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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3068 & 3069 of 2014

Mani .. Appellant in C.M.A.No.3068/2014

Venkatesh .. Appellant in C.M.A.No.3069/2014

Vs.

1.R. Shanmugavel

2.The Oriental Insurance Co. Ltd.,
Divya Towers, 2nd Floor, Western Part,
15/1, Fort Main Road, Salem - 1.

.. Respondents in both C.M.As.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 04.06.2014, made in M.C.O.P. Nos.1347 & 1348 of 2012, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal) Salem.

(In both appeals)

For Appellant : Mr. C. Anbu
for M/s. R. Syed Mustafa

For Respondents: No appearance (For R1)

Mr. J. Chandran (For R2)

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

These matters are heard through "Video Conferencing".

These Civil Miscellaneous Appeals have been filed against the award dated 04.06.2014, made in M.C.O.P. Nos.1347 & 1348 of 2012, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal) Salem.



2.The issue involved in both the appeals are one and the same and hence, they are disposed of by this common judgment.

3.The appellant/claimant in both the appeals filed M.C.O.P. Nos.1347 & 1348 of 2012, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal) Salem, claiming a sum of Rs.15,00,000/- and Rs.7,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 03.09.2012.

4.According to the appellant in both the appeals, on the date of accident, the appellant in C.M.A.No.3069 of 2014 was riding his Motorcycle bearing Registration No. TN-32-S-5818 on Mecheri - Omalur main road, along with the appellant in C.M.A.No.3068 of 2014 as pillion rider. When they were nearing Kamaneri Annamar petrol bunk, driver of a Bus bearing Registration No. TN-30-AD-9103, belonging to the 1st respondent, drove the bus in a rash and negligent manner and dashed against the Motorcycle in which the appellants traveled and caused the accident. In the accident, appellant in both the appeals sustained multiple grievous injuries and fractures. The accident occurred due to rash and negligent driving by the driver of the Bus belonging to the 1st respondent and hence, appellant in both the appeals filed the present claim petitions, claiming compensation against the respondents, as owner and insurer of the offending vehicle respectively.

5.The 1st respondent remained exparte before the Tribunal.

6.The 2nd respondent-Insurance Company filed separate counter statements in both the claim petitions and denied all the averments made by the appellant in both the appeals. According to the 2nd respondent, at the time of accident, three persons traveled in the Motorcycle, in violation of policy conditions. The appellant in C.M.A.No.3069 of 2014, who did not possess valid driving license to ply the vehicle at the time of accident, lost control and caused the accident. The accident occurred only due to rash and negligent riding of the Motorcycle by the appellant in C.M.A.No.3069 of 2014. Hence, the 2nd respondent is not liable to indemnify the 1st respondent and prayed for dismissal of the claim petitions.

7.Before the Tribunal, the appellant in both the appeals examined themselves as P.W.1, P.W.2 respectively, examined Dr.S.Rajamanickam and Dr.Azhaganban as P.W.3 and P.W.4 and marked 13 documents as Exs.P1 to P13 and 10 documents as Exs.X1 to X10. The respondents did not let in any oral and documentary evidence.



8.The Tribunal considering the pleadings, oral and documentary evidence, fixed 50%-50% contributory negligence on both the driver of the Bus as well as rider of Motorcycle/appellant in C.M.A.No.3069 of 2014, awarded a sum of Rs.12,60,000/- and Rs.1,62,000/- as compensation to the appellant in both the appeals respectively and directed the 2nd respondent-Insurance Company to pay 50% of the award amount, i.e. Rs.6,30,000/- and Rs.81,000/- as compensation to the appellants.

9. Questioning the contributory negligence fixed on the appellants, in the common award dated 04.06.2014, made in M.C.O.P. Nos.1347 & 1348 of 2012, the appellants have come out with the present Civil Miscellaneous Appeals.

