IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1655 and 1656 of 2013

C.M.A.No.1655 of 2013

The New India Assurance Company Ltd.,
Cuddalore. ... Appellant/2nd Respondent

Vs.

1.Natarajan .. 1st Respondent/Claimant

2.M/s.Marg Logistics (P) Ltd.,
Kizhavanjur Village & Post,
T.R.Pattinam, Karaikal. ... 2nd Respondent/1st Respondent
3.Abdul Ajees ... 3rd Respondent/3rd Respondent

4.The United India Insurance Co. Ltd.,
Cuddalore. ..4th Respondent/4th Respondents

(The 3rd respondent remained exparte and hence, notice dispensed with)

C.M.A.No.1656 of 2013

The New India Assurance Company Ltd.,
Cuddalore. ... Appellant/2nd Respondent

Vs.

1.Vimala Rani

2.Minor Ajay @ Kuralarasan
(Minor represented by his mother
and guardian 1st respondent Vimala Rani)

3.Kathiresan

4.Sangeetha ... Respondent 1 to 4/Claimants 1 to 4

5.M/s.Marg Logistics (P) Ltd.,
Kizhavanjur Village & Post,
T.R.Pattinam, Karaikal. ...5th respondent/1st Respondent
6.Abdul Ajees ...6th respondent/3rdst Respondent

7.The United India Insurance Co. Ltd.,
Cuddalore. ...7thRespondents/4th Respondent

(The 6th respondent remained exparte and hence notice dispensed with)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.03.2012 made in M.C.O.P.Nos.171 & 174 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Chidambaram.

In both C.M.As.

For Appellant : Mr.M.Krishnamoorthy

For R1 in C.M.A.No.1655 of 2013 &
For RR1 to R4 in C.M.A.No.1656 of 2013: Mr.A.Murugan

For R2 in C.M.A.No.1655 of 2013 &
For R5 in C.M.A.No.1656 of 2013 : Mr.S.Gopinath

For R4 in C.M.A.No.1655 of 2013 &
For R7 in C.M.A.No.1656 of 2013 : Mr.S.Arunkumar

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the common award dated 01.03.2012 made in M.C.O.P.Nos.171 & 174 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Chidambaram.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.The appellant in both the appeals is the second respondent in M.C.O.P.Nos.171 & 174 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Chidambaram. The claimant in C.M.A.No.1655 of 2013 and the claimants in C.M.A.No.1656 of 2013 filed the above said claim petitions claiming a sum of Rs.8,00,000/- and Rs.20,00,000/- respectively as compensation for the injuries sustained by the claimant in C.M.A.No.1655 of 2013 and for the death of one Sekar in C.M.A.No.1656 of 2013, who died in the accident that took place on 31.10.2009.

4.According to the claimants, on the date of accident i.e. on 31.10.2009 at about 10.00 hours, the lorry belonging to the 3rd respondent was caught in the heap of coal at Karaikal Port and the driver, who is the claimant in M.C.O.P.No.171 of 2010 arranged the 1st respondent's Hitachi Poclain to push it from behind. The driver of the Poclain without giving any signal pushed the lorry, as a result of which, the lorry ran over the deceased Sekar as well as claimant in M.C.O.P.No.174 of 2010. In the said accident, Sekar died on the spot and the driver Natarajan sustained grievous injuries. Hence, the claimants have filed the above claim petitions claiming compensation.

5.The respondents 1 & 3 remained exparte before the Tribunal.

6.The 2nd respondent/New India Assurance Company being insurer of the Poclain filed counter statement and denied the averments made by the claimants in the claim petitions. They contended that the 1st respondent's Poclain driver has not committed any fault and he rightly pushed the 3rd respondent's vehicle after the 3rd responden's driver gave signal to start the Poclain and push the lorry. The 1st respondent's vehicle driver was called by the 3rd respondent's driver for help and the 1st respondent driver acted only on the instructions of the 3rd respondent's driver. The deceased died only due to the carelessness of the lorry driver and he was crushed only by the 3rd respondent's vehicle. It is further contended that there was no rashness or negligence on the part of the 1st respondent's vehicle driver. The vehicle involved in the accident was not at all insured with the 2nd respondent/Insurance Company and there was no valid R.C. Book and the driver of the vehicle involved in the accident had no valid driving license at the time of accident. Hence, the 2nd respondent/Insurance Company is not liable to pay any compensation to the claimants.

