IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA Nos.1656 and 1657 of 2016
and
CMP Nos.12643 and 12644 of 2016

The Divisional Manager,
The Oriental Insurance Company Ltd.,
Vellore. … Appellant/2nd Respondent

versus

1. Santha ...1st respondent/Petitioner in CMA No.1656 of 2016

1. Srinivasan ...1st respondent/Petitioner in CMA No.1657 of 2016

2. Syed Nazeer Ahmed … 2nd respondent in both CMAs

Prayer in CMA No.1656 of 2016 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 06.04.2016 made in MCOP No.1424 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Tirupattur.

Prayer in CMA No.1657 of 2016 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 06.04.2016 made in MCOP No.1389 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Tirupattur.

For Appellant
in both appeals : Mr.D. Bhaskaran

For Respondents
in both appeals : Mr.V. Parivallal for R1

R2 - Served - No appearance

COMMON JUDGMENT

(Heard Video Conference)

These appeals have been filed challenging the common award dated 06.04.2016 passed by the Motor Accidents Claims Tribunal (Special Subordinate Judge), Tirupattur, Vellore District, in MCOP Nos.1389 of 2013 and 1424 of 2013.

2. Initially, the respondents / claimants preferred claims before the III Additional District Court, Vellore, Tirupattur in MCOP No.220 of 2011and MCOP No.340 of 2012 and later these cases were transferred to the Sub Court, Tirupattur and re-numbered as MCOP Nos.1389 of 2013 and 1424 of 2013 respectively.

3. The appellant / Insurance Company has challenged the impugned common award questioning its liability to pay the compensation on the ground that the respondents/claimants are themselves the tortfeasors as seen from the Referred Charge sheet (RCS) submitted by the police, which has been marked as Ex.R2 as well as the spot sketch which has been marked as Ex.R1. It is also the case of the appellant / Insurance Company that the claimant in MCOP No.1389 of 2013, who was the rider of the motor cycle had no Driving Licence at the time of the accident. According to the appellant / Insurance Company, the motor cycle in which the respective claimants were travelling while crossing the Highway did not stop and suddenly emerged cutting across the Highway and therefore, they alone are responsible for the cause of the accident and not the Driver of the insured car, which was proceeding in the Highway from Krishnagiri to Tiruvannamalai. According to them, though FIR has been filed as against the Driver of the insured car, the investigation authority after investigation has found fault only with the rider of the motor cycle and have closed the FIR as mistaken of fact.

4. Heard Mr.D. Bhaskaran, learned counsel for the appellant / Insurance Company and Mr.V. Parivallal, learned counsel for the 1st respondent. Despite service of notice on the 2nd respondent, there is no representation on his side.

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. The learned counsel for the appellant / Insurance Company drew the attention of this Court to the spot sketch as well as the Referred Charge Sheet submitted by the police, which have been marked as Exs.R1 and R2 respectively before the Tribunal and would submit that as seen from the said documents, it is clear that only due to the fault of the rider of the motor cycle, the accident happened and there was no negligence on the part of the Driver of the insured car.

7. The learned counsel for the appellant also drew the attention of this Court to the findings of the Tribunal and in particular, he would point out that the Tribunal even though held the appellant / Insurance Company liable to compensate the insured claim has observed that the claimant as well as the Driver of the insured car should have taken extra care and should have driven the vehicle in a controllable speed to avoid any accident. According to him, despite the said observation, no amount of Contributory negligence was fixed on the part of the Driver of the insured car. He would also submit that a specific stand has been taken in the counter statement filed by the Insurance Company that only due to rash and negligent driving by the rider of the motor cycle, the accident had happened and when such a specific stand has been taken, it is for the respondents / claimants to prove their case. According to him, when the FIR has been closed as mistake of fact, the respondents / claimants have failed to prove negligence as against the Driver of the insured car.

8. Per contra, the learned counsel for the respondents / claimants drew the attention of this Court to the findings of the Tribunal and in particular, he referred to the reasons given by the Tribunal for holding the Insurance Company liable to compensate the claim to the respective claimants, which reads as follows :-

