

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.Nos.384 to 391 of 2007

National Insurance Company Limited,
No.78, T.V.S. Street, Branch Office I,
Erode Taluk and District.

... Appellant
in all appeals

Vs.

- 1.Kaliammal
- 2.K.Murthy -died(driver)
- 3.P.Senthil Kumar - Exparte- Owner
- 4.United India Insurance Co. Ltd.,
No.3, Gobi Road, Gobichettipalayam Taluk,
Erode District.
- 5.Mariappan - Exparte-Driver
- 6.I.Priya-Exparte-Owner

... Respondents
in C.M.A.No.384 of 2007

- 1.Ponnuswamy
- 2.K.Murthy-died
- 3.P.Senthil Kumar
- 4.United India Insurance Co. Ltd.,
No.3, Gobi Road, Gobichettipalayam Taluk,
Erode District.
- 5.Mariappan
- 6.I.Priya

... Respondents
in C.M.A.No.385 of 2007

- 1.Murugan
- 2.K.Murthy
- 3.P.Senthil Kumar
- 4.United India Insurance Co. Ltd.,
No.3, Gobi Road, Gobichettipalayam Taluk,
Erode District.
- 5.Mariappan
- 6.I.Priya

... Respondents
in C.M.A.No.386 of 2007

- 1.Kumar
- 2.K.Murthy
- 3.P.Senthil Kumar
- 4.United India Insurance Co. Ltd.,
No.3, Gobi Road, Gobichettipalayam Taluk,
Erode District.
- 5.Mariappan

6.I.Priya

... Respondents
in C.M.A.No.387 of 2007

1.Selvan

2.K.Murthy

3.P.Senthil Kumar

4.United India Insurance Co. Ltd.,
No.3, Gobi Road, Gobichettipalayam Taluk,
Erode District.

5.Mariappan

6.I.Priya

... Respondents
in C.M.A.No.388 of 2007

1.Periyakaruppan

2.K.Murthy

3.P.Senthil Kumar

4.United India Insurance Co. Ltd.,
No.3, Gobi Road, Gobichettipalayam Taluk,
Erode District.

5.Mariappan

6.I.Priya

... Respondents
in C.M.A.No.389 of 2007

1.Aandavan

2.K.Murthy

3.P.Senthil Kumar

4.United India Insurance Co. Ltd.,
No.3, Gobi Road, Gobichettipalayam Taluk,
Erode District.

5.Mariappan

6.I.Priya

... Respondents
in C.M.A.No.390 of 2007

1.Vaikunthal @ Vaikuntham

2.K.Murthy

3.P.Senthil Kumar

4.United India Insurance Co. Ltd.,
No.3, Gobi Road, Gobichettipalayam Taluk,
Erode District.

5.Mariappan

6.I.Priya

... Respondents
in C.M.A.No.391 of 2007

Prayer : Civil Miscellaneous Appeals in C.M.A.Nos.384 to 391 of 2007 filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 16.12.2004 made in M.C.O.P.Nos.174, 177, 176, 181, 195, 196, 198 and 200 of 2002, respectively, on the file of the Motor Accident Claims Tribunal (II Additional Sub-Judge), Gobichettipalayam.

For Appellant : Mr.N.B.Surekha
in all appeals

For R1 : Mr.I.C.Vasudevan
in all appeals

For R4 : Mr.S.Arun Kumar
in all appeals

For R6 : No appearance
R2, 3, 5 & 6 in all appeals

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

These Civil Miscellaneous Appeals have been preferred by the appellant Insurance Company, challenging the common award dated 16.12.2004, passed by the 'Motor Accident Claims Tribunal (II Additional Sub-Court), Gobichettipalayam' (hereinafter referred to as 'the Tribunal') in M.C.O.P.Nos.174, 177, 176, 181, 195, 196, 198 and 200 of 2002 respectively.

