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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

AND

THE HONOURABLE MR. JUSTICE C. SARAVANAN

CIVIL MISCELLANEOUS APPEAL NO. 1814 OF 2016

AND

CIVIL MISCELLANEOUS APPEAL NO. 2351 OF 2017

CMA No. 1814 of 2016:-

United India Insurance Co., Ltd.,
No.134, Greams Road
Silingi Building
Chennai - 600 006

...Appellant / 2nd respondent

Versus

1.Suseela Jothi Mary

...1st Respondent / Claimant

2.D.Saul Sampath Kumar

...2nd Respondent / 1st Respondent

CMA No. 2351 of 2017:-

1.Suseela Jothi Mary
Wife of Mr.D. Saul Sampath Kumar
No.18, New Natarajapuram,
Aminjikarai,
Chennai - 600 029

...Appellant / Claimant

Versus

1.D. Saul Sampath Kumar
No.14, 6th Street
Kamaraj Nagar, Avadi
Chennai - 600 071

2.United India Insurance Company Limited
No.134, Greams Road
Silingi Building
Chennai - 600 006

...Respondents / Respondents

Appeals filed under Section 173 of The Motor Vehicles Act against the Award and Decree dated 31.03.2016 passed in MCOP No.2889 of 2010 on the file of Motor Accidents Claims Tribunal (Special Sub Court No.1 to deal with MCOP Cases), Chennai.



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CMA No. 1814 of 2016:-

For Appellant : Mr. D. Bhaskaran
For Respondents-1 : Mr. Mohan Choudary
R2 exparte

CMA No. 2351 of 2017:-

For Appellant : Mr. Mohan Choudary
For Respondents : Mr. D. Bhaskaran for R2
R1 exparte

COMMON JUDGMENT

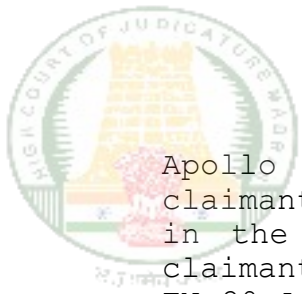
(Judgment of the Court was delivered by R. SUBBIAH, J)

These appeals are taken up for hearing through Video-conference.

2. Both these appeals arise out of the Award and Decree dated 31.03.2016 passed in O.P. No. 2889 of 2010 on the file of Motor Accidents Claims Tribunal (Special Sub Court No.1 to deal with MCOP Cases), Chennai. While C.M.A. No. 1814 of 2016 has been filed by the Insurance Company questioning the liability fastened on them by the Tribunal to pay the compensation, CMA No. 2351 of 2017 has been filed by the claimant seeking enhancement of the compensation. Therefore, both these appeals are taken up for hearing together and disposed of by this common Judgment.

3. For the sake of convenience, the appellant in CMA No. 1814 of 2016 shall hereinafter be referred to as "Insurance Company" and the appellant in CMA No. 2351 of 2017 shall be referred to as 'claimant' in this appeal.

4. As per the averments in MCOP No. 2889 of 2010 filed by the claimant before the Tribunal, on 10.05.2010 at about 18.00 hours, she was travelling as a pillion rider in the motor cycle bearing Registration No. TN 20 AS 3409 driven by her husband/first respondent in the claim petition. It is stated that when the two wheeler was proceeding in Meppedu Road from Meppedu to Poonamallee, near Vellakalvai, her husband had driven the two wheeler in a rash and negligent manner, towards the left side of the road and hit against another motor cycle bearing Registration No. TN 20 AQ 7110, which was proceeding in the same direction. In the impact, the claimant suffered right clavicle fracture, fracture on 4th, 5th and 6th ribs and other injuries in her vital parts of the body. The claimant was admitted in Shri Ramachandra Medical College Hospital, Porur and after initial treatment in the said hospital, she was shifted to



Apollo Hospital, Chennai. From 10.05.2010 to 05.07.2010, the claimant was given treatment for the injuries sustained by her in the accident on four different spells. According to the claimant, the rider of the two wheeler bearing Registration No. TN 20 AS 3409 viz., her husband was responsible for the accident due to his negligent driving. Therefore, she filed the claim petition claiming a sum of Rs.30 lakhs as compensation. In the claim petition, the claimant had arrayed her husband/rider of the two wheeler bearing Registration No. TN 20 AS 3409 as first respondent and the insurance company, with which the two wheeler of her husband was insured, as the second respondent. The claimant sought compensation from the respondents in the claim petition jointly and severally.

