

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 763 of 2018 & 130 of 2019
and C.M.P. Nos. 6475 of 2018 & 581 of 2019

C.M.A. No. 763/2018

The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office No. 12003A,
M.M.Reddy Complex,
Old Bangalore Road,
Hosur 635 109. ...Appellant/2nd Respondent

Vs.

1.Vediyappan ...1st Respondent/Petitioner

2.Syed Nadeem

3.Hyder Ali

4.Royal Sundaram Alliance Insurance Co. Ltd.,
No.8/H1, Mangalam Building,
4-Roads, Salem 635 001.

... Respondents 2 to 4/Respondents 1,3 & 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 11.09.2017, made in M.C.O.P. No. 328 of 2014, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Ms. I. Malar

For Respondents: Mr. Mukund R. Pandiyan (For R1)

Ms. C. Harini (For R4)
for M/s. M.B. Gopalan Associates

C.M.A. No. 130 /2019

The Manager,
M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
No.8/H1, Mangalam Building,
4-Roads, Salem 635 001. ... Appellant/2nd Respondent

Vs.

1.A. Subramani

..1st Respondent/Petitioner

2.Hyder Ali

..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 22.01.2018, made in M.C.O.P. No. 3635 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Ms. C. Harini
for M/s. M.B. Gopalan Associates

For Respondents: Mr. Mukund R. Pandiyan (For R1)

No appearance (For R2)

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

C.M.A. No. 763 of 2018 is filed against the award dated 11.09.2017, made in M.C.O.P. No. 328 of 2014, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

C.M.A. No. 130 of 2019 is filed against the award dated 22.01.2018, made in M.C.O.P. No. 3635 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.Both the appeals arise out of the same accident, but different awards and therefore, they are disposed of by this common judgment.

3.The facts arising for C.M.A. No. 763 of 2018 are dealt with:

The 1st respondent in the C.M.A. No. 763 of 2018 filed M.C.O.P. No. 328 of 2014 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri, against the appellant/The United India Insurance Co. Ltd., and respondents 2 to 4. The appellant was 2nd respondent in the claim petition. According to the 1st respondent, on 06.03.2013, at about 06.15 a.m., the 1st respondent was driving the Mahindra Bolero vehicle bearing Registration No. TN-24-M-6858 belonging to the 3rd respondent and insured with the 4th respondent. While he was proceeding on the left side of the road solely and cautiously,

blowing horn and following rules of road near tomato mundy situated in Rayakottai to Kelamangalam road, a Lorry belonging to the 2nd respondent bearing Registration No. KA-01-AE-5589 was parked in the middle of the road in the wrong side without any indication. When the Lorry driver saw Special Sub-Inspector of Police coming towards the Lorry, suddenly started the Lorry and came and hit the Car driven by the 1st respondent. The accident has occurred only due to rash and negligent act of the driver of the Lorry belonging to the 2nd respondent, insured with the appellant. The 1st respondent was employed by the 3rd respondent and accident has occurred during the course of his employment. In the accident, the 1st respondent sustained injuries and took treatment and claimed compensation for the injuries sustained by him. The accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 2nd respondent, but FIR was registered against the 1st respondent in Crime No. 47 of 2013 under Section 279 and 338 of I.P.C on Rayakottai Police Station. At the time of accident, the 1st respondent was unconscious and defacto-complainant gave wrong complaint against the 1st respondent and FIR was registered falsely. The 1st respondent claimed compensation against the respondents 2 to 4 and appellant as owners and insurers of the Lorry and Car.

4.The respondents 2 and 3, who are owners of the Lorry and Car, remained exparte before the Tribunal.

5.The appellant and 4th respondent filed separate counter statement and blamed the 1st respondent and driver of the Lorry respectively.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 10 documents as Exs.P1 to P10. The appellant examined their Official as R.W.1 and the driver of the Lorry as R.W.2, but did not mark any documents. The 1st respondent filed Ex.C1-Disability Certificate issued by the Medical Board.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by both the 1st respondent, driver of the Car as well as R.W.2, driver of the Lorry and directed both the appellant and 4th respondent to pay 50% of the compensation (i.e., Rs.6,58,000/-) each to the 1st respondent.

8.Against the award dated 11.09.2017, made in M.C.O.P. No. 328 of 2014, the appellant has filed C.M.A. No. 763 of 2018.

