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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2242 and 2243 of 2013
and
M.P.Nos.1, 1 of 2013

The Branch Manager
National Insurance Company Limited
Raja Street, Gobi Town
Gobi Taluk, Erode District.

.. Appellant/2nd Respondent in both CMAs.

Vs

1.Palaniammal .. 1st Respondent/Claimant in
CMA.No.2242 of 2013

1.G.P.Nithiyananthan .. 1st Respondent/Claimant in
CMA.No.2243 of 2013

2.N.Selvakumar .. 2nd respondent/1st Respondent in both
appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2011 made in M.C.O.P.Nos.203 and 205 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam.

In both CMAs.

For Appellant : Ms.N.B.Surekha

For R1 : Mr.M.Lokesh
for Mr.MA.P.Thangavel

For R2 : No appearance

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

This matter is heard through "Video-Conferencing".

These Civil Miscellaneous Appeals have been filed by the Insurance Company, challenging the common award dated 19.12.2011



made in M.C.O.P.Nos.203 and 205 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam.

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

3.The appellant/Insurance Company is 2nd respondent in M.C.O.P.Nos.203 and 205 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam. The 1st respondent in both the appeals filed the said claim petitions claiming a sum of Rs.7,50,000/- each as compensation for the injuries sustained by them in the accident that took place on 30.08.2010.

4.According to the 1st respondent in both the appeals, on the date of accident, i.e., on 30.08.2010 at about 9.00 a.m., while the 1st respondent in C.M.A.No.2243 of 2013 was riding in his motorcycle along with his mother, the 1st respondent in C.M.A.No.2242 of 2013 as pillion rider on Banglapudur - Gobichettipalayam Main Road from North to South direction on the left side of the road and near Asarimedu, the driver of the lorry belonging to the 2nd respondent, which was going in front of the motorcycle, suddenly applied brake, due to which the rider of the motorcycle dashed on the back side of the lorry and caused the accident. Due to the accident, the 1st respondent in both the appeals sustained multiple injuries all over the body. Therefore, they filed the above claim petitions claiming compensation against the 2nd respondent and the appellant/Insurance Company.

5.The 2nd respondent, owner of the lorry filed counter statement denying the averments made in the claim petitions and contended that the 1st respondent in C.M.A.No.2243 of 2013 alone rode the motorcycle in a rash and negligent manner, tried to overtake the lorry, lost his control, dashed on the back side of the lorry and invited the accident. The said lorry is insured with the appellant/Insurance Company. If any compensation is to be paid, it is only the appellant/Insurance Company is liable to pay compensation as the vehicle was insured with appellant. The 2nd respondent has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent in both the appeals. In any event, the compensation claimed by the 1st respondent in both the appeals are excessive and prayed for dismissal of the claim petitions.

6.The appellant/Insurance Company, insurer of the lorry filed counter statements in both the claim petitions denying the averments made in the claim petitions and contended that the 1st respondent in C.M.A.No.2243 of 2013 without wearing the helmet



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and without keeping the proper distance from the vehicle going in front on the road, rode the motorcycle in a rash and negligent manner and caused the accident. The accident did not occur due to negligence on the part of the driver of the lorry belonging to the 2nd respondent. The owner and insurer of the motorcycle were not made as parties to the claim petitions. Hence, the claim petitions are bad for non-joinder of necessary parties. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent in both the appeals. In any event, the total compensation claimed by the 1st respondent in both the appeals are excessive and prayed for dismissal of the claim petitions.

7. Before the Tribunal, the 1st respondent in both the appeals examined themselves as P.W.1 & P.W.2 respectively, Dr. Periasamy was examined as P.W.3 and 24 documents were marked as Exs.P1 to P24. On the side of the appellant/Insurance Company, one Sampath, the driver of the lorry was examined as R.W.1 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 lorry belonging to the 2nd respondent and directed both the 2nd respondent as well as the appellant/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.2,14,738/- and Rs.1,40,075/- as compensation to the 1st respondent in both the appeals respectively.

9. Against the said common award dated 19.12.2011 made in M.C.O.P.Nos.203 and 205 of 2010, the present appeals have been filed by the appellant/Insurance Company.