7.Before the Tribunal, on the side of the claimants, the claimant in M.C.O.P.No.171 of 2010 examined himself as PW1 and

1st claimant in M.C.O.P.No.174 of 2010 examined herself as PW2, one Dr.Balamurugavel was examined as PW3 and marked 13 documents as Ex.P1 to Ex.P13. The X-ray was marked as M.O.1. On the side of the 2nd respondent, one Ulaganathan was examined as RW1 and no documentary evidence was let in.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Poclain belonging to the 1st respondent and directed the 2nd respondent/New India Assurance Company to pay a sum of Rs.2,00,000/- as compensation to the claimant in M.C.O.P.No.171 of 2010 and Rs.9,00,000/- as compensation to the claimants in M.C.O.P.No.174 of 2010.

9.Against the said common award dated 01.03.2012 made in M.C.O.P.Nos.171 & 174 of 2010, the 2nd respondent/New India Assurance Company has come out with the present appeals.

10.The learned counsel appearing for the 2nd respondent/New India Assurance Company contended that the Tribunal erred in holding that the driver of the Poclain insured with the 2nd respondent under Contractor's Plant & Machinery Policy was rash and negligent and solely responsible for the accident. The Tribunal failed to see that the driver of the 1st respondent was instructed to push the lorry on hearing the horn sound given by the driver of the lorry. When the driver of the lorry gave the signal by blowing horn, the driver of the Poclain pushed the lorry as per instructions. The Tribunal ought to have fixed entire negligence on the part of the driver of the lorry belonging to the 3rd respondent insured with the 4th respondent. In the FIR, averments in the claim petition and evidence given by the claimants, it is seen that both the drivers were negligent and compensation were claimed against the respondents. The Tribunal in any event ought to have fixed negligence on both the drivers. The Tribunal failed to see that the policy issued by the 2nd respondent/Insurance Company in respect of Poclain is only Contractor's Plant & Machinery Policy for compensating damages to the vehicle and not for the third party liability and prayed for allowing the appeal.

11.Per contra, the learned counsel appearing for the 4th respondent/United India Insurance Company contended that the driver of the 1st respondent was specifically instructed to push the lorry, only when the driver of the lorry starts the lorry and gives signal. The Poclain driver, even before the lorry was started, pushed the lorry based on the horn blown by the driver of the lorry and caused the accident. The accident has occurred only due to negligence on the part of the driver of the Poclain who pushed the lorry without seeing the lorry was not started.

The Tribunal after considering all the materials on record, has rightly held that the driver of the Poclain was responsible for the accident and directed the 2nd respondent to pay the compensation. Hence, there is no error in the findings of the Tribunal and prayed for dismissal of the appeal against 4th respondent.

12.The learned counsel appearing for the 1st respondent contended that the driver of the Poclain was instructed to push the lorry and he heard the horn given by the driver of the lorry. As soon as he heard the horn, he pushed the lorry as per instructions. There is no negligence on the part of the 1st respondent/driver of Poclain. The vehicle was insured with the 2nd respondent/Insurance Company and the insurance was in force on the date of accident and if any compensation is payable by the 1st respondent, it is only the 2nd respondent who is the insurer of the Poclain is liable to pay compensation on behalf of the 1st respondent and prayed for dismissal of the appeal against the 1st respondent.

13.The 3rd and 6th respondents in C.M.A.Nos.1655 and 1656 of 2013 remained exparte before the Tribunal and hence, notice to him is dispensed with.

