

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2581 of 2013

and

M.P.No.1 of 2013

The Divisional Manager,
National Insurance Company Limited,
Vellore - 632 001. .. Appellant/2nd Respondent

Vs.

1.Ammu @ Amul ...1st Respondent/ Petitioner

2.S.Senthil Kumar ...2nd Respondent/1st Respondent

3.M/s.A.B.T.Limited,
10/14-15, Kalingarayan Street,
Ram Nagar,
Coimbatore - 641 009. ...3rd Respondent/3rd Respondent

4.The Divisional Manager,
United India Insurance Company Limited,
Kadpadi Road,
Vellore - 632 004. ...4th Respondent/4th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.11.2011 made in M.C.O.P.No.266 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vellore.

For Appellant: Mr.S.Vadivel

For R1 : Mr.M.Sivakumar
for Mr.C.Prabakaran

For RR 2 & 3 : No appearance

For R4 : Ms.R.Rathna Thara

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 28.11.2011 made in M.C.O.P.No.266 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vellore.

3.The appellant is the 2nd respondent in M.C.O.P.No.266 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vellore. The 1st respondent filed the said claim petition, claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by her in the accident that took place on 30.08.2004.

4.According to the 1st respondent, on 30.08.2004 at about 12.00 Noon, while she was travelling along with her father and goats in the lorry bearing Registration No.TN 23 H 2289 belonging to the 2nd respondent and insured with the appellant on Polur - Arni road near Polur - Kunnathur Koottu Road, the driver of the 2nd respondent's lorry drove the same in a rash and negligent manner and dashed against another lorry bearing Registration No.TAG 663 belonging to the 3rd respondent and insured with the 4th respondent and caused the accident. In the accident, the 1st respondent sustained multiple grievous injuries all over her body and immediately she was taken to Government Hospital, Polur and thereafter she was referred to Government Vellore Medical College Hospital, Vellore for medical treatment. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by her against the respondents 2 to 4 and appellant-Insurance Company.

5.The respondents 2 and 3, being the owners of the lorries bearing Registration Nos.TN 23 H 2289 and TAG 663 respectively remained exparte before the Tribunal.

6.The appellant-National Insurance Company Limited, being the insurer of the lorry bearing Registration No.TN 23 H 2289 belonging to the 2nd respondent filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident has not occurred as alleged by the 1st respondent. The appellant denied the manner of accident and the nature of injuries sustained by the 1st respondent in the accident. The 2nd respondent's lorry was not insured with the appellant at the time of accident. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The policy taken by the 2nd respondent covers the risk of owner of the goods or authorized representative of the owner of the goods, whereas the 1st respondent and others travelled in the 2nd respondent's lorry only as unauthorized passengers and hence, the appellant is not liable to pay any compensation to the 1st respondent. The

accident has not occurred due to negligence on the part of the driver of the 2nd respondent's lorry. The accident has occurred only due to negligence on the part of the driver of the 3rd respondent's lorry bearing Registration No.TAG 663 and hence, the claim petition is not maintainable. The appellant denied the age, avocation, income, nature of injuries and treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7.The 4th respondent-United India Insurance Company Limited, being the insurer of the lorry bearing Registration No.TAG 663 belonging to the 3rd respondent filed counter statement and denied various averments made by the 1st respondent. According to the 4th respondent, the accident has not occurred due to negligence on the part of the driver of the 3rd respondent's lorry, but the accident has occurred only due to rash and negligent driving by the driver of the 2nd respondent's lorry bearing Registration No.TN 23 H 2289. The 1st respondent and others travelled in the 2nd respondent's lorry as unauthorized passengers. Further, the F.I.R. was registered only against the driver of the 2nd respondent's lorry and therefore only the 2nd respondent and appellant-National Insurance Company Limited are liable to pay the compensation and the respondents 3 and 4 are unnecessary parties in the claim petition. Hence, the 4th respondent is not liable to pay any compensation. The 1st respondent sustained only simple injuries and she does not suffer any disability as alleged by her. The 4th respondent denied the age, avocation, income, nature of injuries and treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is exorbitant and prayed for dismissal of the claim petition as against the 4th respondent.

8.Before the Tribunal, the 1st respondent examined herself as P.W.1 and Dr.Riyaz Ahamed was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. On behalf of the 4th respondent and appellant, one Gnanasekaran was examined as R.W.1 and three documents were marked as Exs.R1 to R3.

