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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.03.2021

PRONOUNCED ON : 22.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.1579 of 2016

and

CMP.Nos.3708, 3713 & 11912 of 2016

Royal Sundaram Alliance Insurance Company Limited,
No.5, R.JH, Plaza, Katpadi Main Road,
Virudampet, Vellore - 632 006.

...Appellant/7th Respondent

Vs.

1.Raja
2.R.Karthick
3.M.Ramya

...Respondents 1-3/Petitioners

4.Pradeep Singh

5.M/s.Safe Cargo Carriers,
No.182, Yogeshwari Dham, Gokhiware, Nalasopara
Sopra, District Thane - 401 203.

6.Bajaj Allianz General Insurance Company Limited,
301 - 302, Bhoomi Sarasswathi, A - Wing,
Building No.2, Ganjawala Lane,
Borivali, West, Mumbai - 400 092.

7.M/s.Sundaram Finance Limited,
No.21, Patulos Road, Chennai 600 002.

8.M.Parasuraman
9.M.Lakshmanan

...Respondents 4-9/Respondents 1 to 6

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree in MCOP.No.295 of 2012 on the file of the Motor Accidents Claims Tribunal (learned Special Subordinate Judge) at Coimbatore, dated 02.02.2015.



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For Appellant	:	Mr.M.Krishnamoorthy
For R1 to R3	:	Mr.J.Hariharan for Mr.V.Nicholas
For R4, R5, R8 & R9	:	No appearance
For R6	:	Mr.Micheal Visuvasam for Mr.R.V.Sivaraj
For R7	:	No appearance

JUDGMENT

(The case has been heard through video conference)

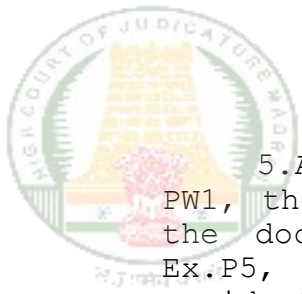
The one of the Insurance Company is the appellant herein.

2.Challenging the award passed by the Motor Accident Claims Tribunal/learned Subordinate Judge, Coimbatore, in MCOP.No.295 of 2012, dated 02.02.2015, this civil miscellaneous appeal has been preferred by the appellant-Insurance Company, on the ground of negligence and quantum.

3(a).The respondents 1 to 3 herein are the claim petitioners before the Tribunal; the fourth respondent herein is the driver of a Mini Lorry bearing Registration No.MH-04-EB-0631; while the fifth respondent is the owner and sixth respondent is the Insurance Company of the said Mini Lorry. The 8th respondent is the driver of a Lorry bearing Registration No.TN-20-P-1110; 9th respondent is the owner and the seventh respondent is the Insurance Company of the said Lorry. The said Lorry was hypothecated with seventh respondent herein. The appellant is the insurer of the lorry owned by the ninth respondent herein.

3(b).The respondents 1 to 3 herein is the legal representatives of the deceased Mallika, who died in the road transport accident, have filed a claim petition in M.C.O.P.No.295 of 2012 before the Motor Accident Claims Tribunal, Coimbatore, claiming a sum of Rs.15,00,000/- as compensation. Two vehicles were involved in the accident as stated supra.

4.From the pleadings and the evidence, it is seen that the claim petitioners along with three other persons including a female child went to Aravind Eye Hospital, Avinashi Road, Coimbatore, for eye-treatment to the child by bus. The bus in which the claim petitioners were travelled was stopped at Peelamedu, Coimbatore, instead of stopping the bus in the bus stop near Aravind Eye Hospital and they all got down from the bus in Peelamedu Bus Stop, in order to catch another bus from Peelamedu to Aravind Eye Hospital.



