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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.1369 of 2020

A.Irudhayanathan (Deceased)

1.Karolinmari

2.Minor Selsi Preethi

3.Minor Pidansiya Preethi

4.Minor Nimitha Preethi

Appellants 2 to 4 represented by Natural Guardian

Mother Karoline Marie

[Cause title accepted vide Court order dated
24.02.2020 made in CMP.No.3612 of 2020 in
CMA.Sr.No.2088 of 2020]

...Appellants/Petitioners

Vs

1.M/s.Chettinadu Logistics Pvt.Ltd.

Rani Seethai Hall,

6th Floor, No.603, Anna Salai,

Chennai - 600 006.

2.The Chief Manager,

The Oriental Insurance Company Ltd.

Third Party HUB,

Old No.115/216, Prakasam

Chennai.

3.R.Rajkumar

4.Royal Sundaram General Insurance Company Ltd.

Represented by its Director,

Sundaram Motors,

No.45, 46, Whites Road, Chennai.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173(1) of
the Motor Vehicles Act, 1988, praying to set aside the order



dated 27.09.2019 passed in MCOP.No.4729 of 2011 on the file of the Motor Accidents Claims Tribunal, Chennai (VI Court of Small Causes, Chennai) and allow this Civil Miscellaneous Appeal to award the compensation as prayed for in the claim petition.

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For Appellants : Mr.V.Manohar

For Respondents : Mr.M.Krishnamoorthy for R4
Mr.P.Kandasamy for R2
R1 and R3 - No appearance

J U D G M E N T

The legal representatives of the deceased Irudhayanathan, who suffered injuries in the road accident that occurred on 28.04.2010, have come up with this appeal, challenging the total rejection of the claim by the Motor Accidents Claims Tribunal, on the ground that the said Irudhayanathan himself was negligent and it was his negligence that caused the accident.

2. In the claim petition filed by Irudhayanathan, when he was alive, it was pleaded that the lorry belonging to the 1st respondent insured with the 2nd respondent was parked on the Trichy - Madurai Highways without any warning signal. While he was driving the lorry bearing Reg.No.TN-21-Q-9799 from Trichy towards Madurai at around 4.30 a.m., there was no visibility and he could not stop his vehicle, when he spotted this parked lorry. The lorry driven by him hit behind the parked vehicle and both the lorries plunged into the garden land nearby. Stating that parking of the lorry on the road is a negligent act on the part of the driver of the lorry belonging to the 1st respondent and insured with the 2nd respondent Insurance Company, the claimant initially sought for compensation from the 1st and 2nd respondents alone.

3. The 2nd respondent contested the proceedings, contending that the claimant who was the driver of the other lorry was also negligent and he caused the accident. Therefore, they are not liable to pay the compensation. The owner of the lorry driven by the claimant and its insurer are necessary parties to the claim. At the instance of the 2nd respondent Insurance Company, those parties viz., owner of the lorry bearing Reg.No.TN-21-Q-9799 insured with the 4th respondent and its insurer were impleaded as respondents 3 and 4.



4. The Tribunal relying upon the investigation report, which was marked as Ex.R3, through an Assistant in the Insurance Company, held that the claimant was 100% responsible for the accident. Upon such conclusion, the claim petition was dismissed in toto. Since the original claimant died pending proceedings the appellants were impleaded as his legal representatives.

5. I have heard Mr.V.Manohar, learned counsel appearing for the appellants, Mr.P.Kandasamy, learned counsel appearing for the 2nd respondent and Mr.M.Krishnamoorthy, learned counsel appearing for the 4th respondent.

6. Mr.V.Manohar, learned counsel appearing for the appellants would vehemently contend that the Tribunal ought not to have relied upon the documents, which formed part of the investigation report, as no one connected with it was examined and the claimants had no opportunity to cross-examine those persons. He would also point out that the sketch, which forms part of Ex.R3, investigation report, does not show, where the lorry was parked, it only shows that both the lorries had plunged in the agricultural field nearby. The First Information Report was given by the cleaner of the lorry bearing Reg.No.TN-21-Q-9799, driven by the injured claimant, wherein, he had stated that the lorry was parked on the road, without any warning signal and the claimant driving the lorry bearing Reg.No.TN-21-Q-9799 was unable to stop the lorry upon spotting the parked lorry and thus the accident occurred.