2.The facts of the case would run thus :

On 27.09.2001, at about 06.30 a.m., the claimants were going for work in a mini auto-rickshaw bearing Registration No.TN-36-E-3170, in Sathiyamangalam-Paruppanpalayam Road, from East to West direction on the left side of the road and at about 07.45 a.m., when they were nearing Thandalampalayam road section, a mini auto-rickshaw, bearing Registration No.TN-36-Z-7984, driven by the 2nd respondent, came from West to North direction in a rash and negligent manner and hit the mini auto-rickshaw, in which the claimants were travelling. Due to the said impact, the claimants sustained grievous injuries. The claimants later, filed individual claim petitions before the Tribunal, which awarded Rs.12,000/-, Rs.12,000/-, Rs.17,000/-, Rs.12,000/-, Rs.22,000/-, Rs.17,000/-, Rs.12,000/- and Rs.12,000/- in M.C.O.P.Nos.174, 177, 176, 181, 195, 196, 198 and 200 of 2002 respectively, with interest @ 6% p.a. from the date of claim petition.

3.Challenging the liability fixed on the appellant Insurance Company, the present appeals came to be filed.

4.Learned counsel appearing on behalf of the appellant submitted that the Tribunal ought not to have fixed the liability on the appellant Insurance Company, who is the insurer of the vehicle, in which the claimants were travelling, inasmuch as the accident was due to the negligence on the part of the driver of the other vehicle involved in the accident, which was insured with the 4th respondent Insurance Company. As such, fixing the liability on both the Insurance Companies on sympathetic grounds is not sustainable in law.

Hence, the finding of the Tribunal to that effect has to be set aside.

5.Per contra, learned counsel appearing on behalf of the 1st respondent/claimant in all appeals, submitted that the Tribunal had considered all the evidence and materials on record and was justified in awarding compensation to the claimant(s). Hence, the learned counsel prayed for dismissal of all these appeals.

6.Learned counsel appearing on behalf of the 4th respondent Insurance Company fairly submitted that a proportionate liability may be fixed on the appellant and 4th respondent Insurance Companies.

7.Heard the learned counsel for all the parties and perused the entire materials available on record.

8.On a perusal of the judgment of the Tribunal, it is seen that the claimant(s) examined themselves as P.W.1 in their respective claim petitions and deposed that the accident was solely due to the negligence on the part of the 2nd respondent/driver of the mini auto-rickshaw bearing Registration No.TN-36-Z-7984, which was insured with the 4th respondent Insurance Company. The Tribunal, on a careful perusal of the First Information Report (Ex.P1), charge-sheet (Ex.P2) and Rough Sketch (Ex.P3) and also on considering the evidence of P.W.1, came to a conclusion that the accident had occurred only due to the negligence on the part of the 2nd respondent, which, this Court is not inclined to interfere.

9.It is to be noted that the mini auto-rickshaw, in which the claimants were travelling, was a goods vehicle and hence, the appellant Insurance Company is not liable to pay any compensation, as per the guidelines framed in the policy, which was correctly taken into consideration by the Tribunal. Further, having regard to the fact that the 2nd respondent (driver of the mini auto-rickshaw bearing Registration No.TN-36-Z-7984) had died and the 3rd respondent (owner of the mini auto-rickshaw bearing Registration No.TN-36-Z-7984), 5th and 6th respondents (driver and owner of the mini auto-rickshaw bearing Registration No.TN-36-E-3170 respectively), had remained ex parte, the Tribunal, to subserve the interests of justice, has directed the appellant and the 4th respondent/Insurance Companies to jointly pay the award amount to the claimants and later, recover the same from the 3rd, 5th and 6th respondents, which according to this Court, is perfectly right and the same warrants no interference.

10.In the result, these Civil Miscellaneous Appeals are dismissed, confirming the common judgment and decree dated 16.12.2004, passed by the Tribunal. No costs.

11. Accordingly, the appellant and the 4th respondent/Insurance Companies are directed to deposit their respective share of 50% of the award amount with interest and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this common judgment. On such deposit, the Tribunal shall transfer the same to the Savings Bank account of the respective claimant(s) through RTGS, within one week thereafter.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mkn

To

1. The II Additional Sub-Judge,
Gobichettipalayam.

2. The Section Officer,
VR Section, High Court of Madras.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.59347

+6ccs to Mr.N.B.Surekha, Advocate SR.No.58980, 58982, 58983,
58985, 58986, 58987

C.M.A.Nos.384 to 391 of 2007

CNR (CO)

GMV (06/11/2020)

सत्यमेव जयते

WEB COPY