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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.03.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA.No.100 of 2013

The Divisional Manager,
Oriental Insurance Co.Ltd
at Krishna Complex,
Post Box No.65, Jawahar Street,
Pondicherry.

... Appellant/2nd Respondent

..VS..

1.Marappan
2.L.Vanajadevi
3.The Managing Director,
State Express Transport Corporation Ltd.,
(Tiruvalluvar Transport Corporation)
Pallavan Salai, Chennai.

... 1st Respondent/Petitioner

...2nd & 3rd Respondents/1st & 3rd Respondent

Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.11.2011 in M.C.O.P.No. 2053 of 2003 on the file of the Motor Vehicles Accident Claims Tribunal, The Principal District Judge, Krishnagiri.

For Appellant : Mr.S.Arun Kumar
For Respondent No.3 : Mr.K.Kathiresan
: Notice unserved -R1 & R2

JUDGMENT

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 11.11.2011 in M.C.O.P.No. 2053 of 2003 on the file of the Motor Vehicles Accident Claims Tribunal, The Principal District Judge, Krishnagiri.



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2. The appellant is the 2nd respondent before the tribunal. The 1st respondent has filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the road accident that took place on 18.05.2001.

3. It is the case of the 1st respondent/claimant that on 18.05.2001 the petitioner was travelling in the 3rd respondent SETC Bus bearing Reg.No. TN 01-N-6137 from Krishnagiri to Chennai. When the said bus was proceeding near Ayanoor Village at about 1.30 a.m, the lorry bearing Reg.No. PY01-Q-6788 driven by its driver in a rash and negligent manner and dashed against the bus and caused the accident. Due to the impact, the claimant and some others were seriously injured and they were admitted as inpatient. The claimant has claimed a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the said accident.

4. The tribunal on analysing the oral and documentary evidence has concluded that the accident had occurred only due to the rash and negligence on the part of the driver of the lorry and not by the driver of the transport corporation. The tribunal directed the owner of the vehicle/2nd respondent herein and the insurance company/appellant herein to pay the compensation of Rs.66,000/- jointly and severally. Challenging the negligence and liability, the insurance company has preferred the present appeal.

5. The learned counsel for the appellant/insurance company has submitted that this Court while considering the appeal in CMA.No. 2585 of 2003 preferred by the insurance company challenging the award passed by the tribunal arising out of the same accident filed by the one of the injured person, has elaborately considered the facts and fixed the negligence both on the transport corporation and insurance company in 50% -50% ratio citing another judgment of this Court. The relevant portion is extracted below;

"7. The Tribunal while awarding the compensation, had thought it fit to direct both the Transport Corporation as well as Insurance Company to equally pay the compensation to the claimants.

8. As against the same award, the Transport Corporation as well as the Oriental Insurance Company had filed CMA Nos.1308 of 2005 & 1147 of 2017, questioning their respective liabilities and quantum. It is pertinent to mention here that this Court while passing final orders, has held as follows:



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"13.The grounds raised by the appellants questioning their respective liabilities is answered as follows:-

i)This is the case of Composite Negligence where the death of a passenger of a bus owned by the Tamil Nadu State Transport Corporation was caused due to the negligence of the drivers of the bus as well as the lorry which was insured with Oriental Insurance Company. The Tribunal, while determining the negligence had relied upon the exhibits A1, A14 & A15 and by taking into account the evidence of P.W.1 and P.W.2, had come to the conclusion that both the drivers of the bus, as well as the lorry, were equally negligent and had caused the accident.

ii)While awarding the compensation, the Tribunal thought it fit to direct both the Transport Corporation as well as the Oriental Insurance Company to equally pay the compensation to the claimants.

iii)It is well settled law in case of Composite Negligence that liability is joint and several and that the Tribunal shall pass a composite decree against the owners of both the vehicles. When this legal issue came up before the Hon'ble Supreme Court in Khenyei V. New India Assurance Company Ltd. & others reported in 2015 (1) TNMAC 801 (SC), the Court after taking into account, various judgments of the Hon'ble Supreme Court as well as the Full Bench Judgment of the High Court of Karnataka, while holding that the liability of the Joint Tort-feasors are joint and several, observed as follows:

"iii)In case all the Joint Tort-feasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of Composite Negligence of the drivers. However, determination of the extent of negligence between the joint tort-feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in main case one Joint Tort-feasor can recover the amount from the other in the Execution proceedings."



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iv) In the instant case, both the drivers of the bus as well as the lorry had died. The only witness namely, P.W.2 who claimed to have witnessed the accident had stated in the cross examination that he was in his house at the time of accident and that he was not present at the accident site. In the absence of any direct eye-witness and by relying upon Exhibits A1, A14 and A15 as well as the oral evidence of P.W.1 and P.W.2, the Tribunal had come to the conclusion that both the Transport Corporation, as well as the Oriental Insurance Company, which is the insurer of the lorry, are equally liable for payment of compensation. As held by the Hon'ble Supreme Court in the judgment cited above, whenever there is sufficient evidence, it is open to the Court/Tribunal to determine inter-se the extent of Composite Negligence of the drivers. The determination of extent of negligence between the drivers is only for the purpose of inter-se liability so as to enable one to recover the same from the other, after making whole of payment to the claimants.

v) Since the Tribunal had rightly applied the doctrine of Composite Negligence and come to the conclusion that there was enough evidence to show that both the drivers were equally responsible for having caused the accident, has fixed the liability of the Transport Corporation as well as the Oriental Insurance Company was fixed in the ratio of 50:50. In view of the same, we have no hesitation to hold that the joint liability as arrived by the Tribunal in fixing the award is valid.

14. In view of the foregoing and above discussions, we do not find any merits in the appeal filed by the State Transport Corporation as well as Oriental Insurance Company. Hence, the Civil Miscellaneous Appeals stand dismissed accordingly. No costs."

The aforesaid decision of the Hon'ble Division Bench of this Court is squarely applies to the facts of the present case.

6. Following the judgment cited supra, this Court modifies the award and fix the negligence against the Insurance Company as well as Transport Corporation in 50% - 50% ratio. Accordingly, both the appellant/insurance company and 3rd respondent/Transport Corporation are equally liable to pay the compensation of Rs,66,000/- to the claimants.



7. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

8. The appellant/Insurance Company and the 3rd respondent/Transport Corporation shall deposit the entire compensation amount in 50% - 50% ratio along with interest as awarded by the tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the compensation as, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

9. In view of the above modification, the appellant/insurance is permitted to withdraw the excess compensation amount lying on the deposit, if any, already deposited. No costs.

Sd/-
Assistant Registrar(CO)
//True Copy//

Sub Assistant Registrar

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To

The Principal District Judge,
Motor Vehicles Accident Claims Tribunal,
Krishnagiri.

Copy to:

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

+1CC to Mr.S.Arunkumar, Advocate, Sr.No.13835

+1CC to Mr.K.Kathiresan, Standing Counsel SE.T.C., Sr.No.13574

CMA.No.100 of 2013

SRA (CO)
K.RK. (30.09.2021)