9.The Tribunal considering the pleadings, oral and documentary evidence held that the 1st respondent sustained injuries in the accident involving two lorries bearing Registration Nos.TN 23 H 2289 and TAG 663 belonging to respondents 2 and 3 and fixed negligence in the ratio 50% : 50% and awarded a sum of Rs.80,000/- as compensation to the 1st respondent and directed both the appellant-National Insurance Company being the insurer of the 2nd respondent's lorry as well as the 4th respondent-United India Insurance Company Limited, being the insurer of the 3rd respondent's lorry to pay 50% each

of the award amount, i.e., Rs.40,000/- as compensation to the 1st respondent.

10. Against the said award dated 28.11.2011 made in M.C.O.P.No.266 of 2004, the appellant-National Insurance Company has come out with the present appeal.

11. The learned counsel appearing for the appellant contended that the Tribunal ought to have dismissed the claim petition against the appellant following the award of the Tribunal in M.C.O.P.No.184 of 2007 on the ground that 1st respondent traveled as unauthorized passenger. The Tribunal ought not to have relied on the copy of the award relied on by the 1st respondent directing the appellant to pay the compensation. The Tribunal failed to see that the 1st respondent is not authorized to travel in the goods vehicle even with consent of the driver of the 2nd respondent's lorry. The Tribunal ought to have dismissed the claim petition as the 1st respondent was only an unauthorized passenger and prayed for setting aside the award of the Tribunal directing the appellant to pay 50% of the compensation awarded and for allowing the appeal.

12. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent and others traveled in the goods vehicle for their business purpose with the consent of the driver of the 2nd respondent's lorry. The 1st respondent is not an unauthorized passenger. The Tribunal considering the evidence let in by the 1st respondent before the Tribunal, held that 1st respondent is not an unauthorized passenger and Insurance Company of both the lorries are liable to pay the compensation. The Tribunal has given valid reason for directing the appellant to pay 50% of the compensation awarded and prayed for dismissal of the appeal.

13. Ms.R.Rathna Thara, learned counsel appearing for the 4th respondent-United India Insurance Company contended that the accident has occurred only due to rash and negligent driving by the driver of the 2nd respondent's lorry and the Tribunal erred in directing the 4th respondent-United India Insurance Company being the insurer of the 3rd respondent's lorry to pay 50% of the compensation to the appellant. The Tribunal ought to have directed the appellant to pay the entire compensation to the 1st respondent and prayed for setting aside the portion of the award directing the 4th respondent to pay 50% of the compensation to the 1st respondent.

14. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and the learned counsel appearing for the 4th respondent and perused the entire materials on record.

15.From the materials available on record, it is seen that the 1st respondent and others traveled in the goods vehicle. According to the 1st respondent, she traveled for her business alongwith her goods. The 1st respondent has not furnished any particulars about the nature of business carried on by her. Further the 1st respondent was only aged 15 years at the time of accident. It is not the case of the 1st respondent that she traveled along with the goods or traveled as representative of the owner of the goods. The Tribunal without properly appreciating the pleadings and evidence let in before it, erroneously held that the 1st respondent was a passenger and on the consent of the driver of the 2nd respondent's lorry, she traveled. The Tribunal having held that 1st respondent can only be classified as gratuitous passenger to the claim of compensation for the injuries sustained by her in the accident, erroneously directed the appellant-National Insurance Company to pay the compensation. The Tribunal without properly appreciating the pleadings and evidence let in before it, erroneously held that 1st respondent traveled with the consent of the driver of the 2nd respondent's lorry and hence the appellant is liable to pay 50% of the compensation awarded. No person can travel in the goods vehicle even with consent of the driver of the lorry. The Tribunal on erroneous reason directed the appellant to pay 50% of the compensation to the 1st respondent. The said portion of the award is liable to be set aside and it is hereby set aside. The 1st respondent is entitled to claim 50% of the compensation awarded only from the 2nd respondent-owner of the lorry bearing Registration No.TN 23 H 2289.

16.It is made clear that if any amount is deposited by the appellant-National Insurance Company and the same was withdrawn by the 1st respondent, the appellant is not entitled to recover the same from the 1st respondent.

***17.With the above modification, this Civil Miscellaneous Appeal is allowed and sum of Rs.80,000/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The 2nd respondent-owner of the lorry bearing Registration No.TN 23 H 2289 is directed to deposit 50% of the award amount, i.e., Rs.40,000/-, along with proportionate interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.266 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vellore. On such**

deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

***Corrected as per order
dated 11.01.2021
in CMA.2581/13**

//True Copy//

Sub Assistant Registrar

krk

To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Vellore.

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

+1cc to Mr.C.Prabakaran , Advocate SR.No. 36715

+1cc to Mr.S.Vadivel, Advocate SR.No. 36441

C.M.A.No.2581 of 2013

A.SK(08.03.2021)

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