IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.785, 786 and 787 of 2014
and M.P.Nos.1, 1, 1 of 2014

C.M.A.No.785 of 2014

M/s.Oriental Insurance Co. Ltd.,
Divisional Office PLA,
Building No.12A, Kovai Road,
Karur -2,
Having office at ,
Dr. Balasundaram Road,
May Flower Building,
Coimbatore. ... Appellant/Respondent II

Vs

1.Minor.Nithiya Dharshini,
Rep. by her guardian and mother Vasanthi

2.Thiru.R.Mahendran,

3.Tmt.S.Komathi, ..1 to 3 Respondents/Petitioner 1 &2 Respondents

4.Mr.Ravichandran,

5.The Regional Manager,
M/s.United Insurance Co. Ltd.,
No.134, Greams Road,
Thousand Light,
Chennai - 600 006. ...4 & 5 Respondents

(RR4 & 5 impleaded as party respondents vide order of this Court dt. 25.04.2017, made in CMP Nos.6044/2017 to 6046/2017 & CMA.785 to 787/14)

C.M.A.No.786 of 2014

M/s.Oriental Insurance Co. Ltd.,
Divisional Office PLA,
Building No.12A, Kovai Road,
Karur -2,
Having office at ,
Dr. Balasundaram Road,

May Flower Building,
Coimbatore.

... Appellant/3rd Respondent

Vs

1.Tmt.Vasanthi

2.Thiru.R.Mahendran

3.Tmt.S.Komathi ...1 to 3 Respondents/Petitioner 1 &2 Respondents

4.Mr.Ravichandran

5.The Regional Manager,
M/s.United Insurance Co. Ltd.,
No.134, Greams Road,
Thousand Light,
Chennai - 600 006. ...4 & 5 Respondents

(RR4 to 5 impleaded as party respondents vide order of this Court dt. 25.04.2017, made in CMP Nos.6044/2017 to 6046/2017) in CMA.No.785/14 and 787/14 ... Respondents

C.M.A.No.787 of 2014
M/s.Oriental Insurance Co. Ltd.,
Divisional Office PLA,
Building No.12A, Kovai Road,
Karur -2,
Having office at ,
Dr. Balasundaram Road,
May Flower Building,
Coimbatore. ... Appellant/Respondent III

Vs

1.Thiru.Dhanasekaran ...Respondents I/Respondent
2.Thiru.R.Mahendran
3.Tmt.S.Komathi ...Respondents 2&3/Respondents 1&2
4.Mr.Ravichandran

5.The Regional Manager,
M/s.United Insurance Co. Ltd.,
No.134, Greams Road,
Thousand Light,
Chennai - 600 006. ...4 & 5th Respondents
(RR4 to 5 impleaded as party respondents vide order of this Court dt. 25.04.2017, made in CMP Nos.6044/2017 to 6046/2017) in CMA.785/14 to 787/14

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.152 of 2012, M.C.O.P.No.153 of 2012 and M.C.O.P.No.938 of 2012 on 09.04.2013 on the file of the Learned Motor Accident Claims Tribunal (Special Sub - Judge) at Coimbatore District.

For Appellant in all CMAs : Mr.J.Chandran

For Respondents in all CMAs: Mr.Ma.P.Thangavel for R1
Not ready in notice - R2 to R5

COMMON JUDGMENT

All these appeals have been filed by the Insurance Company relating to the same accident. They are aggrieved by the Common Award dated 09.04.2018 passed by the Tribunal in MCOP No.152 of 2012, MCOP No.153 of 2012 and MCOP No.983 of 2012.

2.The only contention raised by the Appellant Insurance Company is that the apportionment of liability by the Tribunal at the ratio of 70% : 30% between the vehicle insured with the Appellant Insurance Company and the vehicle owned by the third respondent is incorrect. According to them, the lorry which is insured with the Appellant was proceeding in front of the car owned by the third respondent. It is their case that the car which was coming behind the lorry, dashed against the lorry due to the rash and negligent driving by the driver of the car. According to the Appellant Insurance Company, the apportionment of contributory negligence against the Appellant at 70% is excessive.

3.Heard Mr.J.Chandran, learned Counsel for the Appellant and Mr.Ma.P.Thangavel, learned Counsel for the first respondent.

4.The learned counsel for the Appellant drew the attention of this Court to the findings of the Tribunal under impugned Award. According to him, even if sudden brakes were applied by the lorry which was proceeding in the front, the car driver ought to have been alert and could have avoided the accident by applying the brake. According to him, the driver of the car was equally responsible for the cause of the accident due to his rash and negligent driving. According to him, the contributory negligence fixed by the Tribunal on the Appellant is on the higher side and it has to be reduced. Insofar as, the quantum of compensation awarded by Tribunal is concerned, the Appellant has not raised any serious objection.

5.This Court has perused and examined the impugned common Award. The contention raised by the Appellant Insurance Company has been duly considered by the Tribunal under the impugned Award. Before the Tribunal, the claimants have filed 12 documents which were marked as Exs.P1 to P12 and three witnesses were examined on their side. The FIR was also registered only against the lorry which is insured with the Appellant and has been marked as Ex.P2. Before the Tribunal, on the side of the claimants, the petitioner in MCOP No.152/2012 was examined as PW1 and petitioner in MCOP No.938 of 2012 was examined as PW2 and eye witness to the accident namely N.Kanagaraj was examined as PW3. On the side of the Appellant, two documents were marked namely Ex.R1 - being the copy of the Insurance Policy and Ex.R2 - Order of the District Munsif cum Judicial Magistrate, Perundurai in FIR in Crime No.733/2009 of Perundurai Police Station.

6.Admittedly, the car which was coming from behind is not insured and only the lorry alone is insured with the Appellant. It is the case of the claimants that all of a sudden, the lorry insured with the Appellant took a right turn without any signal which resulted in the accident. As seen from the materials and evidence available on record, this contention has not been disproved by the Appellant by the production of any contra evidence. The claimants have filed the FIR and the rough sketch disclosing the details of the accident, whereas no documentary evidence in support of the Appellant's contention that the car which was coming from behind is also equally responsible for the accident has been produced before the Tribunal. The Tribunal has considered the materials and evidence available on record and has rightly held that there is 70% contributory negligence on the part of the lorry which is insured with the Appellant. Further, the accident happened in the year 2010 and the amount awarded to the respective claimants under the impugned award is also not a huge sum and hence no useful purpose will be served if the impugned common Award is interfered with at this stage after a lapse of almost 10 years.

7.For the foregoing reasons and considering the fact that the compensation awarded by the Tribunal is a just compensation, this Court does not find any merit in all these appeals.

8.Accordingly, these appeals shall stand dismissed. The Appellant Insurance is directed to deposit its portion of the Award before the Tribunal together with interest at the rate of 7.5% per annum from the date of petition till the date of realization as fixed by the Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, all the claimants are permitted to withdraw their respective shares as apportioned by the Tribunal. Since the first respondent being minor in M.C.O.P.No.152 of 2012, her respective share of award amount shall be deposited in an interest bearing fixed deposit in any Nationalized bank till she attains majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the guardian/mother once in 6 months. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//
Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
(Special Sub Judge) at Coimbatore.

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

C.M.A.Nos.785, 786 and 787 of 2014

BS(CO)
CB(09/02/2021)