10. Though the learned counsel appearing for the appellant/Insurance Company has raised various grounds with regard to quantum of compensation in the grounds of appeals, at the time of arguments, she has restricted her arguments only with regard to negligence fixed on the part of the driver of the lorry.

11. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fixing the entire negligence on the part of the driver of the lorry. The Tribunal failed to appreciate the contradictory statement made by the 1st respondent in both the claim petitions and their oral evidence. Had the 1st respondent in C.M.A.No.2243 of 2013 kept sufficient distance, the accident could have been avoided. The entire negligence is only on the part of the 1st respondent in C.M.A.No.2243 of 2013, rider of the motorcycle. The Motor Vehicle Inspector's report reveals that front portion



of the motorcycle and left rear portion of the lorry are damaged. This shows that the accident has occurred only when the rider of the motorcycle tried to overtake the lorry on the left side of the lorry. The appellant examined the driver of the lorry as R.W.1. The Tribunal erroneously holding that no contra evidence to the evidence of P.W.1 and P.W.2 was let in by the appellant/Insurance Company, held that R.W.1 was responsible for the accident. R.W.1, the driver of the lorry clearly explained the manner of accident and established negligence on the part of the rider of the motorcycle. The Tribunal ought to have fixed entire negligence on the part of the rider of the motorcycle and dismissed the claim petitions and prayed for setting aside the award of the Tribunal and allowing both the appeals. In support of her contentions, the learned counsel relied on the following judgment of the Hon'ble Apex Court reported in (2018) 6 SCC 765 (Nishan Singh and others vs. Oriental Insurance Company Limited);

"12.The finding so recorded by the Tribunal has been affirmed by the High Court, by observing that the evidence was clearly indicative of the fact that the Maruti car was being driven in a rash and negligent manner, which was the cause for accident of this nature and resulting in death of one of the passengers in the Maruthi car. The Maruthi car was driven by none other than PW2 Manjeet Singh. In his evidence, he has admitted that the subject truck was running ahead of the Maruthi car for quite some time about one kilometre and at the time of accident, the distance between the truck and Maruthi car was only 10-15 ft. He has also admitted that the law mandates maintaining sufficient distance between two vehicles running in the same direction. It is also not in dispute that the road on which the two vehicles were moving was only about 14 ft. wide. It is unfathomable that on such a narrow road, the subject truck would move at a high speed as alleged. In any case, the Maruthi car which was following the truck was expected to maintain a safe distance, as envisaged in Regulation 23 of the Rules of the Road Regulations, 1989, which reads thus:

"23.Distance from vehicles in front._The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."



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The expression "sufficient distance" has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10-15 ft between the truck and Maruthi car was certainly not a safe distance for which the driver of the Maruthi car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants.

13.The Tribunal also noted that there was no evidence on record to indicate that the driver of the truck suddenly applied his brake in the middle of the road. Further, the finding on Issue 1 recorded by the Tribunal is that there was no evidence regarding exact place of occurrence of accident and having taken survey. Therefore, the issue under consideration was answered against the appellant claimants, namely, that the subject truck was not driven rashly and negligently by the truck driver nor had he brought the truck in the centre of the road at the right side or applied sudden brake as being the cause of the accident. Being a concurrent finding of fact and a possible view, needs no interference."

12.The learned counsel appearing for the 1st respondent in both the appeals contended that the accident occurred while the driver of the lorry going in front of the motorcycle driven by the 1st respondent in C.M.A.No.2243 of 2013, suddenly applied the brake. F.I.R. was registered against the driver of the lorry and he was charge sheeted. The 1st respondent in both the appeals examined themselves as P.W.1 and P.W.2 respectively and deposed the manner of the accident. The Tribunal considering the evidence of P.W.1, P.W.2 and Ex.P1/F.I.R., rightly held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent. R.W.1, the driver of the lorry is an interested witness. The appellant/Insurance Company has not let in any independent witness to prove the negligence on the part of the rider of the motorcycle, the 1st respondent in C.M.A.No.2243 of 2013. There is no error in the award of the Tribunal and prayed for dismissal of the appeals.