5. The claim petition was vehemently opposed by the insurance company by contending that the First Information Report relating to the accident was registered on the basis of the complaint given by the brother of the claimant against the rider of the two wheeler bearing Registration No. TN 20 AQ 7110 by stating that the rider of the two wheeler bearing Registration No. TN 20 AQ 7110 had driven the vehicle in a rash and negligent manner and hit the two wheeler bearing Registration No. TN 20 AS 3409 in which the claimant was travelling as a pillion rider. According to the Insurance Company, the owner of the two wheeler bearing Registration No. TN 20 AQ 7110 and the insurer of the said vehicle are proper and necessary parties to the claim petition, inasmuch as the rider of the vehicle bearing Registration No. TN 20 AQ 7110 is the tort-feasor. It is the contention of the Insurance Company before the Tribunal that the First Information Report lodged in respect of the accident, would reveal that the rider of the two wheeler No. TN 20 AQ 3409, in which the claimant was riding pillion, had driven the vehicle properly and that the rider of the other two wheeler bearing Registration No. TN 20 AQ 7110 had driven the vehicle rashly and negligently, which led to the accident. Therefore, the Insurance Company contended that they are not liable to pay compensation. It was also contended that the claimant had not impleaded the owner of the two wheeler bearing Registration No. TN 20 AQ 7110 as a party because the rider of the said two wheeler did not possess a valid insurance policy at the time of the accident. Therefore, in order to get an unlawful enrichment, the claim petition was filed only against her husband/rider of the two wheeler bearing Registration No. TN 20 AQ 3409 and its insurer and therefore, the Insurance Company prayed for dismissal of the claim petition.

6. Before the Tribunal, the claimant examined herself as PW1 and three Doctors, who have given treatment to her, were examined as PWs 2 to 4. She has also marked Exs. P1 to P27 as documents on her side. On behalf of the Insurance Company,



Mr.B.Arunan, Investigator was examined as RW1, through whom, the investigation report was marked as Ex.R1. The Tribunal, on analysing the oral and documentary evidence, has come to the conclusion that the claimant, as PW1, had precisely narrated in her deposition about the rash and negligent manner with which the rider of the two wheeler bearing Registration No. TN 20 AQ 3409 had driven the vehicle and which had resulted in the accident. At the same time, the First Information Report, marked as Ex.P1 would show that it was registered against the rider of the motor cycle bearing Registration No. TN 20 AQ 7110 for the offences under Sections 279 and 337 of Indian Penal Code. Therefore, rider of both the two wheelers are at fault and in such event, if any one of the rider had taken some precautionary steps, the accident could have been averted. Moreover, the injured claimant in this case is only a pillion rider of the motor cycle bearing Registration No. TN 20 AS 3409. Thus, the riders of both the two wheelers are equally responsible for the accident. Therefore, there was composite negligence so far as the injured victim is concerned and she can claim compensation as against any one of the vehicle owners or their insurers and directed the appellant/Insurance Company to pay the compensation as the insurer of the vehicle bearing Registration No. TN 20 AQ 3409. By holding so, the Tribunal awarded a total sum of Rs.25,86,245/- as compensation to the claimant.

7. The learned counsel for the appellant/Insurance Company vehemently contended that the claimant was travelling pillion in the two wheeler bearing Registration No. TN 20 AS 3409, which was driven by none other than her husband. There was a collision between the two vehicles, due to which the claimant suffered injuries. However, for the reasons best known to her, the claimant did not array the owner or insurer of the other vehicle bearing Registration No. TN 20 AS 7110 as parties to the claim petition. The accident had occurred due to the negligent driving of the rider of the two wheeler bearing Registration No. TN 20 AS 7110 and it is explicit from the complaint given by the brother of claimant. In the complaint, it was stated that the rider of the two wheeler bearing Registration No. TN 20 AS 7110 had driven the vehicle in a rash and negligent manner and hit behind the vehicle driven by the husband of the claimant. Based on such complaint, criminal proceedings were initiated against the rider of the vehicle bearing Registration No. TN 20 AS 7110 and he was also charge sheeted. However, the Tribunal has come to the conclusion that the rider of both the vehicles are equally responsible for the accident. According to the learned counsel for the appellant/Insurance Company, the First Information Report has come into existence at the earliest point of time. Under such circumstances, the Tribunal ought to have fixed the entire liability only against the rider of the vehicle