10.The learned counsel appearing for the appellant in both the appeals contended that the Tribunal erred in fixing contributory negligence on the part of the rider of the Motorcycle/appellant in C.M.A.No.3069 of 2014, without any evidence to show that he also contributed negligence to the accident. The Tribunal failed to see that the contributory negligence cannot be fixed on presumption that the rider of the Motorcycle/appellant in C.M.A.No.3069 of 2014 could have averted the accident. The reason given by the Tribunal for fixing contributory negligence on the appellant in C.M.A.No.3069 of 2014 that the accident has occurred in the straight road is erroneous and Tribunal failed to see that in all the accident that occurred in a straight road, there will not be any contributory negligence. The Tribunal considering all the materials, ought to have fixed entire negligence and liability on the respondents herein and prayed for setting aside 50% negligence fixed on the appellant in C.M.A.No.3069 of 2014 and prayed for allowing both the appeals.

11.The learned counsel appearing for the 2nd respondent-Insurance Company contended that at the time of accident, three persons traveled in the Motorcycle, contrary to the statutory provisions and terms of policy. The appellant in C.M.A.No.3069 of 2014, who is the rider of the Motorcycle drove the vehicle in a rash and negligent manner and dashed against the Bus and he only is responsible for the accident. The Tribunal ought to have fixed entire negligence on the part of the appellants and exonerated the 2nd respondent-Insurance Company from its liability. The Tribunal considering all the materials on record, fixed contributory negligence, which is in order and prayed for dismissal of both the appeals.

12.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no

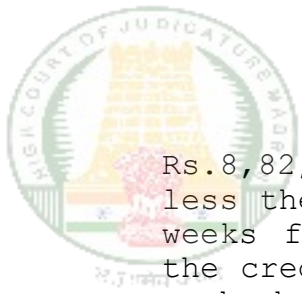


representation for him either in person or through counsel.

13. Heard the learned counsel appearing for the appellant in both the appeals as well as the 2nd respondent-Insurance Company and perused the materials available on record.

14. It is the contention of the appellant in both the appeals that while they were traveling in the Motorcycle, the driver of the Bus belonging to the 1st respondent drove the same in a rash and negligent manner and dashed against the Motorcycle and caused the accident. To substantiate this contention, the appellants examined themselves as P.W.1 and P.W.2 and deposed to that effect. They also marked FIR which was registered against the driver of the Bus as Ex.P1. On the other hand, it is the contention of the 2nd respondent-Insurance Company that at the time of accident, three persons traveled in the Motorcycle, contrary to the statutory provisions and due to rash and negligent driving by rider of the Motorcycle only, the accident has occurred. The 2nd respondent has not let in any evidence in support of their contention. On the other hand, the 2nd respondent relied on the contents of FIR and admission of the appellant that at the time of accident, three persons traveled in the Motorcycle. The appellant in both the appeals, did not reveal in their claim petitions that three persons traveled in the Motorcycle at the time of accident. This amounts to suppression of material facts. Three persons traveling in a Motorcycle is contravention of statutory provisions as well as violation of permit and policy conditions. Even though the 2nd respondent has not let in any evidence to substantiate their contention, due to suppression of material facts by the appellant in both the appeals that three persons traveled in the Motorcycle at the time of accident in violation of statutory provisions and policy conditions, some percentage of negligence has to be fixed on the part of the appellant in both the appeals and has to be deducted from the compensation awarded by the Tribunal. In the present case, the Tribunal considering the above materials and also the fact that accident has occurred in a straight road, fixed 50% of contributory negligence on the part of the appellant in C.M.A.No.3069 of 2014, who is rider of the Motorcycle. The 50% negligence fixed by the Tribunal on the appellants is excessive and the same is reduced to 30%. Hence, the appellant in both the appeals are entitled to only 70% of the compensation awarded by the Tribunal.

15. In the result, both the appeals are partly allowed and the amounts awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 2nd respondent-Insurance Company is directed to pay 70% of the award amount, i.e.



Rs.8,82,000/- and Rs.1,13,400/- 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, to the credit of M.C.O.P. Nos.1347 & 1348 of 2012 respectively. On such deposit, the appellant in both the appeals are permitted to withdraw their respective award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special Subordinate Judge No.1,
(Motor Accident Claims Tribunal),
Salem.

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

+2cc to Mr.M.R.Thangavel, Advocate, S.R.No.38905, 38906
+1cc to Mr.J.Chandran, Advocate, S.R.No.39159

C.M.A.Nos.3068 & 3069 of 2014

SPD(CO)
CB(24/08/2021)