

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 932 of 2013
and M.P. No. 1 of 2013

M/s. National Insurance Co. Ltd.,
Branch Office, 403/B-10,
Mettur Road, Bhavani.

.. Appellant

Vs.

1.V. Kamalam
2.K. Thirugnana Sambandam
3.T. Arulanandham
4.D. Muniraj
5.M. Navaneethan

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.09.2012, made in M.C.O.P. No. 170 of 2010, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Erode.

For Appellant : Ms. N.B. Surekha

For Respondents : Mr. Kaithamalaikumaran (For R1)

No appearance (For R2 & R4)

Mr. P. Parthikannan (For R3)

Mr. Ma.P. Thangavel (For R5)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 21.09.2012, made in M.C.O.P. No. 170 of 2010, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Erode.

2.The appellant is the 3rd respondent in M.C.O.P. No. 170 of 2010, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Erode. The 1st respondent filed the said claim petition, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by her in the accident that took place on 02.11.2008.

3. According to the 1st respondent, on the date of accident viz., 02.11.2008, when she was travelling as pillion rider in the TVS XL bearing Registration No. TN-33-AB-9722 belonging to the 3rd respondent, near Club Melange Hotel, 2nd respondent/rider of the said vehicle turned towards right side and after crossing the median, crashed into the another TVS 50 bearing Registration No. TN-33-H-4716, belonging to the 5th respondent, driven by the 4th respondent in a rash and negligent manner. In the accident, the 1st respondent sustained several injuries and took treatment as in-patient in Ganga Hospital, Coimbatore from 04.11.2008 to 17.11.2008. The accident occurred due to composite negligence on the part of the 2nd respondent as well as the 4th respondent and filed the present claim petition, claiming compensation against the respondents 2 to 5 as well as the appellant.

4. The respondents 2, 3, 4 and 5 remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the accident occurred only due to rash and negligent riding by the 4th respondent, rider of the TVS 50 bearing Registration No. TN-33-H-4716, belonging to the 5th respondent. Moreso, the 2nd respondent, owner of the TVS XL bearing Registration No. TN-AB-9733 in which the 1st travelled as pillion rider, has not paid any extra premium to cover the risk of the pillion rider. Hence, the appellant is not liable to pay compensation on behalf of the respondents 2 and 3. The appellant also denied the age, avocation, income, nature of injuries, kind of medical treatment and the permanent disability suffered by the 1st respondent and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined one Dr. K. Periyasamy as P.W.2 and marked 14 documents as Exs.P1 to P14. The appellant examined their Official as R.W.1 and marked two documents as Exs.B1 and B2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to composite negligence of riders of the both the TVS XL as well as the TVS 50 viz., respondents 2 and 4 respectively and fixed 80% negligence on the part of the 2nd respondent and 20% negligence on the part of the 4th respondent. The Tribunal awarded a sum of Rs.1,81,000/- as compensation to the 1st respondent and directed the appellant-Insurance Company to pay 80% of the award amount, i.e., Rs.1,44,800/- as compensation to the 1st respondent.

8.Against the award dated 21.09.2012, made in M.C.O.P. No. 170 of 2010, the appellant-Insurance Company has come out with the present appeal.

9.Though the Learned counsel appearing for the appellant raised various grounds with regard to quantum of compensation and the policy issued by the appellant is only 'Act Policy' and the appellant is not liable

to pay the compensation, at the time of arguments, learned counsel appearing for the appellant restricted her arguments only with regard to negligence and the rate of interest.

10. The learned counsel appearing for the appellant contended that the Tribunal erred in fixing negligence on the part of the 2nd respondent, rider of the TVS XL bearing Registration No. TN-33-AB-9722. The Tribunal failed to see that the 1st respondent had lodged the complaint to the Police stating that the accident has occurred only due to rash and negligent riding by the 4th respondent, rider of the TVS 50 bearing Registration No. TN-33-H-4716, belonging to the 5th respondent. The Tribunal failed to see that the Police after investigation, charge sheeted the 4th respondent, rider of the TVS 50 bearing Registration No. TN-33-H-4716. The 4th respondent, rider of the TVS 50 belonging to the 5th respondent admitted his guilt and paid fine before the Criminal Court. The respondents 4 and 5 did not let in any evidence to prove that there is no negligence on the part of the 4th respondent, rider of the TVS 50

bearing Registration No. TN-33-H-4716 and accident has occurred only due to rash and negligent riding by the 2nd respondent, rider of the TVS XL bearing Registration No. TN-33-AB-9722. The Tribunal also erred in fixing the interest at the rate of 9% without appreciating the prevailing rate of Bank interest and hence, prayed for setting aside the award of the Tribunal.

11. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent as P.W.1, has deposed that the accident has occurred only due to rash and negligent riding by her husband, 2nd respondent herein, who crossed the median without noticing the TVS 50 bearing Registration No. TN-33-H-4716 coming from the other side. P.W.1 is an eye-witness. The appellant has not examined any eye-witness to disprove the evidence of 1st respondent and hence, the appellant is liable to pay the compensation and prayed for dismissal of the appeal.