bearing Registration No. TN 20 AS 7110. Instead of holding so, the Tribunal erroneously held that both the riders of the respective two wheelers have equally contributed for the accident and therefore, there was a composite negligence so far as the injured victim is concerned and therefore, directed appellant/Insurance Company, insurer of the two wheeler bearing Registration No. TN 20 AS 3409 to pay the compensation amount ignoring the fact that the First Information Report as well as charge sheet were filed only as against the rider of the two wheeler bearing Registration No. TN 20 AS 7110.

8. It is further submitted by the learned counsel for the appellant that there is no evidence to show that both the riders of the two wheeler have contributed for the accident equally, which has given rise to a composite negligence. In fact, the first respondent, rider of the vehicle bearing Registration No. TN 20 AS 3409, who is the husband of the claimant, is the best person to speak about the manner in which the accident had taken place, but he remained ex-parte. Similarly, the brother of the claimant, who gave the complaint, based on which the First Information Report was registered against the owner of the offending two wheeler bearing Registration No. TN 20 AS 7110, also did not enter the witness box. When the brother of the claimant had given the complaint against the owner of the two wheeler bearing Registration No. TN 20 AS 7110, he might have knowledge about the factum of the accident and he ought to have deposed in this case, but he was also not examined. While so, there is no evidence to show that both the riders of the two wheelers have contributed for the accident. In such circumstances, the question of composite negligence will not arise. This is more so that the investigation report under Ex.R1 clearly points out that the owner of the two wheeler bearing Registration No. TN 20 AS 7110 did not possess a valid driving licence at the time of accident and therefore, conveniently, he was omitted to be arrayed as party to the claim petition. In this context, the learned counsel for the appellant/Insurance Company relied on the decision of the Division Bench of this Court in United India Insurance Company Limited, Chennai vs. D. Hemavathy, reported in 2017 (2) TN MAC 115 (DB), wherein it was held as follows:-

"14. Reverting, in the case on hand, PW1, has not witnessed the accident. PW2, stated to have witnessed the accident, is not the complainant in Ex.P1, FIR in Cr.No.280/S2/2012 registered, by J-3, Guindy Traffic Investigation. Ex.P1-FIR has been registered on the complaint of RW2, D. Vasu, owner of the Motorcycle bearing Registration No. TN-07-BM-6368, who has categorically deposed that the accident occurred, due to the rash and negligent driving of the Driver of the Share Autorickshaw. RW1, Mr.



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Elango, Sub-Inspector of Police, Traffic Investigation (Admn.), has deposed that Ex.R2-Charge Sheet has been filed against the Driver of the Share autorickshaw.

15. When the Motorcyclist, RW2, himself has given a complaint, against the unknown Driver of the Share Autorickshaw, against whom, Ex.R2-Charge-sheet has been filed, the sole statement of PW2, Mr. R. Vinothkumar, alone to the effect that the accident occurred, due to the negligent act of both the Motorcyclist and Driver of the unknown Share autorickshaw, trying to proceed ahead of each other, cannot be the basis of arriving at a conclusion that the accident occurred, due to the negligence of the motorcyclist.

16. Testimony of RW2, Motorcyclist is corroborated by Ex.R1-FIR and Ex.R2-Charge-sheet and duly supported by the testimony of RW1, Sub-Inspector of Police, Traffic Investigation (Admn.,) FIR would be the first document produced by any claimant to prove that there was an accident. Inasmuch as FIR has been given by RW2, Motorcyclist, against the unknown Share Autorickshaw, it could be deduced that conveniently, the Claimants have failed to mark FIR.