5.As described in the claim petition and as spoken to by PW1, the Tribunal, based upon the occurrence witness as well as the documentary evidence viz., Ex.P.1-FIR and charge sheet-Ex.P5, filed by the police, has come to the conclusion that the accident has occurred due to the composite negligence of the drivers of both the vehicles involved in the accident. Based upon the oral evidence of PW1, coupled with documentary evidence viz., Ex.P2/Rough Sketch & Ex.P5/Charge Sheet, the Tribunal has come to the conclusion that while the deceased was carrying the child and when she was trying to cross the road from North to South, while both the offending vehicles were proceeding from East to West and the driver of the Mini Lorry had applied break while the driver of the Ashok Leyland Lorry which was coming from beyond also applied the break, however, dashed from the behind from the Mini Lorry and the Mini Lorry ran over the pedestrian, who was crossing the road and as a result of which, the deceased died on the spot.

6.The Tribunal, on appreciation of the evidence, has held that the driver of the Mini Lorry as well as the driver of the Ashok Leyland Lorry which came beyond the Mini Lorry are at fault and accordingly, arrived at the negligence as composite in nature.

7.Heard the learned counsels and perused the materials placed on record. Both the respective owners of the vehicles have taken the stand that the driver of the other vehicle is at fault.

8(a).The learned counsel for the appellant/Insurance Company for the lorry would contend that lorry driver has not committed any mistake. However, after perusing the evidence of PW1 coupled with Ex.P1/FIR, Ex.P2/rough sketch and Ex.P5/Charge sheet, the Tribunal has come to the conclusion that the deceased was carrying child and was trying to cross the road from North to South. Though the driver of the mini lorry applied the break, in view of the fact that the driver of the Ashok Leyland Lorry, which is coming from the beyond of the mini lorry has also applied the break but dashed from the beyond of the mini lorry. Thereby, the mini lorry has crossed over the pedestrian and the deceased died on the spot.

8(b).Hence, the finding rendered by the Tribunal that the accident has taken place due to the composite negligence of the drivers of both the vehicles.

8(c).The Tribunal has rightly analyzed the manner of the accident in the proper prospective by appreciating the evidence of the independent occurrence witness viz., PW1 coupled with the documentary evidence of Exs.P1, P2 and P5. On re-appreciation



of the occurrence witness coupled with the documentary evidence, this Court finds that the finding arrived at by the Tribunal does not suffer from any irregularity or illegality, warranting interference at this appellate stage. Accordingly the finding of the Tribunal that drivers of both the vehicles are compositely responsible for the accident is hereby confirmed. Accordingly the respective owners viz., fifth respondent herein and ninth respondent herein are liable to the accident at 50% each. Consequently, the respective Insurance Companies viz., the sixth respondent herein for the fifth respondent's mini lorry owner and the appellant herein (Insurance Company for the lorry owner) ninth respondent, are jointly and severally liable to pay the compensation, on behalf of the respective lorry owner.

9(a).Before the Tribunal, the sixth respondent herein viz., Bajaj Allianz General Insurance Company Limited, has taken a plea that the driver viz., Pradeep Singh/fourth respondent herein had fake license at the time of driving of the vehicle and accordingly sought for exoneration from liability.

9(b).To prove the fact that the licence produced by the fourth respondent herein at the time of vehicle inspection before the Motor Vehicle Inspector is fake one, the certificate given by the office of the Assistant Regional Transport Officer, Poonch, was marked as Ex.R3 through R.W1/Viswadharani and the certificate sent for from the said office was marked as Ex.R5 with consent.

9(c).As per Exs.R3 and R5, the licence number mentioned in the MVI report as produced by the fourth respondent herein is that D.L.No.5431/MVD/P-08 date of issued 02.08.2080 stands in the name of one Sh.Gulab Din, S/o.Kak Din, R/o.Poonch and not in his name. Thereby it is proved through documentary evidence by the sixth respondent herein that the licence produced by the fourth respondent herein is a fake one.

10.After perusing the evidence of the Motor Vehicle Inspector and documentary evidence of Exs.R3 & R5, the finding rendered by the Tribunal that the licence produced and possessed by the fourth respondent herein at the time of accident, is a fake one.