13.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no



representation for the 2nd respondent either in person or through counsel.

14. Heard the learned counsel appearing for the appellant/Insurance Company as well as the 1st respondent in both the appeals and perused all the materials available on record.

15. From the materials available on record, it is seen that it is the contention of the 1st respondent in both the appeals that while the 1st respondent in C.M.A.No.2243 of 2013 was riding in his motorcycle, the driver of the lorry belonging to the 2nd respondent going in front of the motorcycle, suddenly applied brake and the rider of the motorcycle dashed on the back side of the lorry. The accident has occurred only due to rash and negligent driving by the driver of the lorry, who suddenly applied brake without any indication. To substantiate this contention, the 1st respondent in both the appeals examined themselves as P.W.1 and P.W.2 respectively and marked F.I.R., which was registered against the driver of the lorry, as Ex.P1. On the other hand, it is the contention of the appellant that the 1st respondent in C.M.A.No.2243 of 2013, the rider of the motorcycle did not keep sufficient distance between the motorcycle and the lorry going in front of him and tried to overtake the lorry, dashed on the back side of the lorry on seeing another vehicle coming in the opposite direction. The driver of the lorry was examined as R.W.1, who deposed as that of the contention of the appellant with regard to the manner of accident. In the cross-examination, R.W.1 denied that the accident has occurred due to his negligence. The Tribunal has not considered the evidence of R.W.1. On the other hand, the Tribunal held that no contra evidence was let in by the appellant or documents marked to disprove the evidence of P.W.1 and P.W.2 by the appellant. The said finding is contrary to the materials on record.

16. From the materials on record, it is seen that the accident has occurred at a curve. R.W.1 has deposed that the vehicles cannot be driven at high speed in the place of accident as it was a curve. It is an admitted fact that the accident occurred at a curve. The Tribunal without considering the evidence of R.W.1 and contention of the appellant, has erroneously held that the accident has occurred only due to rash and negligent driving by the driver of the lorry and fixed entire negligence on the part of the driver of the lorry. The contention of the learned counsel appearing for the appellant that the rider of the motorcycle did not keep sufficient distance between the lorry and motorcycle and had he kept sufficient distance, the accident could have been avoided, has considerable force. The ratio laid down in the judgment of the Hon'ble Apex Court relied on by the learned counsel appearing



for the appellant/Insurance Company reported in (2018) 6 SCC 765 (Nishan Singh and others vs. Oriental Insurance Company Limited) referred above, is squarely applicable to the facts of the present case. There are two vehicles, lorry and motorcycle are involved in the accident and the accident has occurred, when the motorcycle dashed on the back side of the lorry. Considering the entire materials on record and F.I.R. registered against the driver of the lorry, this Court is of the view that the accident has occurred due to negligence of both the driver of the lorry as well as the rider of the motorcycle and hence negligence is fixed equally on both the driver of the lorry as well as the rider of the motorcycle, the 1st respondent in C.M.A.No.2243 of 2013. The 1st respondent in both the appeals are entitled to only 50% of the compensation awarded by the Tribunal. The appellant/Insurance Company is directed to pay 50% of the compensation awarded by the Tribunal to the 1st respondent in both the appeals.

17. With the above modification, the Civil Miscellaneous Appeals are partly allowed. The compensation of Rs.2,14,738/- and Rs.1,40,075/- awarded by the Tribunal in both the claim petitions along with interest and costs are confirmed. The appellant/Insurance Company is directed to deposit 50% of the compensation awarded by the Tribunal i.e., Rs.1,07,369/- in M.C.O.P.No.203 of 2010 and Rs.70,038/- in M.C.O.P.No.205 of 2010 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 in both the appeals are permitted to withdraw the modified award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.Nos.203 and 205 of 2010 on the file of Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1. The Subordinate Judge
The Motor Accident Claims Tribunal
Gobichettipalayam.



2.The Section Officer,
VR Section, High Court, Chennai.

+2cc to Mr.N.B.Surekha, Advocate, S.R.No. 39496 & 39497
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 39375

C.M.A.Nos.2242 and 2243 of 2013

NMI (CO)
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