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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1819 of 2014
and M.P.No.1 of 2014

M/s.National Insurance Co. Ltd.
Muruga complex
K.K.Road, Villupuram.

... Appellant /2nd Respondent

Vs.

1.Arjunan

... Respondent I/Petitioner

2.Kasinathan

... 2nd Respondent/1st Respondent

3.Srikanth

... 3rd Respondent/3rd Respondent

4.M/s.Oriental Insurance Co. Ltd.
Regional Office
U.I.L. Building, IV floor
No.8, Esplanade
Chennai-8.

...4th Respondent/4th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2012 made in M.C.O.P.No.6 of 2010 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Villupuram.

For Appellant : Mr.J.Chandran

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

For R4 : Mr.P.Kandasamy

J U D G M E N T

The matter is heard through "Video-conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 24.01.2012 made in M.C.O.P.No.6 of 2010 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court,



Villupuram.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.6 of 2010 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Villupuram. The 1st respondent filed the said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.07.2004.

3.According to the 1st respondent, on the date of accident i.e., on 02.07.2004, at about 11.15 a.m., while the 1st respondent along with others were travelling as loadmen in the tractor belonging to the 2nd respondent insured with the appellant, the driver of the tractor drove the same in a rash and negligent manner along Kumbakonam - Chennai Main Road near Sundaripalayam village from North towards South direction. At that time, the driver of the lorry belonging to the 3rd respondent insured with the 4th respondent drove the same in a rash and negligent manner from South towards North direction in a wrong side of the road, dashed against the tractor and caused the accident. Due to the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the respondents 2 to 4 and appellant.

4.The respondents 2 and 3, owners of the tractor and lorry respectively, remained exparte before the Tribunal.

5.The appellant/Insurance Company insurer of tractor filed counter statement denying the averments made by the 1st respondent and stated that at the time of accident, the tractor belonging to the 2nd respondent towed two trailers fully loaded with manure, which is in violation of policy and permit conditions. As per the policy conditions, only one trailer should be attached with tractor and except driver of the tractor, no person is permitted to travel in the tractor. At the time of accident, six persons have travelled in the tractor. The 1st respondent travelled in the tractor only as an unauthorised passenger. The accident did not occur due to negligence on the part of the driver of the tractor belonging to the 2nd respondent. The driver of the lorry belonging to the 3rd respondent alone is responsible for the accident. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. The owner of the two trailers and their Insurance Company are not made as parties to the claim petition. Hence, the claim petition is bad for non-joinder of necessary parties. The appellant/Insurance Company has also denied the age, occupation and income of the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.



6. Before the Tribunal, the 1st respondent examined himself as P.W.4, other injured persons who filed separate claim petitions examined themselves as P.W.1 to P.W.3, Dr. Raveendran was examined as P.W.5 and marked twelve documents as Exs. P1 to P12. The appellant/Insurance Company examined one Mr. Sivakumar, Senior Assistant of the appellant/Insurance Company, as R.W.1 and marked four documents as Exs. R1 to R4. The 4th respondent/Insurance Company did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the drivers of the tractor and lorry belonging to the respondents 2 and 3 respectively, fixed 50 : 50 contributory negligence on the part of both the drivers of the tractor and lorry, awarded a sum of Rs.58,500/- as compensation to the 1st respondent, directed the appellant/Insurance Company being insurer of the tractor to pay a sum of Rs.29,250/- being 50% of the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent as the 2nd respondent, owner of the tractor, has violated the policy conditions and directed both the 3rd respondent, owner of the lorry as well as the 4th respondent/Insurance Company being insurer of the lorry, to jointly and severally pay a sum of Rs.29,250/- being 50% of the compensation to the 1st respondent.

8. Against the said award dated 24.01.2012 made in M.C.O.P.No.6 of 2010, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal considering the evidence on record ought to have held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 3rd respondent. The respondents 3 and 4 alone are liable to pay compensation to the 1st respondent. The Tribunal having held that the 1st respondent and others travelled in the tractor as unauthorised passengers, ought to have exonerated the appellant from its liability and erred in ordering pay and recovery. The 2nd respondent in violation of policy and permit conditions used the tractor other than agricultural purpose. The Tribunal ought to have disbelieved the evidence of P.W.4/1st respondent and P.W.5/Doctor and the documents filed by the 1st respondent. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and allowing this appeal.

10. The learned counsel appearing for the 1st respondent made



his submissions in support of the award passed by the Tribunal.

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

12. It is the contention of the 1st respondent that the drivers of both the tractor and lorry belonging to the respondents 2 and 3 drove the vehicles in a rash and negligent manner and caused the accident. To prove the said contention, the 1st respondent examined himself as P.W.4, other claimants who filed separate claim petitions examined themselves as P.W.1 to P.W.3, marked F.I.R. as Ex.P1. It is the contention of the appellant that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 3rd respondent. To prove the said contention, the appellant did not examine the driver of the tractor or any other eye-witness. The appellant examined only its official witness as R.W.1. Though F.I.R. was registered against the driver of the tractor insured with the appellant, the Tribunal considering the evidence of P.W.1 to P.W.4 who are eye-witnesses, held that the accident has occurred due to rash and negligent driving by both the drivers of the tractor and lorry. The finding of the Tribunal holding that both the drivers are equally responsible for the accident and fixing 50% negligence on both the drivers is valid. There is no error in the said finding of the Tribunal warranting interference by this Court.

13. As far as liability is concerned, it is the contention of the 1st respondent and others that they travelled as loadmen in the tractor belonging to the 2nd respondent along with manure. The appellant has not let in any evidence to show that there was no manure in the trailer at the time of accident and the tractor was used for the purpose other than agriculture. The Tribunal considering the facts, evidence and judgments relied on by the parties held that the 1st respondent and others travelled in the tractor-trailer as loadmen and agricultural coolies and held that the appellant is liable to pay the compensation, but ordered pay and recovery.

14. As far as quantum of compensation is concerned, the Tribunal considering the evidence of 1st respondent as P.W.4 and the Doctor as P.W.5 and medical records filed by the 1st respondent, awarded compensation under different heads, which are not excessive warranting interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.58,500/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs



is confirmed. The appellant/Insurance Company is directed to deposit a sum of Rs.29,250/- i.e., 50% of the compensation along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 2nd respondent, owner of the tractor and directed both the respondents 3 and 4 to jointly and severally pay a sum of Rs.29,250/- i.e., 50% of the compensation along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (Audit)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Villupuram.

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

+1cc to Mr.P.Kandasamy, Advocate, S.R.No. 34475

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.35068

C.M.A.No.1819 of 2014
and M.P.No.1 of 2014

PP(CO)
GN(27/08/2021)