

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2449 of 2008
and M.P.No.1 of 2008

Divisional Manager
The Oriental Insurance Co. Ltd.
No.1, Katpadi road
Vellore-4.

... Appellant/4th Respondent

Vs.

1.Sivabalan ...1st Respondent/ Petitioner
2.V.Elumalai

3.Divisional Manager
New India Assurance Co. Ltd.
No.1, Officer's road
Vellore.

4.G.Soundarajan ... Respondents2 to 4/
Respondents1 to 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.04.2006 made in M.C.O.P.No.630 of 2002 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai.

For Appellant : Mr.S.Arunkumar

For R3 : Ms.A.Salomi for
Mr.C.Ramesh Babu

For R4 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Oriental Insurance Company challenging the award dated 06.04.2006 made in M.C.O.P.No.630 of 2002 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai.

2.The appellant/Oriental Insurance Company is the 4th respondent in M.C.O.P.No.630 of 2002 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai. The 1st respondent filed the said claim petition claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.09.2001.

3.According to the 1st respondent, he was working as a driver of the mini lorry belonging to the 2nd respondent insured with the 3rd respondent. On the date of accident, i.e., on 24.09.2001 at about 1.30 a.m., after loading the tomato bags, while the 1st respondent was driving the mini lorry near Ramanashramam, Tiruvannamalai, the driver of the lorry belonging to the 4th respondent insured with the appellant, parked the lorry on the middle of the road and unfortunately, the 1st respondent hit the lorry belonging to the 4th respondent and caused the accident. Due to the accident, the 1st respondent sustained fracture and grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation.

4.The respondents 2 and 4, owners of the mini lorry and lorry respectively, remained exparte before the Tribunal.

5.The 3rd respondent/New India Assurance Company Limited, insurer of the mini lorry filed counter statement denying the averments made in the claim petition and contended that the 1st respondent has to prove that the driver of the lorry possessed valid driving license and Registration Certificate at the time of accident. The 3rd respondent has also denied the age, avocation, income and the medical expenses incurred by the 1st respondent and further stated that the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.The appellant/Oriental Insurance Company filed counter statement denying the averments made in the claim petition and contended that the 1st respondent has to prove that the lorry belonging to the 4th respondent was insured with the appellant. The appellant has also denied the age, avocation, income and the medical expenses incurred by the 1st respondent and stated that the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1 and examined Dr.Ravindran as P.W.2 and marked six documents as Exs.P1 to P6. On the side of the 3rd respondent and appellant/Insurance Company, one Ganesan, Administrative Officer of the 3rd respondent/Insurance Company was examined as R.W.1 and one Ganesh Shankar, Senior Assistant of the

appellant/Insurance Company was examined as R.W.2 and one document was marked as Ex.R1.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the 1st respondent, driver of the mini lorry belonging to the 2nd respondent as well as the driver of the lorry belonging to the 4th respondent, fixed 75 : 25 contributory negligence on the part of the 1st respondent and 4th respondent, awarded a sum of Rs.56,000/- as compensation to the 1st respondent and directed both the 4th respondent, owner of the lorry and the appellant/Oriental Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.14,000/- i.e., 25% of the award amount, as compensation to the 1st respondent.

9.Against the said award dated 06.04.2006 made in M.C.O.P.No.630 of 2002, the appellant/Insurance Company has come out with the present appeal questioning the liability fastened on the appellant/Oriental Insurance Company.

10.The learned counsel appearing for the appellant/Oriental Insurance Company contended that the Tribunal failed to see that the accident has occurred only due to rash and negligent driving by the driver of the mini lorry, 1st respondent herein and erred in fixing 25% negligence on the part of the driver of the parked lorry belonging to the 4th respondent insured with the appellant inspite of the fact that the driver of the lorry belonging to the 4th respondent was not responsible for the accident. The Tribunal ought to have dismissed the claim petition as against the appellant in the absence of any independent witness. The Tribunal having absolved the appellant from its liability in connected M.C.O.P.Nos.488 and 295 of 2002, ought not have taken different view in this case and prayed for setting aside the award of the Tribunal made against the appellant and allowing this appeal.

11.Though notice has been served on the 4th respondent and his name is printed in the cause list, there is no representation on behalf of the 4th respondent either in person or through counsel.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent/New India Assurance Company Limited and perused the entire materials available on record.

