177 of 2008 filed by the other claimants, the Tribunal dismissed the claim petitions against the respondents 5 and 6 and appellant. It is not the case of the 4th respondent that the appeal has been filed against the said award. On the other hand, the 4th respondent had compromised before the Lok Adalat one of the claim petition, M.C.O.P.No.1274 of 2007, admitting the entire negligence and paid compensation to the injured person/claimant. There cannot be different awards fixing negligence differently on the driver of the vehicle.

10.The award passed by the Tribunal fixing negligence on the part of the driver of the van had become final and 4th respondent also accepted the same. In view of the same, the award of the Tribunal fixing 50% negligence on the part of the

5th respondent, driver of the lorry belonging to the 6th respondent is liable to be set aside and is hereby set aside. The award of the Tribunal directing the appellant-Insurance Company as insurer of the lorry belonging to 6th respondent to pay 50% of the award amount is also set aside. The 4th respondent, as the insurer of the van is directed to pay the entire compensation awarded by the Tribunal.

11. In the result, the Civil Miscellaneous Appeal is allowed. The 4th respondent-Insurance Company is directed to deposit the entire award amount along with interest and costs, within a period of six weeks from the date of petition, till the date of realization. On such deposit, the 1st respondent/claimant is permitted to withdraw the entire award amount along with interest and costs, after adjusting the amount already withdrawn if any, by filing necessary applications before the Tribunal. The appellant is permitted to withdraw the amount if any deposited by them to the credit of M.C.O.P.No.1273 of 2007 along with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Chief Judicial Magistrate,
(Motor Accidents Claims Tribunal), Tiruppur.

2. United India Insurance Company Ltd.,
No.1-A, Thanjavur Main Road,
Tiruverumbur, Tiruchy 620 013.

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras. (2 copies)

+1cc to Mr.T.Ravichandran, Advocate, S.R.No. 88437
+1cc to Mr.R.Sivakumar, Advocate, S.R.No. 88147

C.M.A.No.2979 of 2018
and C.M.P.No.22578 of 2018

CNR(CO)
GN(26/03/2019)