7. The Tribunal had dis-believed the First Information Report, on the ground that it was given by the cleaner of the lorry, driven by the injured claimant. Pointing out that the author of the document viz., Rough Sketch, which formed part of the investigation report was not examined, Mr.V.Manohar, would submit that the Tribunal fell in error in relying upon the said document, on the ground that it formed part of the investigation report and therefore it is an official document. He would further contend that the claimant was denied an opportunity to cross-examine the author of the document and therefore, the document ought not to have been relied upon to deny his claim.

8. Contending contra Mr.P.Kandasamy, learned counsel appearing for the 2nd respondent would submit that the Tribunal has given sufficient reasons for its conclusion and being an official document, the reliance placed upon the investigation report, is justified.



9. Mr.M.Krishnamoorthy, learned counsel appearing for the 4th respondent Insurance Company would submit that he being the insurer of the lorry bearing Reg.No.TN-21-Q-9799, has no say on the negligence aspect. But, he would however contend that the Tribunal was not justified in concluding that the entire negligence was on the part of the driver of the lorry insured with the 4th respondent.

10. I have considered the rival submissions. To my mind, the rejection of entire claim is clearly unjust. The fact that the accident occurred is admitted and the fact that there was collision between two vehicles is also admitted. The time of the accident viz., 4.30 a.m is also admitted. The fact that the lorry bearing Reg.No.TN-25-C.4424 was parked on the road is also admitted. But, a claim is made that the lorry was parked on the mud portion of the road. There is not direct evidence to prove that the lorry was parked on the mud portion of the road. Even the local residents, whose statements have been recorded as a part of the investigation report, had stated that they were informed by the driver of the lorry bearing Reg.No.TN-25-C.4424 that his lorry was parked on the mud portion of the road. The said driver has not been examined. The Police official, who recorded those statements and prepared the sketch has also not been examined.

11. In the absence of examination of persons connected with those documents, I find that the reliance placed by the Tribunal on the investigation report itself is flawed. The contents of the documents have to be proved by evidence, mere marking of the documents through a person, who is not connected with the documents is not sufficient proof and such document cannot be relied upon.

12. Coming to the contributory negligence aspect, as I have already pointed out, it is an admitted fact that the collision had happened at 4.30 a., and the lorry bearing Reg.No.TN-25-C.4424 was parked in the portion of the road which is not shown to be a parking area. In United India Insurance Company Vs. Semmalar and others reported in 2019 (1) TNMAC 22, the Division Bench of this Court, to which, I was a party, had considered the case of contributory negligence, vis-a-vis, parking in a no parking area. After considering the law relating to such parking, the Division Bench had held that the negligence should be apportioned at 75% and 25%, since the vehicles involved were a car and a lorry.



13. In the case on hand, both the vehicles are heavy vehicles and it is also in evidence that both the vehicles were fully loaded and as such, lorry bearing Reg.No.TN-21-Q-9799 could not have proceeded at a very high speed. Considering the totality of circumstances and the speed at which a fully laden lorry could have travelled, I am of the considered opinion that the negligence should be apportioned equally between two lorries. Therefore, I fix the contributory negligence at 50% on both the vehicles.

14. In view of the above, I am convinced that the award of the Tribunal has to go. Therefore, the award of the Tribunal is set aside. The negligence is fixed at 50% on both the vehicles involved in the accident. The MCOP.No.4729 of 2011 is remitted back to the Tribunal Viz., VI Court of Small Causes, Chennai, for fixation of the quantum of compensation in accordance with law and with reference to the contributory negligence fixed above. It is made clear that neither the 3rd respondent as the owner of the lorry bearing TN-21-Q-9799, nor the 4th respondent insurer will be liable to pay any compensation. The apportionment is made only to fix the quantum of compensation and apportion 50% of contributory negligence on the 1st and 2nd respondent.

15. It is stated that the evidence regarding quantum is already on record. Considering the fact that the accident had occurred in 2010 and the injured person is also no more, the Tribunal is required to dispose of the MCOP.No4729 of 2011, within a period of three (3) months from the date of receipt of papers from this Court. Registry is directed to send back the records, if they had been received. No costs.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

dsa

To

1.The Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.



Copy to: The Section officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.V.Manohar, Advocate SR.No.65526

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CMA No.1369 of 2020

SMI (CO)
CB(28/12/2021)