

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.3607 of 2012

and

M.P.No.01 of 2012

The New India Assurance Company Ltd.,
Third Party Cell, No.69-70,
Sheikpet Nadu Street,
Kancheepuram.

...Appellant/2nd Respondent

vs.

1.M.Lingesh ...1st Respondent/Claimant

2.R.Selvaraj ...2nd Respondent/1st Respondent

(The second respondent
herein remained ex-parte
before the lower
Court, hence notice to him
may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the decree and Judgment
dated 08.03.2012 passed in MCOP.No.69 of 2007 on the file of the
Motor Accident Claims Tribunal, Principal Subordinate Judge,
Chengalpattu.

For Appellant : Mr.S.Jayasankar

For Respondents : R1 No appearance
R2 Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the
appellant/Insurance Company, challenging the award dated
08.03.2012 made in M.C.O.P.No.69 of 2007 on the file of the
Motor Accident Claims Tribunal, Principal Subordinate Judge,
Chengalpattu.

2.The case of the claimant/first respondent is that on
06.11.2006 at about 23.30 hours, when he was on the wheel on the
Swaraj Mazda Van bearing Regn.No.TN10D2589 along the G.S.T.Road
from North to South, while approaching the signal point at
Pallavaram, a TATA 909 Van with Regn.No.TN30 2238 moving ahead

of the claimant was driven rashly and negligently and it rammed into the door side of the lorry which was stationery due to stoppage signal and though the incident has not been foreseen, the first petitioner applied brake, which saved his life but sustained multiple injuries.

3.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.69 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Chengalpattu. The 1st respondent filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.11.2006. 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 van belonging to the 2st respondent and directed both 1st respondent as well as the appellant/Insurance Company being insurer of the said van to pay a sum of Rs.58,900/- as compensation to the 1st respondent, jointly and severally after deducting 50% of the amount towards contributory negligence on the part of the injured. Against the said award dated 08.03.2012 made in M.C.O.P.No.69 of 2007, granting compensation to the 1st respondent, the appellant has come out with the present appeal.

4.The learned counsel for the appellant would submit that the Tribunal has failed to appreciate the averments contained in FIR that the lorry bearing Regn.No.TN-30-K-2238 was stationed at signal behind another unknown lorry, waiting for clearance of signal, the van bearing Regn.No.TN30 2238 which was driven by the claimant himself in a rash and negligent manner with high speed and dashed against the said lorry which in turn dashed against the unknown lorry. The Court below has come to the conclusion that except the evidence of the injured P.W.1 and Ex-P1 FIR there was no other independent evidence on the side of the claimant to prove the negligence, has erroneously held that accident occurred due to the negligent driving of the driver of the lorry insured with the appellant herein. The Tribunal has failed to apply its mind to the settled law that when the FIR itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the proof that the claimant was negligent as held by the Hon'ble Supreme Court reported in (2009 ACJ 925 SC). The learned Tribunal has erroneously applied the contributory negligence in apportioning the liability when the claimant himself was the tort-feasor in causing the accident as seen from FIR and in the absence of any independent witness. The Tribunal has erroneously awarded higher compensation and higher rate of interest on the award amount from the date of petition when the delay in disposing the claim petition was not due to the fault of the

appellant. Hence, the learned counsel for the appellant prays to allow the appeal.

5. Heard the learned counsel appearing for the appellant/Insurance Company and perused all the materials available on record.

6. From the materials available on record, it is seen that 1st respondent, who is injured person examined himself as P.W.1, has deposed that the accident occurred only due to rash and negligent driving by 2nd respondent. He has also deposed the manner in which the accident occurred. It is seen from the evidence, the accident had happened due to the rash and negligent driving of both the first and second respondents equally. The first and second respondent contribute negligence equally to the accident. The appellant has not examined any witness to prove that the accident occurred by equal negligence on the part of the 1st respondent while crossing the road. The driver of the lorry was not examined to prove the manner of accident. As far as quantum of compensation is concerned, the Tribunal considering the nature of injuries sustained by the 1st respondent and evidence of P.W.3/Doctor, has awarded compensation under different heads, which are not excessive and the same is hereby confirmed. As far as negligence aspect is concerned, it is clear from Ex.P1, FIR and evidence of P.W.1 that it is the 1st respondent, who had driven the vehicle rashly and negligently. By stating so, Tribunal has held 50% : 50% negligence, which alone needs interference by this Court.

7. Considering the facts and circumstance of the case, this Court is inclined to fix 25% negligence on the part of the claimant and 75% of the negligence on the part of the 2nd respondent herein. Accordingly, the 2nd respondent and the appellant are jointly and severally directed to deposit the 75% of the amount awarded by the Tribunal to the credit of M.C.O.P.No.69 of 2007 with interest as fixed by the Tribunal within a period of 4 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the amount by filing proper application.

8. In the result, this Civil Miscellaneous Appeal is disposed off. No costs. Consequently Connected M.P. Is closed

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sbn
To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Chengalpattu.

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

+1cc to Mr.S.Jayasankar, Advocate Sr.14109/2020

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and
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