> As per SOC the accident place is the junction of four roads. It is the admitted case of respondent, the petitioner tried to cross the road, at the time of accident. Generally, all the vehicles which are passing through the junction roads has to be careful and watch for the vehicles which may come from the other roads. When it is so, both the petitioner and the 1st respondent driver should have taken extra care and should have driven the vehicle in controllable speed to avoid any accident. The petitioner seems to have crossed the road from

the madhahalli road to reach the road in opposite direction. So, the petitioner would not have bend towards Krishnagiri road as shown in the SOC. Moreover, as per the MV reports of petitioner and 1st respondent vehicle, the petitioner vehicle fuel tank right side, right side battery box cover, driver right side foot rest, silencer cover are damaged. As far as, the 1st respondent vehicle is concerned, the front grill, front bumper left side, front left side head light, front body left side, Radiator cores are damaged. If at all, the petitioner vehicle hit against the car which was passing as alleged by the 2nd respondent, the damages would have occurred only to the left side body and not to the front grill, front bumper, front left side head light and if at all, it is the petitioner who had hit against the car, definitely his front wheel and other front side parts of the motorcycle would have been damaged. But, as per the MV report, only right side foot rest, right side battery box, right side fuel tank, and silencer cover are damaged. From the very damages happened to the vehicles, it is clear that it is the car left side corner which hit upon the crossed motorcycle of the petitioner. Hence, this tribunal has come to the driver with high speed on the junction road, he had hit upon the crossing two wheeler and caused the accident.

9. According to him, the Tribunal has rightly appreciated the evidence available on record and only thereafter has come to the conclusion that the Driver of the insured car is alone responsible for the cause for the accident.

Discussion :

10. Admittedly, the accident happened in a junction where four roads meet. The insured car was proceeding in Krishnagiri to Tiruvannamali Highway from West to East direction and the motor cycle in which the claimants were travelling was coming from North to South direction in Madhahalli Road. As seen from the spot sketch, (Ex.R1), the accident has happened in the intersection between the two roads. The Tribunal has considered the MV reports of the motor cycle as well as the insured car which have been marked as Exs.R3 and R4 respectively and has come to the conclusion that the Driver of the insured car is alone responsible for the cause of the accident. The Tribunal has taken note of the damages caused to the

respective vehicles and has made an inference from the said damages that the cause of the accident was only the Driver of the insured car.

11. However, at the same time, the Tribunal has observed that both the rider of the motor cycle as well as the Driver of the insured car ought to have taken extra care and should have driven the vehicle in a controllable speed to avoid any accident. Even though such an observation was made, no contributory negligence has been fixed by the Tribunal on the part of the claimants, who were travelling in the motor cycle. Admittedly, the accident happened in the intersection of a junction road and therefore, the rider of the motor cycle ought to have driven his motor cycle cautiously and in a controllable speed to avoid any accident in the intersection. But in the instant case, if the rider of the motor cycle was also cautious by driving his motor cycle in a controllable speed, the accident could have been avoided. Therefore, this Court is of the considered view that some amount of contributory negligence has to be necessarily fixed on the part of the rider of the motor cycle also. Infact, as observed earlier the Tribunal though has observed that the rider of the motor cycle as well as the Driver of the insured vehicle were not cautious by not driving their respective vehicles in a controllable speed speed in an intersection has failed to fix any contributory negligence on the part of the rider of the motor cycle and the entire negligence was erroneously fixed on the part of the Driver of the insured vehicle alone. This Court deems it fit to fix the Contributory negligence on the claimants, who are a couple (husband and wife), who were travelling in the motor cycle at 10% and the remaining amount of Contributory negligence at 90% is fixed on the Driver of the insured car. Therefore, the contributory negligence is fixed by this Court at 10% for the claimants / respondents and the Driver of the insured car at 90%.

12. Excepting for this modification of the impugned award, the quantum of compensation fixed by the Tribunal in favour of the claimants remain unaltered and is confirmed as it is a just compensation and cannot be considered to be excessive.

13. In the result, both these appeals filed by the appellant / Insurance Company stand partly allowed by fixing the contributory negligence on the part of the

respective respondent / claimant in CMA Nos.1656 and 1657 of 2016 at 10% and remaining 90% on the driver of the insured vehicle. No costs. Consequently, connected miscellaneous petitions are closed.

14a. The appellant / Insurance Company is directed to deposit 90% of the award amount i.e. Rs.13,500/- (in respect of CMA No.1656 of 2016, corresponds to MCOP No.1424 of 2013) and Rs.1,98,522/- (in respect of CMA No.1657 of 2016, corresponds to MCOP No.1389 of 2013) together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. Nos.1424 of 2013 and 1389 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Tirupattur, within a period of four weeks from the date of receipt of a copy of this Judgment.

14b. On such deposit being made, the Tribunal is directed to transfer the respective award amount directly to the bank accounts of the respective respondent / claimant in both appeals, through RTGS, within a period of two weeks thereafter.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vsi2
To

1. The Sub Judge,
   Motor Accident Claims Tribunal,
   Tirupattur.

2. The Section Officer,
   V.R. Section
   High Court of Madras,
   Chennai – 104.

+2cc to Mr.V.Parivallal, Advocate Sr.42149

CMA Nos.1656 and 1657 of 2016

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srg 19/01/2022