

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2925 of 2018
and C.M.P.No.22160 of 2018

The Divisional manager,
United India Insurance Co. Ltd.,
No.4, Bharathidasan Salai,
Contonment, Trichy. ... Appellant/3rd Respondent

Vs.

1.R.Lakshmi Narasimman ... 1st Respondent/Claimant

2.The Managing Director,
T.N.S.T.C. Kumbakonam Ltd.,
Trichy Region,
Periyamilaguparai, Trichy-1. ... 2nd Respondent/1st Respondent

3.Kannaiyan ... 3rd Respondents/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 15.11.2017 made in M.C.O.P.No.12 of 2016 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Ariyalur.

For Appellant : Mr.D.Bhaskaran

For R1 : No appearance

For R2 : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the liability fastened on them, by the award dated 15.11.2017, made in M.C.O.P.No.12 of 2016 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Ariyalur.

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

3.The appellant-Insurance Company is the 3rd respondent in M.C.O.P.No.12 of 2016 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Ariyalur. The 1st respondent filed the said claim petition, claiming a sum of Rs.80,000/- as compensation for the injuries sustained by him in the accident that took place on 15.10.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 3rd respondent and the driver of the bus belonging to the 2nd respondent-Transport Corporation is not liable to pay compensation and directed the appellant-Insurance Company to pay a sum of Rs.25,000/- as compensation to the 1st respondent.

5.Against the said award dated 15.11.2017, made in M.C.O.P.No.12 of 2016, the appellant-Insurance Company has come out with this appeal.

6.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing negligence on the part of the driver of the lorry belonging to the 3rd respondent. The Tribunal has not properly appreciated the materials on record and came to the conclusion to fix the negligence on the part of the driver of the lorry belonging to the 3rd respondent. The 2nd respondent-Transport Corporation failed to produce spot sketch and Inspection Report, but filed only rough sketch. The Tribunal failed to consider the admission of the driver of the bus that three buses can simultaneously proceed in the said route and driver of the bus failed to exercise caution and was responsible for the accident.

7.The learned counsel appearing for the 2nd respondent-Transport Corporation contended that considering the materials on record, the Tribunal has held that the driver of the bus belonging to the 2nd respondent is not responsible for the accident and the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 3rd

respondent.

8. Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Transport Corporation and perused the materials available on record.

9. From the materials available on record, it is seen that the contention of the 1st respondent/claimant is that the driver of the lorry belonging to the 3rd respondent came in reverse direction and dashed against the bus belonging to the 2nd respondent-Transport Corporation. According to the 1st respondent/claimant, both the drivers are responsible for the accident. The evidence deposed by the 1st respondent is that the driver of the lorry came in the reverse direction and dashed against the bus. On the other hand, it is the contention of the learned counsel appearing for the appellant-Insurance Company that the lorry belonging to the 3rd respondent was not coming in the reverse direction in a rash and negligent manner to dash against the bus. On the other hand, the lorry was not moving, but it was stationed in the Amman diesel workshop. The driver of the bus in order to avoid head on collision with another oncoming lorry, dashed the bus against the backside of the lorry. From the materials on record, it is seen that the 1st respondent and other claimants have stated that there was no oncoming another lorry and that the lorry belonging to the 3rd respondent and insured with the appellant-Insurance Company is not stationed, but the driver of the lorry was reversing the lorry. The Tribunal has considered these facts along with the report of the Motor Vehicle Inspector, wherein the Motor Vehicle Inspector has stated that if bus hit the lorry on the backside, the damages to the lorry would have been more, but when the lorry came on the reverse direction and dashed against the bus, damage to the bus will be more. The Tribunal also considered the deposition of the driver of the lorry that he did not put indicator as lorry was in workshop. From the materials available on record, the Tribunal found that the lorry was five feet inside the road. The Tribunal has elaborately considered as to whose negligence the accident had occurred and by giving cogent and valid reason, held that the driver of the lorry is responsible for the accident. There is no perversity in the finding of the Tribunal, warranting interference by this Court.

10. In the result, the Civil Miscellaneous Appeal is dismissed and sum of Rs.25,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant, with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit 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.No.12 of 2016. On such deposit, the 1st

respondent/claimant is 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. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gsa

To

- 1.The Managing Director,
T.N.S.T.C. Kumbakonam Ltd.,
Trichy Region,
Periyamilaguparai, Trichy-1.
- 2.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal), Ariyalur.

+1cc to Mr.D.Venkatachalam, Advocate SR.No.87366

+1cc to Mr.C.Jagadish, Advocate SR.No.87759

+1cc to Mr.D.Bhaskaran Advocate SR.No.87664

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CNR (CO)
GMY (21/03/2019)

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