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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1497 of 2018
and C.M.P.No.11903 of 2018

The Divisional Manager,
Oriental Insurance Co. Ltd.,
No.23-B, Arunagiri Complex,
Bye-pass Road, Hosur- 635 109.

..Appellant/3rd Respondent

Vs.

1.Thiyagarajan

..1st Respondent/ Petitioner

2.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Regional Office,
Dharmapuri 636 701.

3.S.Subramaniam

4.M/s.Dharmapuri District Co-Op.
Milk Producers Union Ltd.,
Milk Dairy, Salem Main Road,
Krishnagiri.

5.The Branch Manager,
M/s.National Insurance Co. Ltd.,
Branch Office, Anuradha Complex, III Floor,
Opp. To Raja Theatre, Bangalore Road,
Krishnagiri - 635 001.

..Respondents 2 to 5
..Respondents 1,2,4 & 5

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of Motor Vehicles Act, 1988, against the award dated
27.11.2017 made in M.C.O.P.No.162 of 2014 on the file of the
Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Ms.C.Harini
for Mr.N.Vijayaraghavan

For R2 : Mr.D.Venkatachalam



For R5 : Ms.R.Sreevidhya

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This Civil Miscellaneous Appeal is filed against the award dated 27.11.2017 made in M.C.O.P.No.162 of 2014 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant-Insurance Company is the 3rd respondent in M.C.O.P.No.162 of 2014 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri. The 1st respondent filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.02.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by all the drivers of the vehicles involved in the accident and fixed 40% negligence on the part of the driver of the 2nd respondent-Transport Corporation bus, 30% negligence each on the part of the driver of the SRS private bus belonging to the 3rd respondent and the driver of the Aavin tanker lorry belonging to the 4th respondent. The Tribunal granted a sum of Rs.15,40,700/- as compensation to the 1st respondent and directed the 2nd respondent-Transport Corporation to pay 40% of the award amount and the appellant as well as the 5th respondent each to pay 30% of the award amount on behalf of the respondents 3 and 4 respectively.

4.Challenging the said award dated 27.11.2017 made in M.C.O.P.No.162 of 2014, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing 30% contributory negligence on the part of the driver of the SRS private bus belonging to the 3rd respondent and insured with the appellant-Insurance Company. The Tribunal failed to see that FIR was lodged only against the driver of Aavin milk tanker lorry belonging to the 4th respondent and accident occurred only due to rash and negligent driving by the driver of the Aavin tanker lorry which was insured with the 5th respondent. The Tribunal failed to consider the fact that the Aavin tanker lorry coming in the opposite direction driven in a rash and negligent manner dashed against the bus belonging to the 2nd respondent-Transport Corporation and then dashed against the SRS private bus belonging to the 3rd respondent and the Tribunal failed to properly appreciate the evidence of R.W.2, an Official from



appellant-Insurance Company. The appellant-Insurance Company further contended that the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

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6.Mr.D.Venkatachalam, learned counsel appearing for the 2nd respondent and Ms.R.Sreevidhya, learned counsel appearing for the 5th respondent separately contended that the accident occurred only due to the rash and negligent driving by the driver of the other vehicle and the Tribunal erroneously fixed negligence on the part of the driver of the bus belonging to the 2nd respondent and tanker lorry belonging to the 4th respondent. The amount fixed by the Tribunal is excessive and prayed for dismissal of the appeal against the respondents 2 and 5.

7.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 2 and 5 and perused the materials available on record.

8.From the materials on record, it is seen that FIR was lodged against the driver of the tanker lorry who died in the accident. The complaint was given by the Village Administrative Officer who was not an eye witness. P.W.1 is the eye witness examined in the claim petition. He deposed that he traveled in the Transport Corporation bus belonging to the 2nd respondent and according to him, the driver of the bus belonging to the 2nd respondent drove the bus in a rash and negligent manner. At that time, the driver of the SRS private bus belonging to the 3rd respondent driven in a rash and negligent manner came behind the Transport Corporation bus and dashed against the back side of the Transport Corporation bus. In view of the said impact, the driver of the Transport Corporation bus lost control and dashed against the Aavin tanker lorry which was coming in opposite direction in a rash and negligent manner. Again the driver of the SRS private bus belonging to the 3rd respondent dashed against the Transport Corporation bus and the said bus capsized. P.W.1 deposed that the driver of the Aavin tanker lorry also drove the vehicle in a rash and negligent manner and dashed against the bus. The 2nd respondent or the 5th respondent have not examined the drivers of the buses or any eye witness to disprove the evidence of P.W.1. The driver of the Aavin tanker lorry died in the accident. R.W.2 is only an official from the Insurance Company and he is not an eye witness. The Tribunal considering the evidence of P.W.1 and contents in the claim petition wherein it has been pleaded that the drivers of all the 3 vehicles drove the vehicles in a rash and negligent manner and all the vehicles involved in the accident are heavy vehicles, held that all the 3 drivers are responsible for the accident and fixed contributory negligence of 40% on the part of the 2nd respondent driver, 30% on the part of the driver of the SRS private bus belonging to



the 3rd respondent and 30% on the part of the driver of the Aavin tanker lorry belonging to the 4th respondent and directed the 2nd respondent-Transport Corporation to pay 40% of the award amount and the appellant as well as the 5th respondent each to pay 30% of the award amount on behalf of the respondents 3 and 4 respectively. There is no error in the said award warranting interference by this Court.

9.As far as the quantum of compensation is concerned, the Tribunal fixed the monthly income of the 1st respondent/claimant at Rs.11,504/- and following the judgment of the Hon'ble Apex Court in National Insurance Co. Ltd., Vs. Pranay Sethi and others, granted 10% enhancement towards future prospects for the 1st respondent who was aged 48 years. In total the Tribunal fixed a sum of Rs.12,650/- as the monthly income of the 1st respondent and applying the multiplier '13' and 50% loss of earning power, granted compensation towards loss of earning power. The same is not excessive. The total compensation amount awarded by the Tribunal is not excessive and there is no error in the said award warranting interference by this Court.

10.In the result, the Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.15,40,700/- along with interest and costs is confirmed. The 2nd respondent is directed to pay 40% of the award amount, the appellant as well as the 5th respondent are each directed to pay 30% of the award amount jointly and severally to the 1st respondent along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.162 of 2014. The 1st respondent is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

gsa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.



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

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+1cc to Mr.N.Vijayaraghavan, Advocate, SR.No.43276

C.M.A.No.1497 of 2018
and C.M.P.No.11903 of 2018

Kak(03.10.2019)