BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.(MD)No.1075 of 2016
and
C.M.P.(MD)No.9678 of 2016

United India Insurance Co. Ltd.,
74-A, Salai Road, Tiruchy -18. ... Appellant / 4th respondent

- Vs -

1.G.Rengarajan ... 1st respondent / petitioner

2.Tmt.G.Uma Basakaran

3.The New India Assurance Co. Ltd.,
No.66, West Bouliward Road,
Tiruchy.

4.K.Saravanan ... Respondents 2 to 4 / Respondents 1 to 3

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2007 passed in M.C.O.P.No.92 of 1999 on the file of Motor Accidents Claims Tribunal (III Additional Subordinate Judge), Tiruchirappalli.

For Appellants : Mr. B.Rajesh Saravanan

For R-1 : Mr.N.Sudhagar Nagaraj

For R-3 : Mr.S.Natarajan

J U D G M E N T

This appeal has been filed challenging the liability fixed against the appellant / Insurance Company. The Tribunal fixed 100% liability against the appellant.

2.Heard the learned counsel appearing on either side and perused the materials available on record.

3.When the matter came up for hearing, the learned counsel appearing on either side has submitted that in a similar issue in CMA(MD).No.309 to 214 of 2012, dated 25.09.2018, this Court at paragraph Nos.12 to 16, has passed the following order:-

> 12. From the materials on record, it is seen that the accident occurred in a National Highway and two heavy vehicles were involved in the accident and it is head on collision. In the claim petitions, the claimants have stated that the owner and insurer of the Tata Sumo bearing Regn. No.TN 45 H 7916, and the owner and insurer of the Lorry bearing Regn.No.NL 01 A 2998 are liable to pay compensation to the claimants. The Rough Sketch marked as Ex.R1 shows that accident occurred on the side of the road, where the Lorry was being driven. All these facts show that both the drivers are responsible for the accident.
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> 13. The contention of the learned counsel appearing for the appellant that the First Information Report was lodged only against the driver of the Lorry as driver of the Tata Sumo died in the accident, has considerable force and is acceptable. Considering the fact that Lorry is a heavy vehicle than the Tata Sumo, negligence on the part of the Lorry driver is fixed at 65% and on the part of the driver of the Tata Sumo is fixed at 35%. The Tribunal considering the age and other facts, awarded consolidated amount to the claimants, which is just and proper and does not require any interference by this Court.
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> 14. For the above reasons, the respondents 3 and 4 in claim petitions are directed to pay 65% of the compensation and the respondents 1 and 2 in the claim petitions are directed to pay 35% compensation as awarded by the Tribunal.
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> 15. The Insurer of Lorry and Tata Sumo are directed to deposit the compensation awarded by the Tribunal in all the cases in the ratio of 65 : 35 to the credit of the respective claim petitions, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants are entitled to their shares as per the apportionment fixed by the Tribunal. Except the minor claimant in the respective claim petition, the other claimants are permitted to withdraw their shares with interest

on filing necessary application before the Tribunal. The share of the minor claimant shall be deposited in a Fixed Deposit Scheme in any one of the Nationalized Banks till she attains majority. The maternal grand father / Guardian of the minor is permitted to withdraw the interest accrued thereon once in three months directly from the Bank.

16. In the result, these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

and hence, they have consented for a similar order as made in the above judgment.

4.In the above said judgment, this Court re-fixed the liability as 65 : 35. Therefore, in view of the above decision, by consent of both parties, this Civil Miscellaneous Appeal is disposed of one the same lines as ordered in CMA(MDNo.309 to 214 of 2012, dated 25.09.2018.

5.The insurer of the Lorry and Tata Sumo are directed to deposit the compensation awarded by the Tribunal in the ratio 65 : 35 to the credit of M.C.O.P.No.92 of 1999 on the file of Motor Accdients Claims Tribunal (III Additional Subordinate Judge), Tiruchirappalli, along with accrued 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. The first respondent / Claimant is directed to submit his Savings Bank Account Details along with the copy of his passbook to the Tribunal forthwith. On such deposit being made, the Tribunal is directed to transfer the entire award amoung along with accrued interest and costs directly to the Personal Savings Bank Account Number of the Claimant, through RTGS/NEFT system, after getting his Account Details, within a period of three weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

rj2

To:

The III Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruchirappalli.

Copy to:
The Record Keeper, (2 Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B. RAJESH SARAVANAN, Advocate (SR-100044[F] dated 21/11/2019)

+1 CC to M/s.S.NATARAJAN, Advocate (SR-100073[F] dated 21/11/2019)

+1 CC to M/s.N. SUDHAGAR NAGARAJ, Advocate (SR-100271[F] dated 21/11/2019)

C.M.A.(MD)No.1075 of 2016
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JMN(17.12.2019) 2P : 7C