17. Testimony of PW2, is not supported or corroborated by any evidence. There is no logic in the conclusion of the Tribunal that just because, the Motorcycle was new, there was every possibility to ride the same, in a rash and negligent manner and therefore, the accident would have occurred, due to the rash and negligent manner act, on the part of the Motorcyclist. Analyzing the evidence, in the light of the preponderance of probability, this Court is unable to subscribe to the contention of the Legal Representatives of the deceased that the Pillion Rider had not contributed to the accident and therefore, liability should be fastened on the Motorcyclist and its Insurer.

18. On the facts and circumstances of the case, we are of the view that the finding of the Tribunal, holding that the Motorcyclist had contributed to the accident, is perverse and warrants reversal and accordingly, the said finding is set aside. Consequently, the insurer of the Motorcycle, the Appellant-Insurance Company, is not liable to pay compensation. The respondents are at liberty to pursue remedy, against the Share Autorickshaw and its Insurer.

19. Record of proceedings show that this Court, while admitting this appeal, granted interim stay



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subject to the condition that the appellant-Insurance company deposits 50% of the Award amount. Consequent to allowing this Appeal, the Appellant-Insurance Company is permitted to withdraw the amount lying in the Court deposit."

9. By placing reliance on the above decision of the Division Bench of this Court, the learned counsel for the appellant/Insurance Company contended that the Tribunal erred in holding that the appellant is vicariously liable for payment of the compensation amount to the claimant. The claim petition ought to have been dismissed by the Tribunal on the ground of non-joinder of necessary parties. The findings of the Tribunal that both the two wheeler riders have contributed for the accident equally and the principle of composite negligence will arise in this case, is without any basis. In such circumstance, the claimant is not entitled for payment of compensation and therefore, the learned counsel for the appellant/Insurance Company prayed for setting aside the order passed by the Tribunal.

10. Per contra, the learned counsel for the appellant/claimant would contend that even though the First Information Report is registered against the rider of the two wheeler bearing Registration No. TN 20 AS 7110 and he was also charge sheeted, the criminal proceedings will have no bearing for independently deciding the claim made by the claimant in the claim petition filed before the Motor Accidents Claims Tribunal. As regards the quantum of compensation, though the Tribunal has awarded a sum of Rs.25,86,245/- as compensation to the claimant, it is not befitting the nature of injuries and the sufferings, to which the the claimant had been subjected to, due to the accident. The claimant was 63 years at the time of accident. The Doctor, who treated the claimant had assessed her disability at 80%. The claimant retired as a Teacher, earning a meager sum as pension, besides taking tuition to the students. This was clearly deposed by the claimant, as PW1. Notwithstanding the same, the Tribunal had taken the monthly income, apart from pension, only as Rs.1,500/- to award a sum of Rs.1,00,800/- towards loss of future earnings. Further, the Tribunal has not taken into account that she was admitted as an in-patient for 77 days in four different spells and she requires future medical expenses. Though the actual medical expenses incurred by the claimant was considered by the Tribunal to award compensation under the head medical expenses, the Tribunal did not award any amount towards future medical expenses. Similarly, the sum of Rs.75,000/- awarded by the Tribunal towards pain and suffering is very low and it is not befitting the nature of injuries sustained by her and the period of hospitalisation of the claimant. In such view of the matter, there is no infirmity in



the award passed by the Tribunal. Therefore, the learned counsel for the claimant prayed for appropriate enhancement of the compensation amount by modifying the award of the Tribunal.

