IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17/06/2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.NOS. 1409 TO 1420 OF 2015

PAZHANIYAMMAL	.. APPELLANT / CLAIMANT (IN CMA NO.1409/2015)
MALLIGA	.. APPELLANT / CLAIMANT (IN CMA NO.1410/2015)
KIRUTHIGA	.. APPELLANT / CLAIMANT (IN CMA NO.1411/2015)
MALAR	.. APPELLANT / CLAIMANT (IN CMA NO.1412/2015)
AKILA	.. APPELLANT / CLAIMANT (IN CMA NO.1413/2015)
LATHA	.. APPELLANT / CLAIMANT (IN CMA NO.1414/2015)
JAYASHRI	.. APPELLANT / CLAIMANT (IN CMA NO.1415/2015)
MANIMARAN	.. APPELLANT / CLAIMANT (IN CMA NO.1416/2015)
KAMALA	.. APPELLANT / CLAIMANT (IN CMA NO.1417/2015)
MANIKANDAPRABU	.. APPELLANT / CLAIMANT (IN CMA NO.1418/2015)
GNANASEKARAN	.. APPELLANT / CLAIMANT (IN CMA NO.1419/2015)
MINOR KANDHAVEL REP. BY MOTHER S.KAMALA	.. APPELLANT / CLAIMANT (IN CMA NO.1420/2015)

VS.

1. MAGESH

2. IFFCO TOKIO GENERAL INSURANCE CO.LTD.
43/3, FIRST FLOOR, 100 FEET ROAD, MUDALIARPET,
PONDICHERRY.

3. MOHAMED SHAHUL

4. NATIONAL INSURANCE CO.LTD. DIVISIONAL OFFICE,
NO.110, JAWAHARLAL NEHRU SALAI,
PONDICHERRY. ...RESPONDENTS IN ALL CMAS / RESPONDENTS IN ALL IN TRIBUNAL

COMMON PRAYER: These Civil Miscellaneous Appeals filed Under Section 173 of Motor Vehicles Act, 1988 against the common award dated 23.01.2015 made in M.C.O.P.Nos.144 of 2013 to 151 of 2013, 154/2013, 156/2013 to 158 of 2013 on the file of the III Additional District and Sessions Judge, Cuddalore at Vridhachalam.

For Appellants in all CMAs	: M/s.S.Udhayakumar
For Respondents in all CMAs	: Mr. J.Michael Visuvasam - R2 M/s.N.B.Surekha - R4 For R1 to R3 - No Appearance.

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the common award dated 23.01.2015 made in M.C.O.P.Nos. 144 of 2013 to 151 of 2013, 154/2013, 156/2013 to 158 of 2013 on the file of the III Additional District and Sessions Judge, Cuddalore.

2.All the appeals arise out of the same accident and same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

Brief facts:

3. On 25.02.2013 at about 15 hrs when all the petitioners in MCOP Nos 141 of 2013 to 151 of 2013, 145 of 2013, 156 of 2013 to 158 of 2013 were travelling towards their residence from Thiruvannamalai in the third respondent's van bearing Reg. No. TN 51/L.3340, while it reached Vettakudi Village, at that time the first respondent's driver TATA Sumo bearing Reg.No. TN 29/C 6464 drove the vehicle in a rash and negligent manner and dashed against the above said Van in which the petitioners were travelling and thereby petitioners sustained grievous injuries.

For the injuries caused to the petitioners, they have filed separate claim petitions under various heads.

4. The 1st and 2nd respondents are owner and insurer of the Tata Sumo bearing Reg. No.TN 29/C 6464 and the 3rd and 4th respondents are owner and insurer of the Van bearing Reg. No. TN 51 L 3340.

5. The tribunal after analysing the documents and evidence has awarded compensation to the claimants under various heads holding that the accident had occurred only due to the rash and negligence on the part of the driver of the 1st respondent's vehicle and since there was no policy for the said vehicle as on the date of the accident, directed the 1st respondent/ owner of the offending vehicle to pay the entire compensation to the claimants. Not being satisfied with the award amount granted by the Tribunal, the claimants have come out with these appeals seeking enhancement of compensation.