14.Heard the learned counsel appearing for the 2nd respondent/New India Assurance Company Limited, learned counsel appearing for the claimants, learned counsel appearing for the respondents 1 & 4 and perused the materials available on record.

15.It is the contention of the claimants that the lorry belonging to the 3rd respondent got break down and caught struck in the heap of coal. According to the claimants, the claimant in M.C.O.P.No.171 of 2010, one Natarajan requested driver of another lorry to start the lorry and blow horn and requested the driver of the Poclain to push the lorry from behind when he heard the horn sound blown by the driver of the lorry, so that the lorry can be parked in the side. According to the claimants, the driver of the lorry without starting the lorry given horn and driver of the Poclain, without seeing that the lorry was not started, pushed the lorry from behind and both the drivers are responsible for the accident. On the other hand, it is the contention of the 1st respondent that the driver of the Poclain was instructed to push the lorry on the moment he heard the horn sound and he acted accordingly. There is no negligence on the part of the driver of the Poclain.

16.From the pleadings, FIR and evidence of claimants, it is clear that both the drivers are responsible for the accident. The Tribunal while answering the first issue whether the accident occurred due to negligence of the driver of the 1st respondent or 3rd respondent, in one portion of the award, held that the driver of the 3rd respondent was solely responsible for the accident and in the last line, held that the driver of the 1st respondent is responsible for the accident. Considering the entire materials on record, this Court is of the view that both the drivers were negligent and equally responsible for the accident. It is the contention of the 2nd respondent that policy issued by the 2nd respondent is only Contractor's Plant & Machinery Policy. According to the said policy, the 2nd respondent is liable to pay compensation only for the damages to the vehicle and not to third party. The said policy was marked as Ex.P7. The policy is termed as Contractor's Plant & Machinery Insurance. In the said policy, it has been mentioned that “TPL Any One Accident SI” and “TPL Any One Person SI”. In view of the policy issued for third party liability, the contention of the 2nd respondent that the 2nd respondent is not liable to pay compensation for the third party claim, is without merits. Further, from the averments made in the counter statement filed by the 2nd respondent, it is seen that the 2nd respondent has not taken such a plea before the Tribunal. It is well settled that without pleadings, the 2nd respondent is not entitled to take such a plea in the grounds of appeal now.

17.For the above reasons, the award of the Tribunal fixing entire liability on the 2nd respondent/Insurance Company is set aside. The negligence is fixed equally on both the drivers of respondents 1 & 3 and as insurer of the vehicles the 2nd and 4th respondents are directed to pay 50% each of the award amount.

18.In the result, both the appeals are partly allowed and the portion of the award passed by the Tribunal fixing entire negligence on the part of the 2nd respondent/Insurance Company is set aside and the compensation of Rs.2,00,000/- and Rs.9,00,000/- [M.C.O.P.Nos.171 & 174 of 2010] along with interest and costs is confirmed. Both the respondents 2 & 4 are directed to deposit 50% of the award amount in both the appeals along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant in M.C.O.P.No.171 of 2010 and the claimants 1, 3 & 4 in M.C.O.P.No.174 of 2010 are permitted to withdraw their share of the award amount as per apportionment fixed by the Tribunal along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn. The share of the minor 2nd claimant in M.C.O.P.No.174 of 2010 is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st claimant in M.C.O.P.No.174 of 2010 being the mother of the 2nd claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The 2nd respondent/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.Nos.171 & 174 of 2010, if the entire amount has already been deposited by them. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal
Chidambaram.

2.The Section Officer
V.R.Section
High Court, Chennai.

+2ccs to Mr.M.Krishnamoorthy, Advocate, Sr.No. 21722 & 21721
+1 cc to M/s.S.Gopinath ,Advocate Sr.No. 21944
+1 cc to M/s.A.Murughan, Advocate Sr.No. 21826
+1 cc to M/s. A.Arunkumar, Advocate Sr.No. 22247

C.M.A.Nos.1655 and 1656 of 2013

VBA(CO)
RMP(06/05/2021)