

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.2864 to 2867, 2870, 2910 to 2914 to 2916 of 2017
and
C.M.P.Nos.16397 to 16400, 16403 & 17155 to 17160 of 2017

C.M.A.No.2864/2017

The Bharti AXA General Insurance Co., Ltd.,
Divya Trade Centre, 1st Floor,
No.11, Brindavan Road, Fairlands,
Salem. ... Appellant/2nd Respondent in all CMAs

Vs.

1.RAMASAMY .. 1st Respondent/Petitioner in CMA 2864/17
2.PADMAVATHI .. 1st Respondent/Petitioner in CMA 2865/17
3.R.DINESH .. 1st Respondent/Petitioner in CMA 2866/17
4.R.DIVYA .. 1st Respondent/Petitioner in CMA 2867/17
5.K. RAJENDRAN .. 1st Respondent/Petitioner in CMA 2870/17
6.MAHESWARI .. 1st Respondent/Petitioner in CMA 2910/17
7.LAKSHMANAN .. 1st Respondent/Petitioner in CMA 2911/17
8.SARASWATHI .. 1st Respondent/Petitioner in CMA 2912/17
9.MINOR MALATHI .. 1st Respondent/Petitioner in CMA 2913/17
REP BY HER FATHER & NG LAKSHMANAN
10.PREMA .. 1st Respondent/Petitioner in CMA 2914/17
11.MINOR LOKESH .. 1st Respondent/Petitioner in CMA 2915/17
REP BY FATHER AND NG MANIKANDAN
12.UMA MAHESWARI .. 1st Respondent/Petitioner in CMA
2916/17
13.Thangapandi .. 2nd Respondent/1st Respondent in all CMAs
(R2 in all cases was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 28.02.2017 made in M.C.O.P.Nos.1403 to 1406, 1409 to 1416 of 2012 on the file of the Special Sub Court - 2, (Motor Accidents Claims Tribunal), Salem.

For Appellant : M/s.Srinivasan Ramalingam

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

These Civil Miscellaneous Appeals have been filed challenging the award directing the appellant-Insurance Company to pay the compensation to the claimants by the award dated 28.02.2017 made in M.C.O.P.Nos.1403 to 1406 and 1409 to 1415 of 2012 and challenging the liability fixed on them by the award dated 28.02.2017 made in M.C.O.P.No.1416 of 2012 on the file of the Special Sub Court - 2, (Motor Accidents Claims Tribunal), Salem.

2.Since all the appeals are arising out of the same accident and common award, they are disposed of by this common judgment.

3.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.Nos.1403 to 1406, 1409 to 1416 of 2012 on the file of the Special Sub Court - 2, (Motor Accidents Claims Tribunal), Salem. The 1st respondent/claimants in C.M.A.Nos.2864 to 2867, 2870, 2910 to 2915 of 2017 [M.C.O.P.Nos.1403 to 1406, 1409 to 1415 of 2012] filed the said claim petitions, claiming various amounts as compensation for the injuries sustained by them in the accident that took place on 08.07.2012. The 1st respondent/claimant in C.M.A.No.2916 of 2017 [M.C.O.P.No.1416 of 2012] filed the said claim petition claiming compensation for the damages caused to his TATA Ace in the same accident.

4.The Tribunal considering the pleadings, oral and documentary evidence, fixed composite negligence on both the driver of the TATA Ace belonging to the 1st respondent in C.M.A.No.2916 of 2017 [M.C.O.P.No.1416 of 2012] as well as the driver of the lorry belonging to the 2nd respondent and directed the appellant-Insurance Company/insurer of the lorry to pay various amounts as compensation to the 1st respondents/claimants in C.M.A.Nos.2864 to 2867, 2870, 2910 to 2915 of 2017 [M.C.O.P.Nos.1403 to 1406, 1409 to 1415 of 2012] and dismissed M.C.O.P.No.1416 of 2012 [C.M.A.No.2916 of 2017].