6. It is argued by the learned counsel for the appellants that the policy filed by the petitioner is genuine one and if it is not fabricated, the 2nd respondent should have summoned the Pondicherry officer, who issued the said policy. It is further contended that the when the tribunal specifically ordered to produce the back records of the policy and also directed to appear the person who issued the policy, the 2nd respondent had not produced the relevant records even after several adjournments, which shows that the said policy is not a fabricated one. It is further argued that the tribunal failed to consider that the van in which the claimants have travelled also having comprehensive insurance with the 4th respondent, hence the tribunal should have apportioned the award as against the respondent 1 to 4 equally. It is also argued by the the appellant that the tribunal failed to see that the claim can be made as against any one of the vehicle. If there are two vehicles involved in the accident. It is option of the petitioner to claim compensation as against any one. The tribunal has not consider that it is a composite negligent and both the vehicles are equally liable to pay compensation. But unfortunately the tribunal has passed award as against the 1st respondent only. In support of the contentions, the learned counsel for the appellants has submitted the following judgments. The relevant portions are extracted below'

(i) Judgment reported in 2019 (1) TNMAC 72 (DB) in the caseof Oriental Insurance Co.Ltd Vs. V.Bhuvaneswari.

> "10. In the considered view of this Court, the submission made by the learned Counsel for the Appellant is liable to be rejected. The Motor

Vehicles Act is a benevolent legislation and mere applying wrong provision of law will not per se reject the Claim Petition and this Court can mould the record by applying the correct provision lf law and the submission made by the learned counsel for the Appellant is liable to be rejected."

(ii) Judgment reported in 2008 ACJ 1165 in the case of T.O. Anthony Vs. Karvarnan and others.

" Negligence -Contributory negligence -Head on collision between a Corporation bus and private bus coming from opposite directions and driver of Corporation bus sustained injuries - Injured stated that he was driving his bus at moderate speed on the correct side of his road and private bus came on to the wrong side and dashed against his bus - Distance of accident spot from northern and southern edges of tar road as per mahazar showed that corporation bus was on the correct side of its road and private bus came partly to the wrong side - Evidence that injured neither slowed down his bus nor swerved to his left - Tribunal held that both the drivers were equally negligent and the finding was upheld in appeal - Apex Court modified the blameworthiness of the two drivers from 50:50 to 75: 25 for private bus driver and Corporation bus driver.

" Words and phrases - Contributory negligence - What is - Where a person suffers injury, partly due to negligence of another person of persons, and partly by his own negligence, then negligence on the part of the injured is referred to as his contributory negligence - Claim of injured for damages is not defeated by reason of his own negligence but the damages stand reduced in proportion of his contributory negligence."

(iii). Judgment reported in 2015 ACJ 1441 in the case of Khenyei Vs.New India Assurance Co.Ltd & Others.

" 4. It is a case of composite negligence where injuries have been caused to the claimants by combined wrongful act of joint tort feasors. In a case of accident caused by negligence of joint tort feasors, all the persons who aid or counsel or direct or join in committal of a wrongful act, are liable. In such case, the liability is always joint and several. The extent of negligence of joint tort feasors in such a case is immaterial for satisfaction

> of the claim of the plaintiff/claimant and need not be determined by the court. However, in case all the joint tort feasors are before the court, it may determine the extent of their liability for the purpose of adjusting inter-se equities between them at appropriate stage. The liability of each and every joint tort feasor vis a vis to plaintiff/claimant cannot be bifurcated as it is joint and several liability. In the case of composite negligence, apportionment of compensation between tort feasors for making payment to the plaintiff is not permissible as the plaintiff/claimant has the right to recover the entire amount from the easiest targets/solvent defendant.

7. On the other hand the learned counsel for the 2nd respondent/insurance company argued that the 1st respondent's car is insured with this respondent only for the period from 05.03.2013 to 04.03.2014 vide Policy No. 83190461, whereas the alleged accident took place on 25.02.2013 and at the time of the accident the 1st respondent's TATA Sumo was not insured with this respondent and therefore, the policy produced by the petitioners before the tribunal is not genuine one and it is manipulated one. It is further argued by the learned counsel that as per FIR only 13 persons were travelled in the said Van (including driver 12 +1), but 17 claim petitions were filed for the alleged accident. Hence denied the mode of accident and the compensation as claimed by the claimants under various heads as they are false and without any proof.

