



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.12.2020

PRONOUNCED ON :15.12.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.2434 OF 2015

AND

M.P.NO.1 OF 2015

United India Insurance Co.Ltd.,
Tiruchengode Branch,
Namakkal (Dt.)

.. Appellant/2nd Respondent

/versus/

1.Kannan
2.N.Chinnasamy
3.Madeswaran

.. 1st Respondent/Claimant

.. 2nd and 3rd Respondents/
1st and 3rd Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 01.07.2015 made in M.C.O.P.No.320 of 2009 on the file of the Motor Accident Claims Tribunal, Salem, Special Sub Judge No.1, Salem.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.R.Marudhachalamurthy
for R1
No appearance for R2 and R3

JUDGMENT

(The case has been heard through video conference)

The appeal filed by the Insurance Company challenging the partial liability fixed on the Insurance Company by the Tribunal to pay 40% of the compensation amount to the claimant.

2.On 13.02.2008 at about 3.40 p.m., when the claimant Kannan along his co-worker Babu was riding his bi-cycle to report at



his work spot on the Leigh Bazaar-Matha Koil Street, at that time, a lorry bearing Reg.No.KA01-A-6577 rash and negligently dashed against an auto bearing Reg.No.TN 28-Y-6126 and the lorry thereafter lost its balance and hit the claimant's bi-cycle. The claimant sustained sever fracture injury. He was in the hospital for 20 days as in-patient. Therefore, a claim petition for Rs.10,00,000/- was filed initially against the lorry owner. Later, the Insurance company and the driver of the Auto against whom the First Information Report registered for causing accident were impleaded as respondents 2 and 3.

3.The Insurance Company specifically defended the case on the ground that the vehicle owned by the first respondent and insured by the 2nd respondent is not at all involved in the said accident. The accident occurred purely due to carelessness and negligent driving of the auto driver the 3rd respondent.

4.Before the Tribunal, the Insurance Company to establish that Registration number of the lorry insured under them was not the lorry involved in the accident and on the date of the accident, the vehicle was plying at Madhya Pradesh marked Ex.R8-petrol bunk receipt. The Tribunal, after considering the evidence, held that the theory of alibi of the 1st respondent vehicle not proved beyond doubt, since there is a composite negligence between the auto driver and the lorry driver, the liability was apportioned at the ratio of 40:60. The Tribunal concluded that the first respondent (lorry owner) had insured his vehicle with the 2nd respondent (the appellant). There is no plea for policy violation for the 2nd respondent. The third respondent (auto owner) had not insured his vehicle at the time of accident. With regard to fixation of negligence, it was decided that there is a composite negligence. So, the 2nd respondent is liable to pay 40% of the compensation amount to the claimant. The balance 60% of the compensation shall be paid by the third respondent(auto owner). Out of the total compensation of Rs.1,80,000/-, a sum of Rs.1,08,000/- was ordered to be paid by the 3rd respondent and the balance of Rs.72,000/- was ordered to be paid by the 2nd respondent.

5.In this appeal, the Insurance Company has questioned the 40% liability fastened on them, when RW1-the investigation officer, Ex.R1-final report, Ex.R3- observation mahazar and the evidence of RW-2, prove that at the time of accident, the vehicle bearing Reg.No.KA01-A-6577 was not at the scene of occurrence and it was plying at Madhya Pradesh. Further, when the police investigation has indicated that the accident occurred only due to the negligence of the auto driver. The liability of insurance Company of the lorry to pay compensation does not arise.



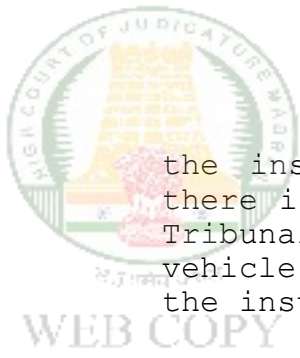
6. Ex.P1 is the copy of the First Information Report. The complaint is given by the claimant, in which he has mentioned the lorry driver is the offender. The lorry number bearing Reg.No.KA01-A-6577 is mentioned in the First Information Report. The accident occurred on 13.02.2008 at 15.40 hours. His complaint is given on the next day when the claimant was in the hospital. Ex.P2 is the discharge summary in which it is recorded that the injured got admitted in the hospital with the History of road traffic accident hit by a lorry number not known. The auto mentioned in the first information report alone was sent for motor vehicle Inspector Inspection and the MV report is Ex.P4.

7. Police after investigation has filed final report against the auto driver. As per the final report, the accident occurred when the auto stopped in the middle of the road the driver of the auto tried to start the vehicle recklessly in a standing position. He lost balance and the vehicle dashed the cyclist. The manner in which the accident occurred as found in the First Information Report is different from the final report filed by the police after investigation.

8. The learned counsel appearing for the appellant strongly rely upon Ex.R8 (Petrol bunk receipt) which is the bill issued by the Hindustan Petroleum LayOut at Gurgone, Madhya Pradesh dated 13.02.2008 for 2000 litres of diesel at the rate of 35/- rupees. The vehicle number bearing Reg.No.KA01-A-6577 is written in hand. The evidence of RW-2, who is the son of the lorry owner, reveals that on 13.02.2008 the vehicle was at Gurgone in Madhya Pradesh. It is a rig lorry and Ex.R8 is the bill for purchase of diesel to the said lorry.

9. Now the point before this Court is, whether Ex.R8-bill, the evidence of RW-2 the son of the vehicle owner and the evidence of RW1, who is the investigating officer who investigated the case and filed the final report to be taken as proved to hold that the lorry bearing Reg.No.KA01-A-6577 was not the vehicle involved in the accident.

10. There is a serious doubt in the case whether to rely upon information given in the First Information Report or the final report. Why should a victim in the hospital mentioned the lorry number and imaginarily narrate the chain of event leading to the accident by falsely implicated the lorry. Further, to show that the lorry was in Madhya Pradesh for some rig work, the bill Ex.R8 which could be prepared even at later point of time, is not a strong evidence. The owner of the lorry ought to have produced better evidence to show that the lorry was engaged at Madhya Pradesh. Being a Welfare legislation, the liability of



the insurance company cannot be ordinarily exonerated, unless there is enough evidence to exonerate them as pointed out by the Tribunal. The alibi placed by the Insurance Company and the vehicle owner is doubtful. Therefore, fixing 40% of liability on the insurance company need not be disturbed.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No order as to costs. The award of the Tribunal is hereby confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accidents Claims Tribunal,
Special Sub Judge No.1, Salem.

+2ccs to Mr.C.Paranthaman, Advocate, S.R.No.41136

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.41578

C.M.A.No.2434 of 2015 and
M.P.No.1 of 2015

CP(CO)
RLP(01/09/2021)