11. We have given our anxious consideration to the rival submissions made before us. According to the claimant, on 10.05.2010, she was riding pillion in the two wheeler bearing Registration No. TN 20 AS 3409 driven by her husband, in a rash and negligent manner, with the result, he had hit another on-going two wheeler bearing Registration No. TN 20 AS 7110 proceeding in the same direction. In the impact, the claimant suffered several injuries and was admitted in the hospital. It is evident from Ex.P1, First Information Report marked by the claimant herself that soon after the accident, her brother had given a complaint to the Police, complaining rash and negligent driving attributable on the part of the rider of the other two wheeler bearing Registration No. TN 20 AS 7110. On the basis of such complaint, admittedly, a First Information Report was registered and after investigation, the driver of the two wheeler bearing Registration No. TN 20 AS 7110 was also charge sheeted. It is needless to mention that the contents of the First Information Report can be taken into account, since it has come into existence at the earliest point of time. There is nothing for the Courts to disbelieve the contents of the First Information Report or to discard it on any grounds. A First Information Report is the best piece of evidence to be taken cognizance of by the Courts. The contents of the First Information Report can be inferred for the purpose of forming a prima-facie opinion in a motor accident case. A First Information Report will give a vivid picture about the ground realities and the manner in which an accident would have occurred. Further, the contents of the First Information Report can be considered, when it is corroborated by any other witness or documentary evidence. However, curiously, in the present case, the Tribunal has rendered a finding that the First Information Report cannot be regarded as a substantive piece of evidence. We are unable to accept such a finding of the Tribunal. This is more so that in the present case, except the testimony of the claimant, who suffered injuries in the accident and who seeks compensation for such injuries, there is no other evidence available to show the manner in which the accident had occurred due to the negligent driving of her husband. While so, we are of the view that the Tribunal ought not to have discarded the evidentiary value of a First Information Report which had come into existence at the earliest point of time, to arrive at a finding, as to who had contributed for the accident and to consequently mulct such person with the liability to pay compensation.

12. In the present case, there is nothing on record before



the Tribunal to show that the husband of the claimant had driven the vehicle in a rash and negligent manner and contributed for the accident. Even the husband of the claimant, who is arrayed as first respondent in the claim petition, did not contest the claim petition and he remained ex-parte. The brother of the claimant, who had given the complaint about the factum of the accident to the Police, also was not examined before the Tribunal. On the other hand, there are contra evidence in the form of First Information Report registered against the owner of the vehicle bearing Registration No. TN 20 AQ 7110, deposition of RW1, Investigator and Ex.R1, investigation report. As per Ex.R1, the driver of the offending two wheeler bearing Registration No. TN 20 AQ 7110 did not possess a valid driving licence at the time of accident and that was the reason why the claimant did not implead the owner or insurer of the vehicle bearing TN 20 AQ 7110. When such evidence was made available through the Insurance Company, for the reasons best known, the Tribunal ignored them. The above evidence does point out the rashness and negligent driving on the part of the driver of the Two Wheeler bearing Registration No. TN 20 AQ 7110. Further, as per Ex.R1, the rider of the two wheeler did not possess a valid insurance policy at the time of accident and therefore, conveniently, the claimant did not implead either the owner of the two wheeler bearing Registration No. TN 20 AQ 7110 or the insurer of the said vehicle. While so, the Tribunal ought to have drawn an adverse inference against the claimant for not impleading the aforesaid persons. Notwithstanding the same, the Tribunal mulcted the appellant/Insurance Company with the liability to pay compensation on the ground that the rider of the two wheeler bearing Registration No. TN 20 AS 3409 is at fault.

13. Admittedly, there was a collision between two motor-cycles, one driven by the first respondent/husband of the claimant and another being a rider of the motorcycle bearing Registration No. TN 20 AS 7110. In order to arrive at a factual finding as to who had caused the accident or who had contributed largely for the accident, it is just and necessary that the riders of both the vehicle and their insurer must be arrayed as parties to the Claim Petition. In their absence, the Claim Petition cannot be adjudicated to fix the liability of the person who is required to compensate the victim. In spite of the non-joinder of the driver of the vehicle bearing Registration No. TN 20 AQ 7110 and the insurer of the said vehicle, the Tribunal had rendered a finding that both the riders of the two wheeler have contributed for the accident and therefore they must be regarded as joint tort-feasors and applied the principle of composite negligence. After arriving at such a finding, the Tribunal held that in such event, impleading any one of the insurers is sufficient to maintain the claim petition and



