



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
C.M.A(MD)No.703 of 2011

and
M.P(D)No.1 of 2011

The Divisional manager,
The New India Assurance Company Ltd.,
Kamarajar Salai,
Madurai.

... Appellant/2nd Respondent

vs.

1.G.Sudalaimani
2.S.Ayyakalai

...1st Respondent/Petitioner

...2nd Respondent/1st Respondent

3. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Byepass Road,
Madurai.

...3rd Respondent/3rd Respondent

Prayer: The appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the award and decree dated 02.11.2010 made in M.C.O.P.No.674 of 2006, on the file of Motor Accidents Claims Tribunal (Additional District Court/Fast Track Court No.2), Madurai.

For Appellant	: Mr.B.Vijay Karthikeyan
For R3	: Mr.M.Prakash
For R2	: Exparte before Tribunal

JUDGMENT

Being aggrieved over the award passed by the Motor Accidents Claims Tribunal (Additional District Court/Fast Track Court No.2), Madurai, in M.C.O.P.No.674 of 2006, dated 02.11.2010, the appellant Insurance Company has filed the present appeal.

2. The appellant Insurance Company is the second respondent in M.C.O.P.No.674 of 2006, dated 02.11.2010, on the file of the Motor Accidents Claims Tribunal (Additional District Court/Fast Track Court No.2), Madurai. The first respondent, who is the claimant, filed a claim petition claiming a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation for the injuries sustained by him in the accident that occurred on 02.09.2005 near Petrol Bunk at Sholavandan.

3.Facts of the Case:-

According to the first respondent, on 02.09.2005 at about 20.00 hours, while he was travelling as a pillion rider in the motor cycle bearing registration No.TN-58-D-4560, belonging to the second



respondent, driven by his friend, insured with the appellant, the bus bearing registration No.TN-59-N-0259, driven by its driver belonging to the third respondent in a rash and negligent manner and dashed against the Motorcycle and caused the accident. Due to that, the first respondent sustained injuries and took treatment. According to the first respondent, the driver of the third respondent is responsible for the accident. The appellant is the insurer of the two-wheeler and both the appellant and the third respondent are liable to pay compensation.

4. The second respondent remained ex-parte before the Tribunal.

5. The appellant and the third respondent opposed the same and denying their liability to pay the compensation.

6. Before the Tribunal, the first respondent examined himself as P.W.1, and examined three witnesses as P.W.2 to P.W.4 and marked 6 documents as Ex.P1 to P6. The appellant and the third respondent did not let in any oral and documentary evidence.

7. The Tribunal, considering the pleadings, oral and documentary evidence held that the accident occurred due to the negligence of the rider of the motorcycle and the driver of the third respondent and directed the respondents 2 & 3 and the appellant to pay the compensation awarded to the first respondent/claimant for the injuries sustained by him.

8. Aggrieved against the said award, the appellant-Insurance Company has filed the present appeal.

9. I have heard the learned Counsel appearing for the appellant and the third respondent and perused all the materials available on record. Though notice was served on the respondents 1 & 2 and their names are also printed in the cause list, they have not chosen to appear either in person or through counsel.

10. The contention of the learned counsel for the appellant is that the Tribunal erred in fastening the liability on the rider of the motorcycle also for the accident, is not correct. The Tribunal considering the evidence, held that the accident occurred due to composite negligence on the part of both rider of the motorcycle as well as the driver of the bus belonging to the third respondent. The said finding is based on the evidence of P.W.1 and P.W.4. There is no reason to interfere with the said findings.

11. The next contention of the learned counsel for the appellant is that the Tribunal erred in directing the appellant and the respondents 2 & 3 to pay the compensation amount jointly and severally to the first respondent. The Tribunal failed to apportion the liability erred in directing the respondents 2 & 3 and the appellant to pay the compensation jointly and severally, has



considerable force and is acceptable. The Tribunal has given a finding that both the rider of the motorcycle as well as the driver of the bus belonging to the third respondent are responsible for the accident. In view of such finding, the award of the Tribunal directing the respondents 2 & 3 and the appellant to pay the compensation amount jointly and severally to the first respondent is modified directing the appellant and the second respondent on one part to pay 50% of the compensation awarded by the Tribunal and the third respondent on the other part to pay 50% of the award amount to the first respondent.

12. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The appellant, second respondent and the third respondent are directed to deposit their share amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.674 of 2006, on the file of the Motor Accidents Claims Tribunal, (Additional District Court/Fast Track Court No.2), Madurai, within a period of **eight weeks** from the date of receipt of copy of this judgment;

13. On such deposit being made, the first respondent/claimant is permitted to withdraw the entire award amount with interest by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal
(Additional District Court/Fast Track Court No.2),
Madurai.
2. The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.B.Vijay Karthikeyan, Advocate Sr.No.81606
+1cc to Mr.M.Prakash, Advocate Sr.No.81454

AM
VB/PM/SAR1/20.12.2018/3P/6C