BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.11.2019
CORAM
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A(MD)No.1353 of 2011

The United India Insurance Company Limited,
Represented by its Branch Manager,
having office at Xavier's Building,
P.W.D. Office Raod, Nagercoil,
Nagercoil Village, Agastheeswaram Taluk,
Kanyakumari District. ... Appellant /2nd Respondent

Vs.

1.Mary Josephine Punitha
2.Pradesh J.R.Thomas

3.Minor Mary Praveena Antonio
(R3 declared as major and R1 discharged from guardianship vide order dated 20.06.2012 in M.P.(MD)No.1 of 2012 in CMA(MD)No.1353 of 2011) ... Respondents 1 to 3 / Petitioners

4.P.R.S.Srinivasan ... 4th Respondent / 1st respondent
5.A.Domnic Savio ... 5th respondent / 3rd respondent

6.The New India Insurance Company Limited,
Muvattupuzha Branch,
Represented by the Branch Manager,
Having office at Balamore Raod,
Opposite to Stadium,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanayakumari District. ... 6th respondent / 4th respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order, dated 18.04.2011 made in M.A.C.O.P.No.73 of 2007 on the file of the Motor Accidents Claims Tribunal, District Court, Kanniyakumari at Nagercoil.

For Appellant	:	Mr.B.Rajesh Saravanan
For R-1 & R-3	:	Mr.C.Godwin
For R-6	:	Mr.B.Vijay Karthikeyan
For R-5	:	No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company challenging the liability fixed by the Tribunal. There are two vehicles involved in the present case. One is lorry bearing registration No.TCK 3353, insured with the United India Insurance Company and another is a Mahindra Van bearing registration No.TN 74 B 0397, insured with the New India Insurance Company. The Courts below have come to the conclusion that the accident was occurred due to 'head on collusion'.

2.In a similar matter in C.M.A.(MD)No.1010 of 2012, dated 07.11.2019, this Court has observed as follows:-

> *"3.Now, the learned counsel for the appellant / New India Assurance Company fairly admitted that since the accident has occurred in the middle of the road, it is a case of "head on collusion" and therefore, responsibility must be on the part of both the drivers and therefore, the liability fixed by the Courts below as 50 : 50 may be confirmed.*
>
> *4.On the other hand, the learned counsel for the United India Insurance Company strongly opposed the contention of the learned counsel for the New India Assurance Company that the entire negligence is on the part of the driver of the van and hence, the entire liability has to be fixed against the driver of the van. He produced the photographs and submitted that to avoid the accident, the driver of the lorry managed to control the lorry and therefore, it has gone to the left side of the mud road.*
>
> *5.Now, the issue to be decided in these cases is whether the liability fixed by the Courts below is just and fair?*
>
> *6.On the perusal of the photographs it appears that the accident had occurred due to 'head on collusion'. Due to the impact of the accident, the lorry pulled the van and lifted out of the road and for the purpose of removal of the lorry it was moved from the accident place and further it appears that to clear the traffic, the van and lorry were moved aside. Even in some of the photographs, it appears that behind the lorry, some glass pieces are there. Therefore, after perusal of the photographs it appears that the accident occurred due to 'head on collusion' and therefore, on these aspect the Courts below has rightly fixed the liability as 50 : 50.*

> *7.Secondly, on perusal of evidence of P.W.1 in MCOP.No.80 of 2009, he has clearly deposed that the accident had occurred due to the rash and negligent driving of the driver of the lorry. However, on seeing the photographs, it appears that the accident occurred due to the negligence on the part of both the driver of the lorry and van due to 'head on collusion'. Further, the injured P.W.1 deposed that immediately after the accident he become unconscious and therefore, the Court below has not taken into consideration his evidence and this Court also does not find any infirmity on this aspect. Further, the driver of the van also clearly admitted the fact that the accident occurred due to 'heard on collusion'. When that being the case, no need to fix the entire liability on the driver of the lorry alone. The Courts below after considering the evidence found that both the drivers are responsible for the accident and hence, this Court find that there is no reason to interfere with the order of the Courts below and also the fixation of liability as 50:50, which is correct.*
>
> *8.In the result, these Civil Miscellaneous Appeals are dismissed, confirming the liability fixed by the Courts below as 50:50. No costs."*

3.In view of the above Judgment, this Court is of the opinion that the order dated 18.04.2011 passed in M.A.C.O.P.No.73 of 2007 by the learned District Judge, Motor Accidents Claims Tribunal, Kanniyakumari at Nagercoil, is liable to be modified. Accordingly, the liability fixed on the appellant /Insurance Company is modified to the extent that both the driver of the lorry and van are liable for the accident and accordingly, the appellant / United India Insurance Company and the 6th respondent / New India Insurance Company are liable to pay the compensation as awarded by the Court below, to the claimants as 50 : 50.

4.In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rj2

To

The District Judge,
Motor Accidents Claims Tribunal,
Kanniyakumari at Nagercoil.

COPY TO:
The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC to MR.B.RAJESH SARAVANAN, Advocate (SR-99104[F] dated 18/11/2019)

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15.11.2019
(2/3)

MK (28.02.2020) 4P 5C