13.It is the case of the 1st respondent that while he was driving the mini lorry, the driver of the lorry belonging to the 4th respondent insured with the appellant, suddenly applied

brake and stopped the lorry. Due to the same, the 1st respondent dashed against the lorry and sustained injuries. The accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 4th respondent and claimed compensation against the respondents 2 to 4 and the appellant. To substantiate his case, the 1st respondent examined himself as P.W.1 and deposed to that effect. On the other hand, it is the contention of the appellant that the 1st respondent drove the mini lorry in a rash and negligent manner and dashed against the parked lorry belonging to the 4th respondent and the 1st respondent alone is responsible for the accident. To substantiate their contention, the appellant examined R.W.2, officer of the appellant and filed Ex.R1, report of the investigator. R.W.2 is not an eye-witness to the accident. According to R.W.2, as per Ex.R1, 1st respondent dashed against the parked lorry belonging to the 4th respondent. The Tribunal considering Ex.R1, took note of the fact that in the report, it was not stated that the lorry belonging to the 4th respondent was parked in the corner of the road with signal. The alleged recording of statement of one Balan in respect of Ex.R1 was also not filed by the appellant. In view of the same, the Tribunal did not accept the evidence of R.W.2 and Ex.R1. Considering the entire materials available on record, the Tribunal held that the appellant failed to prove that the lorry was parked with proper indicator. The appellant has not examined the driver of the lorry belonging to the 4th respondent. In view of the above, there is no error in the award of the Tribunal fixing 75% negligence on the part of the driver of the mini lorry and 25% liability on the part of the 4th respondent as well as appellant.

14. For the above reason, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.56,000/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. Both the 4th respondent as well as the appellant/Insurance Company are directed to jointly and severally deposit 25% of the award amount i.e., Rs.14,000/- along with 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. On such deposit, the 1st respondent/claimant is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (insp cell)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Additional Subordinate Judge
Motor Accident Claims Tribunal
Tiruvannamalai.

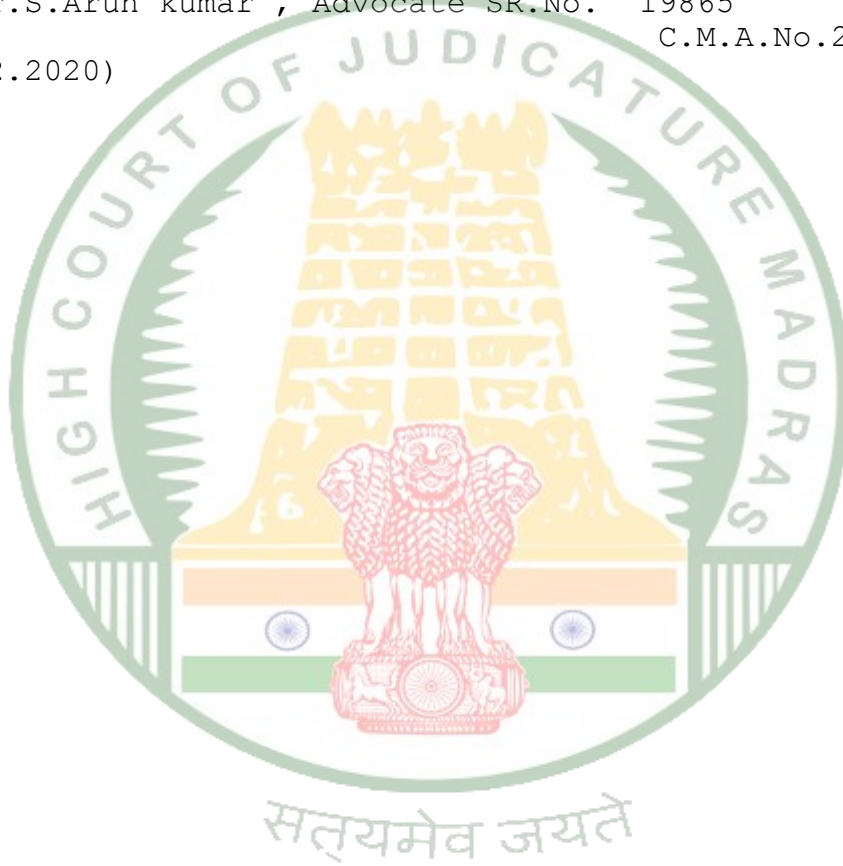
2.The Section Officer
VR Section
High Court
Madras.

+lcc to Mr.C.Ramesh babu , Advocate SR.No. 19810

+lcc to Mr.S.Arun kumar , Advocate SR.No. 19865

C.M.A.No.2449 of 2008

A.Sk(23.12.2020)



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