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mulcted the appellant/Insurance Company, the lone Insurance Company impleaded in the Claim Petition, with the liability to pay compensation. As mentioned above, there is nothing on record to show the negligence attributable on the part of two riders of the vehicle involved in the accident. Unless the negligence of two or more persons is brought on record to show that some damage has been caused to a person by them, jointly, the question of composite negligence will not arise. For invoking the principle of composite negligence, there must be evidence to show that the damage or injury has been jointly caused to a person by reason of joint contribution by one or more person. Unless the negligence caused by one or more persons, jointly, is brought on record, invocation of the principle of composite negligence cannot be sustained. The word "composite" itself would denote a combination of more than one person, meaning thereby, the negligence must be attributable against more than one driver of the vehicle. Only in such event, the principle of "composite negligence" can be pressed into service. In the present case, as mentioned above, there is nothing on record to show that the riders of the two-wheeler bearing Registration Nos.TN 20 AQ 8409 and TN 20 AQ 7110 have jointly contributed for the accident, in some form or the other, warranting the Tribunal to invoke the principle of composite negligence and consequently mulcting the appellant/Insurance Company to pay the compensation to the claimant. Unless and until the rider of the two wheeler bearing Registration No. TN 20 AS 3409 is a joint tort-feasor, the question of application of composite negligence will not arise in this case. In the instant case, the evidence on record shows that the accident was solely due to the rash and negligent driving of the two-wheeler bearing Registration No.TN 20 AS 7110. When a rider of the two-wheeler bearing Registration No.TN 20 AS 3409 is not a joint tort-feasor, the question of awarding compensation by fixing composite negligence, does not arise, as observed above. In such circumstances, the award passed by the Tribunal is wholly unsustainable and it is liable to be set aside.

14. It is brought to the notice of this Court by the learned counsel for the appellant/Insurance Company that at the time of admission of the appeal filed by them, even though they are not liable to pay any compensation to the appellant, they have deposited 50% of the compensation amount awarded by the Tribunal, with proportionate interest, to the credit of OP No. 2889 of 2010 before the Tribunal. Out of the 50% of the compensation amount, by an order passed by this Court on 02.12.2016, the claimant was permitted to withdraw 25% of the of the deposited amount and the claimant had also withdrawn the 25% of the amount. When a question was posed to the learned counsel for the appellant/Insurance company as to why the claimant be not permitted to withdraw the balance 25% amount lying in the



court deposit, taking note of the sum of Rs.18,90,445/- spent by her towards medical expenses, the learned counsel for the Insurance Company has no serious objection for such a course of action. Therefore, having regard to the peculiar facts and circumstances involved in this case, while holding that the award passed by the Tribunal cannot be sustained and it is being set aside by us, we are of the view that the amount already withdrawn by the claimant need not be refunded by her to the appellant/Insurance Company, besides permitting the claimant to withdraw the remaining 25% of the amount lying in deposit. We make such an observation taking into account the peculiar facts and circumstances involved in this case and it need not be cited as a precedent in any other case.

15. For all the reasons aforementioned, we set aside the Award and Decree dated 31.03.2016 passed in O.P. No. 2889 of 2010 on the file of Motor Accidents Claims Tribunal (Special Sub Court No.1 to deal with MCOP Cases), Chennai. Consequently, the Civil Miscellaneous Appeal No. 1814 of 2016 filed by the Insurance Company is allowed to the extent indicated above and the Civil Miscellaneous Appeal No. 2351 of 2017 filed by the claimant for enhancement of compensation is dismissed. No costs. Consequently, connected miscellaneous petition (s) is/are shall stand closed.

Sd/-
31.07.2020

rsh

These appeals are listed today under the caption "for clarification" at the instance of the counsel for the appellant to clarify the Judgment dated 31.07.2020 passed in the above appeals.

We have heard the counsel for both sides. Upon hearing the counsel on either side, we are of the view that no clarification is required to be made and the Judgment dated 31.07.2020 shall remain unaltered in any manner.

Sd/-
13.08.2020

rsh

Sd/-
Assistant Registrar(Audit)

//True copy//

Sub Assistant Registrar

rsh



To

1. The Special Subordinate Judge No. I,
to deal with MCOP cases,
Motor Accidents Claims Tribunal,
Chennai.

Copy To

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

CMA No. 1814 of 2016
and
CMA No. 2351 of 2017

SSI (CO)
RVM(12/08/2021)