9.The learned counsel appearing for the appellant contended that the Tribunal ought to have seen that the accident occurred only due to rash and negligent driving by the 1st respondent,

which is proved by Exs.P1, P2 and P9 and evidence of R.W.2, the driver of the Lorry. In view of the above Exhibits and evidence of R.W.2, the award of the Tribunal is unsustainable. The Tribunal failed to consider the evidence of R.W.2, the driver of the Lorry belonging to the 2nd respondent who has categorically deposed that the accident has occurred only due to rash and negligent driving by the 1st respondent, the driver of the Car. The 1st respondent is responsible for the accident. The Tribunal erred in directing the appellant to pay 50% of the compensation awarded, when the 1st respondent is solely responsible for the accident. No evidence was let in to prove the loss of earning capacity and no documentary evidence was produced by the 1st respondent with regard to expenses incurred for medical expenses and hence, prayed for allowing the appeal.

10.Per contra, the learned counsel appearing for the 4th respondent/ Insurer of the Car contended that the accident has occurred only due to rash and negligent driving by the driver of the Lorry belonging to the 2nd respondent and insured with the appellant and Tribunal erred in fixing 50% negligence on the part of the 1st respondent and directing the 4th respondent to pay 50% of the awarded amount as compensation to the 1st respondent. The 1st respondent examined himself as P.W.1 and proved that the accident has occurred due to rash and negligent driving by the driver of the Lorry and Tribunal ought to have fixed the entire negligence on the part of the driver of the Lorry and liability on the 2nd respondent and appellant and prayed for fixing the entire negligence on the part of the appellant.

10.The facts arising for C.M.A. No. 130 of 2019 are dealt with:

The 1st respondent/claimant filed M.C.O.P. No. 3635 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri, claiming that he was working as Special Sub-Inspector of Police and on the date of accident, while he was enquiring a driver of the Lorry and verifying the documents, the driver of the Car belonging to the 2nd respondent drove the Car in a rash and negligent manner and dashed against the 1st respondent, driver of the Lorry and the Lorry. In the accident, the 1st respondent sustained grievous injuries and filed claim petition against the 2nd respondent, owner of the Car and appellant as insurer of the Car.

11.The 2nd respondent remained exparte before the Tribunal.

12.The appellant filed counter statement and contended that the driver of the Car was driving the Car in a careful and

diligent manner. The 1st respondent suddenly crossed the road without noticing the oncoming vehicle and invited the accident. The accident has occurred due to carelessness and negligence of the 1st respondent and hence, the appellant is not liable to pay any compensation.

13. Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 7 documents as Exs.P1 to P7. The appellant examined their Official as R.W.1 and driver of the Car as R.W.2 and marked one document as Ex.R1.

14. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the Car and directed the appellant as insurer of the Car to pay a sum of Rs.9,00,200/- as compensation, on behalf of the 2nd respondent.

15. Against the award dated 22.01.2018, made in M.C.O.P. No. 3635 of 2013, the appellant has filed the present appeal.

16. The learned counsel appearing for the appellant contended that in a connected case, the Tribunal has fixed 50% negligence on the part of the driver of the Lorry for the negligent parking of vehicle dangerously, as well as 50% on the part of the driver of the Car. The negligence on the part of the Lorry driver was proved by pleadings and evidences. The amounts awarded by the Tribunal is excessive and prayed for allowing the appeal.

17. Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

18. Heard the learned counsel appearing for the appellant in both the appeals, learned counsel appearing for the first respondent and learned counsel appearing for the 4th respondent in C.M.A. No. 768 of 2018 and learned counsel appearing for the 1st respondent in C.M.A. No. 130 of 2019 and perused all the materials available on record.

Conclusion in C.M.A. No. 763 of 2018:

19. It is the contention of the 1st respondent that while he was driving the Car belonging to the 3rd respondent cautiously, following rules, the driver of the Lorry belonging to the 2nd respondent, insured with the appellant/ United India Insurance Co. Ltd., which was parked in the middle of the road in the wrong side without any signal or indicator, suddenly started on seeing the Special Sub-Inspector of Police and dashed against the Car driven by the 1st respondent. The 4th respondent/ Royal Sundaram Alliance Insurance Co. Ltd., who is the insurer of the Car, in the counter statement in M.C.O.P. No. 328 of 2014, has stated that when the Car was nearing Tomato Mundy, the driver of

the Lorry drove the Lorry in careless and reckless manner and suddenly moved from wrong side of the road and caused the accident. The accident has occurred only due to negligent act of the driver of the Lorry and driver of the Car is not responsible for the accident and hence, the 4th respondent/insurer of the Car is not liable to pay any compensation.

