IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3329 of 2010
and
M.P.No.1 of 2010

(Through Video Conferencing)

United India Insurance Co. Ltd.,
Divisional Office-5, No.266,
Kabila Tower, II Floor,
Opposite Sai Babakoil,
Mettupalayam Road,
Coimbatore. ... Appellant/6th Respondent

Vs.

1.M.Lakshmi

2.Madhavan

3.M/s.Brakes India Ltd.,
Boundary Division,
Sholinganur, Thiruvannamalai Dist.

4.Royal Sundaram Allianz Insurance Co. Ltd.,
Chennai -14.

5.Sannaci

6.Mahalingam ... Respondents/ Petitioner / Respondents1 to 5

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 25.03.2010 made in M.C.O.P.No.932 of 2006 on the file of the Motor Accidents Claims Tribunal, III Additional Sub Court, Coimbatore.

For Appellant : Mr.S.Arun Kumar

For 1st Respondent : Mr.Vinod for
M/s.Sai Bharath & Ilan

For 4th Respondent : Mr.P.Poovendra for
M/s.Elveera Ravindran

For 3rd, 5th & 6th Respondents : No appearance
R2 : Person not found

J U D G M E N T

Heard the learned counsel for the appellant, the learned counsel for the 1st respondent and the learned counsel for the 4th respondent.

2. The appellant Insurance Company is aggrieved by the impugned Judgment and Decree passed by the Motor Accidents Claims Tribunal, III Additional Sub Court, Coimbatore in M.C.O.P.No.932 of 2006.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,96,000/- as compensation payable to the 1st respondent/claimant. However, while awarding the aforesaid compensation, the Tribunal has fixed the 20% of the liability on the appellant and the 80% of the liability on the 4th respondent herein.

4. The case of the appellant is that a Honda City car bearing registration No.TN.23-V-7337 belonging to the 3rd respondent insured with the 4th respondent while overtaking a load lorry, hit against the insured lorry coming from the opposite direction carrying goods on which the deceased was siting, as a result of which, the deceased fell down and came under the wheels of the lorry and was crushed to death. The said load lorry driven by the 5th respondent and belonged to the 6th respondent and was insured with the appellant.

5. In the impugned order, the Tribunal has came to a conclusion that the 20% of the liability has to be fixed on the appellant and the 80% of the liability has to be fixed on the 4th respondent Insurance Company which had insured the said Honda City car of the 3rd respondent which caused the accident.

6. The impugned order of the Tribunal is defended by the learned counsel for the 4th respondent Insurance Company on the ground that the 5th respondent ought to have applied brake as the Honda City car had already overtaken the lorry in front of it and therefore, the fixation of 20% of the liability on the 5th and the 6th respondent and the appellant was correct.

7. I have considered the arguments advanced by the learned counsel for the appellant and the respective contesting respondents.

8. The manner in which the accident had taken place reveals that the lorry belonging to the 6th respondent was driven by the 5th respondent and was coming from the opposite direction on which the deceased was siting when the Honda City car driven by the 2nd respondent driver belonging to the 3rd respondent insured with the 4th respondent came from the opposite direction. The said Honda City car hit rear side wheel of the insured lorry while trying to overtake a lorry in

front of it. Thus, the driver of the Honda City car was negligent as he took a chance to overtake a lorry in front of him even though the insured lorry was coming from the opposite direction and was maintaining lane discipline on the Highway.

9. The 2^{nd} respondent driver of the Honda City car belonging to the 3^{rd} respondent had admitted that he has came to right side of the road and therefore, negligence if any was on the part of the 2^{nd} respondent driver of the Honda City car alone.

10. Since the Honda City car belonging to the 3^{rd} respondent was driven by the 2^{nd} respondent in a rash and negligent manner, the Tribunal erred in coming to the conclusion that the appellant Insurance Company was partly liable for accident. The Honda City car had overtaken the lorry, unmindful fact that lorry of the 6^{th} respondent driven by the 5^{th} respondent coming from the opposite direction.

11. Consequently, the 4^{th} respondent as the insurer of the Honda City car belonging to the 3^{rd} respondent is liable to compensate the victims for the accident. Under these circumstances, the appellant Insurance Company, the 5^{th} respondent driver of the lorry and the 6^{th} respondent owner of the lorry are entitled to distance themselves from the liability. Therefore, 20% disability apportioned on the appellant is now fixed on the 2^{nd}, 3^{rd} and the 4^{th} respondents.

12. The 4^{th} respondent Insurance Company is therefore directed to deposit the entire amount of compensation awarded by the Tribunal together with interest at 7.5% per annum from the date of claim petition till the date of deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

13. On such deposit, the 1^{st} respondent/claimant is permitted to withdraw same together with interest and cost, less any already withdrawn, by filing suitable application before the Tribunal.

14. If the appellant Insurance Company has deposited any amount in amount of compensation awarded by the Tribunal, it is permitted to withdraw the same together with interest accrued thereon, by filing suitable applications before the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To:

The Judge, Motor Accidents Claims Tribunal,
III Additional Sub Court, Coimbatore.

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

+1cc to Mr.T.Sai krishnan , Advocate SR.No. 31568

C.M.A.No.3329 of 2010
and M.P.No.1 of 2010

A.SK(29.12.2020)