8. The learned counsel appearing for the 4th respondent / National Insurance Company, insurer of the Van bearing Registration No. TN 51L 3340 in which the petitioners were travelled has also denied the mode of accident by stating that as per own allegations of the respective petitioners, the offending vehicle is said to be the 1st respondent's owned TATA Sumo Car bearing registration No. TN 29 C 6464 and its driver was the tort-feasor. As such the claim of the petitioners could not be legally maintainable as against this respondent/National Insurance Company. Further argued by the learned counsel that the FIR lodged by the Karuveppilankuchi Police Station would reveal the fact that the accident was not caused due to the rash and negligent manner of driving of the 3rd respondent's vehicle in which the petitioners were travelled, hence it is contended that the 4th respondent is not liable to pay compensation and the 1st and 2nd respondents alone are liable to pay the compensation and to that effect this 4th respondent is unnecessary party to the petition.

9. Though the appellants/claimants have preferred these appeals for enhancement, their main arguments is to fix the composite negligent on both the vehicles. To substantiate their contention, they have also produced another judgment with regard to fixation of composite negligence. The relevant portions of the said judgment is extracted below;

(iv) Judgment of the Supreme Court reported in 2014 ACJ 704 in the case of Pawan Kumar and another Vs. Harkishan Dass Mohan Lal and Others.

> "6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.
>
> ......
> 9. We, accordingly, hold that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to the claimants to enforce the award against both or any of them. The order of the High Court dated 05.07.2006 is modified to the extent indicated above and the appeal is allowed. "

10. It is seen from the records that though the petitioners/appellants herein have argued that the policy produced by them which was issued by the 2nd respondent is genuine, the tribunal has concluded that the petitioners/appellants herein have not taken any steps to call

the first respondent to produce the policy copy for the first respondent's vehicle for the relevant period of accident. So the onus of proof still remained with the petitioners/appellants herein who failed to establish that there was insurance policy on the date of accident for the first respondent's vehicle and therefore the tribunal has fixed the liability on the first respondent/owner of the vehicle to pay the compensation by observing that the in absence of the any insurance policy on the date of the accident, the 2nd respondent/Insurance company is not liable to pay any compensation.

11. Though the tribunal has observed as above in fixing the liability on the 1st respondent, but tribunal failed to consider contra evidence of the petitioners/appellants herein in their cross examination who have deposed that due to rash and negligent driving of the driver of the Van, in which they have travelled, the accident had occurred. Further, the tribunal has also not considered the Exhibit P-8 - Policy of the 3rd respondent's vehicle in which all the appellants were travelled. As per the said policy the occupants of the Van are entitled to get compensation from the 3rd &4th respondents herein. It is also seen from the award that the tribunal has not assigned any specific reason to pass award against the 3rd & 4th respondents, where there is a comprehensive policy. In view of the above and the observations made in the judgments cited supra with regard to fixing composite negligence, this Court is of the view that it would be proper to modify the common award made by the tribunal by fixing composite negligence on both the vehicles involved in the accident.

12. 'Composite negligence' refers to the negligence on the part of the two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of composite negligence of those wrongdoers. In such case, each wrongdoers, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately.

13. In view of the above discussions and considering the arguments on either side, this Court modifies the common award passed by the tribunal only on the aspect of liability by fixing composite negligence on the 1st respondent/owner of TATA Sumo bearing Registration No.TN 29C 6464 at 65% and on the 4th respondent/Insurer of the Van, in which the appellants were travelled at 35%.

14. In the result, these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected Miscellaneous Petitions, if any are closed.

15. The 1st and 4th respondents are directed to deposit the entire award amount as awarded by the tribunal as per the percentage of liability fixed by this Court within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited if any. On such deposit the tribunal is directed to transfer the amount to the claimants/appellants herein through RTGS within a period of two weeks thereon.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.

+12 ccs to M/s.N.B.Surekha, Advocate, S.R.No.49366 to 49377

+1 cc to M/s.J.Michael Visuvasam, Advocate, S.R.No.49011

C.M.A.Nos.1409 to 1420 of 2015

VD(CO)
SSM(23/10/2019).