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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1465 of 2016

and C.M.A.No.156 of 2017
and CMP No.1033 of 2017

1. Pushpathal
2. K.Selvi

... Appellants/Claimants in CMA
No.1465 /2016 & Respondents 1 & 2 /
Respondents in CMA No.156/ 2017

..Vs..

S. Samsudeen

... 1st respondent/Respondent No.1 in
CMA No.1465 of 2016 & 3rd Respondent /
1st Respondent in CMA No.156/ 2017

IFCO TOKIO General Insurance Company Ltd.,
Tulsi Chambers
No.195, T.V. Samy Road
R.S. Puram,
Coimbatore - 2.

... 2nd Respondent/2nd Respondent in CMA
No.1465/2016 & Appellant/2nd Respondent
in CMA No.156/2017

Common Prayer: Civil Miscellaneous Appeals filed under Section
173 of the Motor Vehicles Act, 1988, against the Judgment and
Decree dated 23.03.2016 made in MCOP.No.1016 of 2011 on the
file of the Motor Accident Claims Tribunal, Additional District
Court No.3, Tharapuram, Tirupur District.

For Appellant : Mr.N.S.Sivakumar
in CMA No.1465/2016 & Respondents
1 & 2 in CMA No.156 of 2017

For R-2 in CMA No.1465 of 2016 and : Mr.E.Rajadurai for
Appellant in CMA No.156 of 2017 M/s.N.Vijayaraghavan

For R-1 in CMA No.1465 of 2016 and : No appearance.
R-3 in CMA No.156 of 2017



COMMON JUDGMENT

(This Appeal has been taken up for hearing through Video Conferencing)

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CMA No.1465 of 2016 has been filed by the claimants challenging the impugned award dated 23.03.2016 passed by the Motor Accident Claims Tribunal, Additional District Court No.3, Tharapuram, Tirupur District in MCOP No.1016 of 2011 challenging the fixation of contributory negligence against the deceased @ 50%. CMA No.156 of 2017 has been filed by the Insurance Company challenging the very same award of the Tribunal also questioning the contributory negligence fixed on the part of the driver of the insured car @ 50%.

2. Heard Mr.N.S.Sivakumar, learned counsel for the claimant and Mr.E.Rajadurai, learned counsel for the Insurance Company.

3. The accident happened on 04.01.2011 as a result of collision between two vehicles. The deceased Palanisamy Gounder was the rider of the TVS 50 motor cycle and the said motor cycle collided with the car bearing Regn.No.TN 38 AY 0158 insured with the appellant in CMA No.156 of 2017.

4. It is the case of the claimants who are the dependents of the deceased in MCOP No.1016 of 2011 that the deceased Palanisamy Gounder as rider of the TVS 50 motor cycle was coming from his residence to Kankeyam and when he was coming near Kampaliampatti pirivu to reach East to West Kankeyam to Karur Main Road and he was waiting to cross the road, at the northern extreme of the middle road, at that time, the car bearing Regn.No.TN 38 AY 0158 insured with the appellant in CMA No.156 of 2017 and driven by its driver Surendran coming from West to East in a rash and negligent manner, dashed against the TVS 50 Motor cycle in which the Palanisamy Gounder was the rider, which resulted in his death. However, the same has been disputed by the appellant - Insurance Company before the Tribunal, as seen from the counter filed by them. According to them, the deceased Palanisamy Gounder is himself the tortfeasor as only due to his rash and negligent driving and without indicator, he had taken a right turn in the highways and dashed against the car bearing Regn.No.TN 38 AY 0158. It is their case that the entire fault is on the part of the deceased and therefore the appellant - Insurance Company is not liable to compensate the claimants.

5. Before the Tribunal, the claimants filed nine documents which are marked as Exs.P1 to P9 and two witnesses were examined on their side namely Pushpathal, the wife of the deceased as PW1 and Mr.Balusamy, a relative of PW2, who the claimants claim to be an eye witness to the accident. On the side of the Insurance



Company, three documents were filed which were marked as Exs.R1 to R3 and one witness was examined namely Mahalingam, the police official as RW1. Before the Tribunal, the rough sketch was marked as Ex.R1.

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6. As seen from Ex.R1, the deceased Palanisamy Gounder who was the rider of the TVS 50 motor cycle has taken a right turn in a junction road in the highways and the insured car which was coming from West to East in the junction road, in the left hand side of the road. The TVS 50 motor cycle in which the deceased Palanisamy Gounder was rider, after taking the right turn has collided with the insured car which was coming from West to East direction in the left hand side of the road. The police official who was examined as RW1 by the Insurance Company before the Tribunal in his deposition has deposed that the accident happened only due to the fault of the deceased. However, the FIR which was marked as Ex.P1 before the Tribunal, based on a complaint given by a person by name Senthil has stated that only due to rash and negligent driving by the driver of the insured car, the accident had happened which resulted in the death of Palanisamy Gounder. The Tribunal has taken into consideration the evidence available on record and based on preponderance of probabilities, has fixed contributory negligence on the part of the insured car as well as on the deceased in the ratio of 50:50. This Court has perused and examined the impugned award as well as the oral and documentary evidence placed on record before the Tribunal and it does not find any infirmity in the findings of the Tribunal.

7. For the foregoing reasons, this court is of the considered view that both the appeals, one filed by the Insurance Company and the other filed by the claimants does not deserve any merits. In the result, both the Civil Miscellaneous Appeals are dismissed.

8. It is represented by the learned counsel for the Insurance Company that, as per the order of this court dated 03.02.2017 made in CMP No.1033 of 2017 in CMA No.156 of 2017, they have already deposited the entire award amount before the Tribunal to the credit of MCOP.No.1016 of 2011. In view of the same, this Court directs the Tribunal to transfer the amount lying to the credit of MCOP.No.1016 of 2011 to the bank account of the respondents/claimants through RTGS within a period of one week from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



rgr

To

1. The III Additional District Judge,
Motor Accident Claims Tribunal,
Tharapuram, Tirupur District.

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

+1cc to Mr.N.S.Sivakumar, Advocate SR.No. 29801

C.M.A.No.1465 of 2016
and CMA No.156 of 2017

RLP (CO)
B.VC(12.08.2021)