5.Against the said common award dated 28.02.2017 made in M.C.O.P.Nos.1403 to 1406, 1409 to 1416 of 2012, the appellant-Insurance Company has come out with the present appeals.

6.The learned counsel appearing for the appellant-Insurance Company contended that a compliant was lodged against the driver of the TATA Ace. The 1st respondent in C.M.A.No.2864 of 2017 [M.C.O.P.No.1403 of 2012], who travelled in the TATA Ace only gave the complaint and as P.W.1, he admitted that the accident was only due to rash and negligent driving by the driver of TATA Ace. The Tribunal without properly appreciating Ex.P1 - FIR, Charge Sheet, evidence of P.W.1/1st respondent in C.M.A.No.2864

of 2017 [M.C.O.P.No.1403 of 2012], erroneously held that the drivers of both the vehicles are responsible for the accident. The reason given by the Tribunal for such a finding is that the accident is head on collision by two vehicles and as per the Motor Vehicle Inspector's report, both the vehicles were damaged more in the front side. The 1st respondents/claimants have not suffered any injuries except six persons mentioned in the Charge Sheet who suffered simple injuries. The Tribunal in the absence of evidence with regard to injuries, has awarded compensation which are excessive and prayed for setting aside the award. The learned counsel appearing for the appellant-Insurance Company contended that though M.C.O.P.No.1416 of 2012 was dismissed, C.M.A.No.2916 of 2017 is filed challenging the finding with regard to negligence.

7. Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record. Though notices sent to the 1st respondents/claimants were served and their names are printed in the cause list, there is no representation for them either in person or through counsel. Notice sent to the owner of the vehicle/2nd respondent returned with an endorsement as 'refused'. Since he remained exparte before the Tribunal, notice to the 2nd respondent is dispensed with.

8. From the materials available on record, it is seen that the complaint was lodged against the driver of TATA Ace, alleging that the driver of TATA Ace drove the vehicle in a rash and negligent manner and accident has occurred. After investigation, the Charge Sheet has been filed only against the driver of TATA Ace. P.W.1, who is the 1st respondent/claimant in C.M.A.No.2864 of 2017 [M.C.O.P.No.1403 of 2012] lodged complaint and gave evidence, stating that the accident occurred only due to rash and negligent driving by the driver of TATA Ace. The Tribunal without properly appreciating the above facts, erroneously held that the accident occurred due to composite negligence of both the drivers. The Tribunal has come to this conclusion on the ground that as per the Motor Vehicle Inspector's Report, both the vehicles are damaged more in the front side, which shows that it is head on collision. The said reason is erroneous and the same is hereby set aside. Considering all the materials on record in entirety, this Court is of the view that the accident occurred only due to rash and negligent driving by the driver of TATA Ace belonging to the 1st respondent in

C.M.A.No.2916 of 2017 [M.C.O.P.No.1416 of 2012]. Having lodged complaint against the driver of TATA Ace, the 1st respondents/claimants in C.M.A.Nos.2864 to 2867, 2870, 2910 to 2915 of 2017 [M.C.O.P.Nos.1403 to 1406, 1409 to 1415 of 2012]

have not impleaded the owner of TATA Ace as well as the Insurance Company of TATA Ace, which is fatal to their claim petitions, for not impleading proper parties.

9. For the above reasons, all the appeals are allowed, setting aside the common award of the Tribunal fastening the liability on the appellant-Insurance Company. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge No. 2,
(Motor Accidents Claims Tribunal),
Salem.

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

+11cc to Mr. Srinivasan Ramalingam, Advocate SR.No. 3070, 3069,
3068, 3067, 3066, 3065, 3064, 3063, 3062, 3061, 3060

CMA.Nos. 2864 to 2867, 2870, 2910 to 2916 of 2017
and

C.M.P.Nos. 16397 to 16400, 16403 & 17155 to 17160 of 2017

CNR (CO)

GMV (24/07/2019)

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