

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.2597, 2599 and 2600 of 2018
and C.M.P.Nos.19654, 19664 and 19669 of 2018

The United India Insurance Co. Ltd.,
Kumaran Road, Tiruppur 641 601.

.. Appellant in all
C.M.As. /
4th Respondent

Vs.

1.Muthukaruppi @ Usha
2.Nachiappan
3.Valliappan
4.Subburaj
5.The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai) Ltd. Virudhunagar Region.
6.Chellakariammal

.. Respondents in
C.M.A.No.2597/2018 /
Petitioners 1 to 3 &
R1 to R3

1.Valliappan
2.Subburaj
3.The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai) Ltd. Virudhunagar Region.
4.Chellakariammal

.. Respondents in
C.M.A.No.2599/2018/
Petitioner, R1 to R3.

1.Muthukaruppi @ Usha

2.Subburaj

3.The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai) Ltd. Virudhunagar Region.
4.Chellakariammal

.. Respondents in
C.M.A.No.2600/2018/
Petitioner, R1 to R3.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the order and decree dated 08.12.2017 made in M.C.O.P.Nos.122 to 124 of 2014 on the file of the I Additional District Judge, (Motor Accidents Claims Tribunal), Tiruppur.

For Appellant : Mr.T.Ravichandran
(in all C.M.As.)

For R5 : Mr.D.Venkatachalam
(in C.M.A.No.2597/2018)

For R3 : Mr.D.Venkatachalam
(in C.M.A.Nos.2599 & 2600/2018)

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

These Civil Miscellaneous Appeals have been filed against the order and decree dated 08.12.2017 made in M.C.O.P.Nos.122 to 124 of 2014 on the file of the I Additional District Judge, (Motor Accidents Claims Tribunal), Tiruppur.

2.Since all the appeals are arising out of the same accident, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the respective claim petitions.

4.The appellant-Insurance Company is the 4th respondent in the claim petitions. The claimants in M.C.O.P.No.122 of 2014 filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Nachiappan, husband of the 1st petitioner and father of the petitioners 2 and 3 therein, who died in the accident that took place on 13.12.2013. The claimant in M.C.O.P.No.123 of 2014 filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.12.2013. The claimant in M.C.O.P.No.124 of 2014 filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 13.12.2013.

5.The Tribunal considering the pleadings, oral and documentary evidence, by common award dated 08.12.2017, held that the accident occurred due to the interception of TVS XL Moped. The Tribunal holding that the accident occurred due to the rash and negligent act of the 1st respondent and rider of the 3rd respondent, fixed negligence on the part of the 1st respondent at 25% and rider of TVS XL Moped at 75% and awarded compensation, directing the 2nd respondent-Transport Corporation

to pay 25% of the award and 4th respondent-Insurance Company to pay 75% of the compensation awarded.

6. Aggrieved by the said award, the 4th respondent-Insurance Company has come out with the present appeals.

7. The learned counsel for the 4th respondent-Insurance Company contended that the Tribunal erred in fixing 75% of the negligence on the part of the rider of the TVS XL Moped, owned by the 3rd respondent. The said vehicle is not involved in the accident. The Tribunal without considering the evidence, erroneously fixed 75% of the negligence on the rider of the TVS XL Moped. The claimants did not implead owner and insurer of the Maruti car and claim petition is bad for non-joinder of necessary parties.

8. The learned counsel for the 2nd respondent-Transport Corporation contended that the Tribunal having held that the accident occurred only due to the interception of the TVS XL Moped, erred in fixing the negligence on the part of the 1st respondent and directing the 2nd respondent-Transport Corporation to pay 25% of the compensation awarded and prayed for setting aside the award with regard to 25% negligence fixed on the part of the 1st respondent.

9. Heard the learned counsel appearing for the 4th respondent-Insurance Company as well as the 2nd respondent-Transport Corporation and perused the materials available on record.

10. The learned counsel for the appellant contended that the First Information Report was lodged only against the 1st respondent and Charge Sheet was also lodged against him. The Tribunal without considering the FIR and Charge Sheet, had erroneously fixed 75% of negligence on the rider of the TVS XL Moped, belonging to the 3rd respondent. The first contention of the learned counsel for the 4th respondent-Insurance Company is that the Tribunal ought to have fastened the entire liability on the 1st respondent, driver of the bus belonging to the 2nd respondent-Transport Corporation, based on Ex.P1- First Information Report, Ex.P2- alteration Charge Sheet and Ex.P3- Charge sheet, is without merits.

11. It is well settled that FIR, Charge Sheet and criminal investigation as well as judgment rendered by the Criminal Court are not binding on the Tribunal. The Tribunal can take these documents for consideration, but has to fix the negligence only by appreciating the evidence let in by the parties before the Tribunal. In the present case, P.W.1 and P.W.2 have deposed that rider of the TVS XL Moped suddenly tried to cross the road from

right side to left side in rash and negligent manner and due to the same, accident has occurred. The 4th respondent-Insurance Company has not examined any witness who has seen the accident to disprove this contention and substantiate their case that the accident was only due to the rash and negligent driving by the 1st respondent, driver of the bus belonging to the 3rd respondent-Transport Corporation. The Tribunal appreciating the evidence of P.W.1 and P.W.2, has held that the rider of TVS XL Moped is responsible for the accident. At the same time, the Tribunal has held that, had the 1st respondent turned the bus to a side, he could have avoided the accident. For that reason, the Tribunal has fixed 25% of the negligence on the part of the 1st respondent. The Tribunal has given cogent and valid reason by appreciating all the materials on record for fixing 75% of the negligence on the part of the TVS XL Moped, belonging to the 3rd respondent and 25% on the part of the driver of the 1st respondent. There is no perversity in the reasoning of the Tribunal warranting interference.

12. In the result, all the Civil Miscellaneous Appeals are dismissed and the sum of Rs.6,90,000/-, Rs.20,000/- and Rs.1,05,000/- granted as compensation by the Tribunal in M.C.O.P.Nos.122 to 124 of 2014 respectively are confirmed. The 2nd respondent-Transport Corporation and 4th respondent-Insurance Company are directed to deposit their share of the compensation awarded, as directed by the Tribunal, along with interest and costs to the credit of M.C.O.P.Nos.122 to 124 of 2014 respectively, on the file of the I Additional District Judge, (Motor Accidents Claims Tribunal), Tiruppur, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire award amount, as per the ratio of apportionment fixed by the Tribunal, with accrued interest and costs, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The I Additional District Judge,
(Motor Accidents Claims Tribunal), Tiruppur.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai) Ltd. Virudhunagar Region.

+1 cc to Mr.T.Ravichandran, Advocate, S.R.No.79510

+1 cc to Mr.D.Venkatachalam, Advocate, S.R.No.80280

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and C.M.P.Nos.19654, 19664 and 19669 of 2018

KK(CO)
SSM(29/01/2019)