

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2015 of 2008

and M.P.No.1 of 2008

National Insurance Co. Ltd.,
Pondicherry. Appellant/5th Respondent

Vs.

- 1.Jaya1st Respondent/Petitioner
- 2.Thangavelu2nd Respondent/1st Respondent
- 3.M/s.Bayor Crop Science Ltd.,
Avantis House,
54/A, Mathurdas Vasanji Road,
Andheri, Mumbai.
- 4.M/s.Bajaj Alliance General,
Insurance Co. Ltd.,
952/954 A, Appa Sahib Marathe Marg,
Prabhadevi, Mumbai 400 025.
- 5.A.Stanley
- 6.GeethaRespondents 3to 5/Respondents 2to4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.06.2006 and made in M.A.C.T.O.P.No.649 of 2005 on the file of Court of the Motor Accident Claims Tribunal Judge Cum Third Additional Subordinate Court, Coimbatore.

For Appellant : Mr.S.Vadivelu
For R1 : Mr.M.Parthasarathy
For R4 : Mr.N.Vijayaraghavan
For R6 : Ms.P.Indumathi
For R2 & R5 : Given Up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 05.06.2006 passed by the Motor Accident Claims Tribunal Judge Cum Third Additional Subordinate Court, Coimbatore, in M.A.C.T.O.P.No.649 of 2005.

2.The facts of the case are that on 04.09.2003 at 06.15 p.m., the first respondent/claimant was travelling in the Maruthi Car bearing Registration No. PY-01-N-6364 insured with

the appellant insurance company. When the said Car was proceeding on Pollachi to Palghat Main Road, near Ambuja Industrial Co., another Maruthi Car bearing Registration No. TN-38-P-1843 insured with the fourth respondent insurance company, came in a rash and negligent manner and dashed against the Maruthi Car, in which, the first respondent was travelling. Due to the said impact, the first respondent sustained head injury, besides receiving hip dislocation and other injuries. Stating that the accident had occurred due to the rash and negligent driving of the driver of the Car bearing Regn.No.TN38 P1843, she filed a claim petition claiming a compensation of Rs.50,000/-. On consideration of the evidence and materials available on record, the Tribunal awarded a total compensation of Rs.18,350/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant has disputed only the liability of the appellant insurance company to pay compensation. According to him, when the first respondent/claimant herself had not claimed anything against the driver, owner and the insurer of the Car in which, she was travelling on the date of accident, the Tribunal erred in fixing the liability on the insurers of both the vehicles. The learned counsel further submitted that in the absence of any issue framed against the appellant insurance company, the liability of 50% fastened on them is unsustainable in law and the same is liable to be set aside.

4.Per contra, the learned counsel for the respondents 1, 4, 6 submitted that based on the oral and documentary evidence adduced by the parties, the Tribunal has rightly rendered its findings on negligence and liability fastened on the insurers of both the vehicles involved in the accident and hence, the same warrant no interference at the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the respondents 1, 4, 6.

6.On a perusal of the award, it could be seen that Ex.P1 First Information Report in Malayalam and Ex.P2 Tamil version of Ex.P1, was registered only against the driver of the Maruthi Car bearing Regn.No.TN38 P1843. However, after evaluating the oral and documentary evidence adduced by the first respondent/claimant, more particularly, Exs.P3 and P4-Motor Vehicle Inspector's reports relating to both the Cars involved in the accident, the Tribunal, having found that both the drivers of the vehicles did not possess valid driving licence at the time of accident, has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving on the part of drivers of both the vehicles and accordingly

fastened the liability on the insurers of both the vehicles, which this Court is not inclined to interfere.

7. Since the appellant insurance company has not disputed the quantum of compensation awarded by the Tribunal, the same is hereby confirmed as such.

8. In the ultimate analysis, this Civil Miscellaneous Appeal is dismissed, confirming the award passed by the Tribunal. No costs. Consequently, the connected Civil Miscellaneous Petition is closed. The appellant / Insurance Company is directed to deposit the 50% of award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount lying in the deposit to the bank account of the first respondent/claimant, through RTGS, within one week thereafter.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Third Additional Subordinate Court,
Coimbatore.

2. The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to Mr.M.B.Gopalan, advocate, sr.71568

+1 cc to M/s.S.Vadivel, Advocate, sr.69636

+1 cc to M/s.M.Parthasarathy, advocate, sr.69992

sj(co)

krd 24/9

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