

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.850 of 2017  
and C.M.P.No.4256 of 2017

United India Insurance Company Limited  
rep.by Branch Manager,  
Nehruji Street,  
Villupuram.

...Appellant/2<sup>nd</sup> Respondent

Vs.

1.Rajalakshmi ...1<sup>st</sup> Respondent/Petitioner  
2.R.Shankar ...2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent  
3.D.Ganapathy ...3<sup>rd</sup> Respondent/3<sup>rd</sup> Respondent  
4.The Oriental Insurance Company Limited,  
rep.by its Divisional Manager,  
Pondicherry. ...4<sup>th</sup> Respondent/3<sup>rd</sup> Respondent

Appeal under Section 173 of the Motor Vehicles Act against  
the judgment and decree dated 11.04.2003 made in MCOP No.56 of  
1996 on the file of the Motor Accidents Claims Tribunal, II  
Additional Subordinate Judge, Villupuram.

For Appellant : Mr.S.J.Jagadev

For Respondents : Mr.V.G.Natarajan for  
M/s.Srinandh & Associates for R1  
Mr.M.Krishnamurthy for R4

JUDGMENT

The case in brief, is as follows:

On 28.05.1994, at about 4.00 hours, the first respondent and her mother were travelling in the lorry bearing Reg.No.TN-21-Y-1717 belonging to the third respondent herein and insured with the fourth respondent Insurance Company, as passengers from Madras. At that time, another lorry bearing Reg.No.TN-28-A-2433 belonging to the second respondent herein and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the lorry bearing Reg.No.TN-21-Y-1717. Due to the said impact, the first respondent sustained grievous and simple injuries. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.50,000/- as compensation. On consideration of the

materials and evidence available on record, the Tribunal awarded a total compensation of Rs.30,000/- with interest at the rate of 9% per annum from the date of petition. Fixing 50% negligence on the part of the drivers of both the lorries, the Tribunal directed the appellant Insurance Company and the driver of the lorry bearing Reg.No.TN-28-A-2433 to pay 50% out of the total compensation of Rs.30,000/-.

2.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in fixing 50% liability on the appellant Insurance Company, since the first respondent travelled as unauthorised passenger. But, the learned counsel has not disputed the quantum of compensation awarded by the Tribunal.

4.The learned counsel for the first respondent / claimant has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just, fair and reasonable compensation and also correctly fixed 50% negligence on the part of the drivers of both the lorries. Therefore, the judgment of the Tribunal does not require any interference in the hands of this Court, according to the learned counsel for the first respondent.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.Since the quantum of compensation is not disputed, this Court is not inclined to interfere with the same.

7.The first respondent / claimant has been examined as P.W.1 before the Tribunal. She deposed before the Tribunal that when she was travelling in the lorry bearing Reg.No.TN-21-Y-1717 from Madras to Madapattu on the date of accident, the tanker lorry bearing Reg.No. TN-28-A-2433 came from the opposite direction in a rash and negligent manner and dashed against the lorry in which she was travelling and due to the same, she sustained fracture and injuries. Ex.P2 is the Motor Vehicle Inspection Report. According to Ex.P1- First Information Report, the accident had occurred only due to the rash and negligent driving of the driver of the lorry bearing Reg.No.TN-28-A-2433. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the drivers of both the lorries and accordingly fixed the negligence on the part of both

the drivers, equally. It is to be seen that the first respondent travelled as unauthorised passenger only in the lorry bearing Reg.No.TN-21-Y-1717 insured with the fourth respondent Insurance Company and hence the Tribunal, while exonerating the liability on the part of the fourth respondent Insurance Company and directing the owner of the lorry bearing Reg.No.TN-21-Y-1717 to pay 50% of the compensation on the ground that the first respondent travelled as unauthorised passenger violating the policy conditions, also directed the insurer (appellant) and the owner of the lorry bearing Reg.No.TN-28-A-2433 to pay 50% of the compensation, holding that the appellant Insurance Company is liable to pay compensation for the 50% negligence fixed on the driver of the lorry bearing Reg.No.TN-28-A-2433. The Tribunal has rightly dealt with the matter and has given a finding that the accident had occurred due to the rash and negligent driving of the drivers of both the lorries and accordingly directed the appellant Insurance Company and the owner of the lorry bearing Reg.No.TN-28-A-2433 to pay 50% of the compensation. Hence, this Court is not inclined to interfere with the same.

8. In view of the above stated circumstances, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the compensation with interest, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal  
II Additional Subordinate Judge, Villupuram.

Copy to : The Section Officer,  
VR Section, Madras High Court.

+1 cc to M/s.M.Krishnamoorthy, Advocate Sr.No. 77686

AKM/05.12.19/3P-4C /

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