12. Though notice has been served on the respondents 2 & 4 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

13. Heard learned counsel appearing for the appellant, 1st respondent, 3rd respondent as well as the 5th respondent and perused the materials available on record.

14. It is the contention of the 1st respondent that the accident has occurred due to rash and negligent riding by the husband of the 1st respondent, 2nd respondent herein, who drove the TVS XL bearing Registration No. TN-33-AB-9722 in a rash and negligent manner and without noticing the TVS 50 bearing Registration No. TN-33-H-4716 coming in opposite direction, dashed on the said vehicle and caused the accident. The 1st respondent as P.W.1 had deposed to that effect. On the other hand, it is the contention of the appellant that the accident has occurred only due to rash and negligent riding by the rider of the TVS 50

bearing Registration No. TN-33-H-4716 driven by the 4th respondent, belonging to the 5th respondent. The appellant did not examine any eye-witness to disprove the evidence of P.W.1. The appellant relied on FIR, charge sheet and admission of guilt by 5th respondent in criminal proceedings. It is well settled that the contents of the FIR, criminal proceedings and judgments are not binding on the Tribunal. The Tribunal has to come to the conclusion with regard to negligence based on the evidence let in before it. The FIR and criminal proceedings can be considered along with evidence let in before the Tribunal. In the present case, P.W.1 was only eye-witness, who deposed that the accident has occurred due to rash and negligent riding by the 2nd respondent. There is no contra evidence let in by the appellant. In view of the same, the finding of the Tribunal that the accident has occurred due to rash and negligent riding by the 2nd respondent as well as the 4th respondent and fixing 80% negligence on the part of the 2nd respondent and directing the appellant to pay 80% of the compensation awarded by the Tribunal and fixing 20% negligence on the part of the 4th respondent are valid and

legal. The Tribunal erroneously granted 9% interest, which is excessive and hence, the same is reduced to 7.5%.

15. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,81,000/- is confirmed. The appellant-Insurance Company is directed to pay 80% of the award amount, i.e., Rs.1,44,800/- along with 7.5% interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 170 of 2010. On such deposit, the 1st respondent/claimant 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. The appellant-Insurance Company is permitted to withdraw excess amount, if any, lying in the credit of M.C.O.P. No. 170 of 2010, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

02.03.2020

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To

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

2. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Erode.

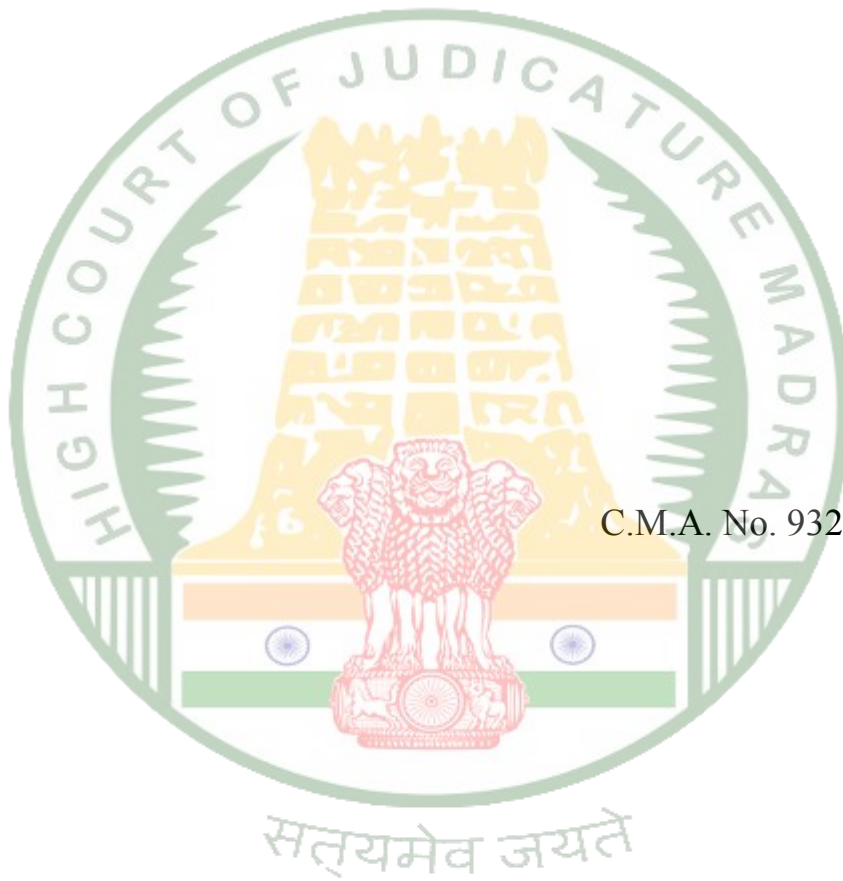


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