11(a).By relied upon paragraph No.6 of the judgment reported in 2013 ACJ 2129 in the case of United India Insurance Company Limited Vs. Sujatha Arora, wherein the Hon'ble Supreme Court, has held as follows:

"6.However, learned single judge of the High Court proceeded on wrong assumption and held it otherwise giving rise to filing of the present



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appeal. The findings of learned single judge that even if driver was having a fake licence, it would not exonerate the insurance company as he was not negligent in driving are certainly erroneous. Driving without licence or with a fake licence and driving a vehicle negligently are two different aspects of the matter. Holding a valid driving licence is a requirement of law. If the vehicle was being driven by a person holding a valid licence, but rashly and negligently, is a matter of evidence. The very fact which stood established that licence of the driver Jagdish was a fake one, would completely exonerate the Insurance company."

the Tribunal has exonerated the sixth respondent herein from indemnifying the fifth respondent.

11(b).However, at the conclusion portion the Tribunal has held that the owner of the lorry viz.,second respondent before the Tribunal/fifth respondent herein and the seventh respondent before the Tribunal/appellant herein are jointly and severally liable to pay the compensation is legally un-sustainable. Since, the seventh respondent herein is Insurance Company of the ninth respondent's vehicle and not the fifth respondent's vehicle.

11(c).Hence, this Court held that the appellant herein/Insurance Company (7th respondent before the Tribunal) is liable to pay only 50% by way of indemnifying the sixth respondent therein(owner of the lorry) and the fifth respondent therein/driver of the lorry. Since the sixth respondent herein/Insurance company is exonerated from liability, for the reasons state supra the fifth respondent herein (second respondent before the Tribunal) is liable to pay 50% of the award amount and hence, this point is answered to the extent indicated above in favour of the appellant herein/Insurance Company.

12.After perusing the compensation awarded by the Tribunal under various heads, this Court finds that the same is found to be reasonable award for the death of a woman aged about 47 years at the time of the accident.

13.This case is prior of the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC). Hence, this Court is of the considered view that the quantum of the compensation need not be disturbed.



14. In this view of the matter, the finding of the Tribunal as the composite negligence on the part of both the vehicles and compensation awarded thereon, are hereby confirmed. On the point of liability as held in the preceding paragraphs, the appellant/Insurance company is liable to indemnify only the ninth respondent herein/the owner of the lorry, to the extent of 50% of the award amount.

15. In the result,

(a) this Civil Miscellaneous Appeal is partly allowed to the limited extent as indicate above, on the point of negligence and quantum. The finding rendered by the Tribunal is hereby confirmed, however, on the point of liability, the appellant herein/Insurance Company of the vehicle belonged to the ninth respondent herein is liable to pay only 50% of the amount as awarded by the Tribunal along with the ninth respondent herein as jointly and severally and the finding of the Tribunal to the contra namely, the appellant herein/Insurance Company, which is the seventh respondent before the Tribunal and the fifth respondent herein is jointly and severally liable to pay the entire compensation is vacated and modified to the limited extent that the owner of the mini lorry (fifth respondent herein/second respondent before the Tribunal) is liable to pay remaining balance viz., 50% of the award amount.

(b) The award amount will carry interest at the rate of 7.5% per annum from the date of filing of the petition till the date of payment.

(c) On such deposit, the claim petitioners are permitted to withdraw the compensation amount as awarded by the Tribunal, less the amount already withdrawn, if any.

(d) No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dua

To

1. The Motor Accidents Claims ,
Special Subordinate Judge,
Coimbatore.



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

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+1cc to Mr.V.Nicholas, Advocate Sr No.18162

+1cc to Mr.J.Michael Visuvasam, Advocate Sr No.18239

CMA.No.1579 of 2016

CP (CO)

PR (29/10/2021)