20. To substantiate the said contention, the 1st respondent examined as P.W.1, deposed as mentioned in the claim petition. On the other hand, it is the contention of the appellant that the 1st respondent came and dashed against the parked Lorry and caused the accident. FIR is registered against the driver of the Car, 1st respondent. It is pertinent to note that the 1st respondent who was examined as R.W.2 in M.C.O.P. No. 3635 of 2013 had deposed that he was driving the Car at high speed at the time of accident. In M.C.O.P. No. 328 of 2014, the 1st respondent has deposed that he was driving the Car cautiously which is contrary to the deposition of the 1st respondent in M.C.O.P. No. 3635 of 2013. Further, the 4th respondent in M.C.O.P. No. 328 of 2014, has taken a stand in the counter statement that the driver of the Lorry suddenly moved the Lorry in careless and reckless manner without noticing the on coming Car. In M.C.O.P. No. 3635 of 2013, the 4th respondent has taken a stand that Special Sub Inspector suddenly crossed the road without noticing oncoming Car and was responsible for the accident. Considering the contradictory statement of the 1st respondent and 4th respondent, the contention of the respondents 1 and 4 that the accident has occurred due to rash and negligent driving by the driver of the Lorry is not acceptable and is without merits. Further, the Tribunal accepted the contentions in FIR, wherein it has been stated that the 1st respondent dashed against the parked Lorry. The Tribunal without considering the fact that the 1st respondent was driving the Car at high speed and the evidence of R.W.2/driver of the Lorry, held that the driver of the Lorry is also responsible for accident, as the Lorry was parked on the wrong side of the road. The 1st respondent failed to prove his contentions that the Lorry was parked in the middle of the road. The Tribunal having rejected the contention of the 1st respondent and 4th respondent that the accident has occurred when driver of the Lorry suddenly moved the Lorry recklessly and carelessly, erred in fixing 50% of the negligence on the part of the driver of the Lorry, when the 1st respondent has dashed against the parked Lorry. For the above reason, the award of the Tribunal fixing 50% negligence on the part of the driver of the Lorry and 50% of the liability fixed on the Car is set aside and the 4th respondent, as insurer of the Car is directed to pay the entire compensation.

Conclusion in C.M.A. No. 130 of 2019:

21. It is the contention of the 1st respondent that while he was questioning the driver of the Lorry who had parked on the wrong side of the road and was verifying the documents, the driver of the Car belonging to the 2nd respondent/insured with the appellant, drove the Car in a rash and negligent manner and dashed against the 1st respondent, Lorry driver and the Lorry. The 2nd respondent owner of the Car remained exparte. The appellant filed counter statement and contended that 1st respondent crossed the road without seeing oncoming vehicle. On the other hand, the driver of the Car, Vediappan who was examined as R.W.2 in M.C.O.P. No. 3635 of 2013 has deposed that he was driving the Car at high speed at the time of accident and driver of the Lorry on seeing the 1st respondent, suddenly moved the Lorry at high speed and he was responsible for the accident. The deposition of R.W.2, driver of the Car is contrary to the contentions in the counter statement of the appellant. The accident has occurred at 06.15 a.m and the Tribunal considering the pleadings, oral and documentary evidence of the 1st respondent and evidence of the driver of the Car as R.W.2, has held that the accident has occurred only due to negligence on the part of the driver of the Car and there is no contributory negligence either by the 1st respondent or the driver of the Lorry. On such conclusion, the Tribunal held that the appellant is liable to pay compensation on behalf of the 2nd respondent, owner of the Car. There is no error in the said reasoning of the Tribunal, warranting interference by this Court.

Results-

(i) C.M.A. No. 763 of 2018: In view of the reasons stated above, this Civil Miscellaneous Appeal is allowed and the amounts awarded by the Tribunal at Rs.6,58,000/- along with interest and costs is confirmed. The 4th respondent is directed to deposit the award amount along with 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. 328 of 2014. 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 the amount, if any, lying in the credit of M.C.O.P. No. 328 of 2014, if the award amount has already been deposited by them. It is made clear that if the 1st respondent/claimant has already withdrawn the award amount, the appellant/Insurance Company is not entitled to

recover the same from the 1st respondent/claimant. Consequently, connected Miscellaneous Petition is closed. No costs.

(ii) C.M.A. No. 130 of 2019: For the reasons stated above, this Civil Miscellaneous Appeal is dismissed and the amounts awarded by the Tribunal at Rs.9,00,200/- along with 9% interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the award amount along with 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. 3635 of 2013. 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. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

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

+1 CC to Ms.I. Malar, Advocate sr 7291.
+1 CC to Mr. Mukund R. Pandiyan, Advocate sr 7078.
+1 CC to M/s.M.B. Gopalan & Associates sr 7342 & 7343.

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C.M.A. Nos. 763 of 2018 & 130 of 2019

MP(CO)
SP(15/12/2020)