



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.11.2019
CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A(MD)No.1794 of 2013

and

C.M.P. (MD)Nos.12182 and 12183 of 2017

The United India Insurance Company Limited,
Nagercoil, through its Branch Manager,
Xavier Building, P.W.D. Office Road, Nagercoil,
Nagercoil Village, Agastheeswaram Taluk,
Kanyakumari District. ... Appellant /2nd Respondent

Vs.

1.Mrs.Boniphas
2.Viju Prakash
3.Shaju Prakash

4.Mrs.Jessy ... Respondents 1 to 4 /Petitioners
5.P.R.S.Srinivasan ... 5th Respondent / 1st respondent
6.A.Dominic Savio ... 6th respondent / 3rd respondent

7.The New India Assurance Company Limited,
Muvattupuzha Branch, through its Branch Manager,
Balamore Road, Opp. Anna Stadium, Nagercoil,
Nagercoil Village, Agasteeswaram Taluk,
Kanyakumari District. ... 7th respondent / 4th respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order, dated 30.03.2012 made in M.C.O.P.No.165 of 2009 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Court, Nagercoil.

For Appellant : Mr.B.Rajesh Saravanan
For R-1 to R-4 : Mr.C.Godwin
For R-7 : Mr.B.Vijay Karthikeyan
For R-5 & R-6 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / United India Assurance Company challenging the liability fixed by the Courts below as 50 : 50. 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.Now, the learned counsel for the seventh respondent / 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.

3.On the other hand, the learned counsel for the appellant / 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.

4.Now, the issue to be decided in these cases is whether the liability fixed by the Courts below is just and fair?

5.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.

6.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.



7. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the liability fixed by the Courts below as 50:50. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

The I Additional Sub Judge,
Motor Accidents Claims Tribunal,
Nagercoil.

COPY TO:

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

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(3/3)

MK (28.02.2020) 3P 4C