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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :29.01.2021

Pronounced on :03.02.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.Nos.3485 and 3486 of 2017

C.M.A.No.3485 of 2017:

Mr.R.Gopala Krishnan

...Appellant/Petitioner

/versus/

1.Mr.S.Gurumoorthy

2.United India Insurance Co.Limited,
Sillingi Building, New No.134,
Old No.40-42 Greams Road,
Chennai.

...Respondents/Respondent

Prayer in C.M.A.No.3485 of 2017: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of compensation against the judgment and decree dated 20.07.2017 in M.C.O.P.No.4473 of 2010 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant :Mrs.Ramya V.Rao

For Respondents:Mrs.N.Mala for R2

R1-Exparte (Not ready notice)

C.M.A.No.3486 of 2017:

G.Sreejeeth(minor)

(Rep.by his father & NF Gopala Krishnan) ...Appellant/Petitioner

/versus/

1.Mr.S.Gurumoorthy

2.United India Insurance Co.Limited,
Sillingi Building, New No.134,
Old No.40-42 Greams Road,
Chennai.

...Respondents/Respondent



Prayer in C.M.A.No.3486 of 2017: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of compensation against the judgment and decree dated 20.07.2017 in M.C.O.P.No.40 of 2011 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant :Mrs.Ramya V.Rao

For Respondents:Mrs.N.Mala for R2

R1-Exparte (Not ready notice)

COMMON JUDGMENT

These appeals filed by the claimant being aggrieved by the dismissal of their claim petitions by the Motor Accident Claims Tribunal, VI Judge, Small Causes Court at Chennai.

2.On 01.08.2008 at about 06.30 p.m., a Maruthi Omni Van bearing Reg.No.TN 07 L 9884 was hit by a Canter Van bearing Reg.No.TN 07 M 4518 near Putru Koil in E.C.Road. The driver of the Maruthi Omni Van R.Gopalakrishnan and a minor boy by name Sreejeeth travelling in the Maruthi Van sustained injury and were taken to Chettinad Hospital & Research Institute, Kelambakkam, Kanchi District. Later, they were shifted to Appollo Speciality Hospital, Chennai. The driver of the Maruthi Van Gopalakrishnan filed a claim petition in M.C.O.P.No.4473 of 2010 claiming compensation of Rs.3,50,000/- and the minor boy Sreejeeth, who accompanied in the Maruthi van, filed claim petition in M.C.O.P.No.40 of 2011 claiming compensation of Rs.1,25,000/- against the owner and its insurer.

3.The insurance company filed counter contesting both the claim petitions on the ground that the canter van had no valid insurance policy and its driver had no valid licence. Therefore, the insurance company is not liable to indemnify the owner of the vehicle. Further, the accident occurred only due to the rash and negligent driving of the Maruthi Omni van driver, who is the claimant in M.C.O.P.No.4473 of 2010. Case was registered against him for rash and negligent driving by E-1, Mamallapuram Police Station. Since he is the tortfeasor, he is not entitled for any compensation. In the counter filed in M.C.O.P.No.40 of 2011 preferred by the minor boy Sreejeeth, the Insurance Company contended that the accident occurred due to the negligence of the driver of the Maruthi Van, in which the claimant was travelling as a passenger. Since the canter van had no valid insurance coverage and its driver had no valid driving licence, there is no responsibility on the part of the insurance company to pay compensation or to indemnify the owner of the canter van.



4.Both the petitions were tried together by the Motor Accident Claims Tribunal. 3 witnesses were examined on behalf of the claimants and 14 exhibits were marked. On behalf of the respondent, Senior Assistant of the 2nd respondent Insurance Company was examined as RW-1. 5 exhibits were marked. The owner of the canter van remained exparte.

5.The Tribunal framed the following points for consideration:

(1)Whether the petitioner in O.P.No.4473 of 2010 and petitioner in O.P.No.40/2011 have sustained injuries in the road accident on 01.08.2009 due to the rash and negligent driving of the driver of the canter van bearing Reg.No.TN-07-M-4518?

(2)Whether the petitioners are entitled for the compensation, if so, from whom? And to what extent the petitioner in O.P.No.4473/2010 and petitioner in O.P.No.40/2011 are entitled to?

6.The Tribunal took note of the fact that First Information Report was against the driver of the Maruthi Omni Van R.Gopalakrishnan and he was charged for offence under Sections 297 and 337 of IPC in Crime No.332 of 2009, which was later it was altered into Sections 297, 337 and 304(A) of IPC since one of the victim by name Karthik, S/o Vijayakumar died. Therefore, held the canter van driver was not at fault and neither the owner of the canter van, nor its insurance company liable to pay any compensation.

7.The claim petition filed by the passenger the minor boy Sreejeeth was also dismissed being the son of tortfeasor. In the appeals preferred by the claimants, it was contended that the contention found in the First Information Report is not gospel truth. The Tribunal ought to have independently examined the evidence and ought to have fixed the negligence. When the accident occurred due to the involvement of two vehicles, the First Information Report registered against one vehicle driver will not be a bar for claiming compensation. The Tribunal ought to have at least fixed contributory negligence and awarded compensation. As far as the claim petition filed by the passenger namely, the minor boy Sreejeeth, it was contended that even if the driver of the vehicle in which the claimant was travelling as a passenger, was at fault. As a third party claimant, the passenger, who sustained injury, is entitled for compensation. The Tribunal has erred in equating the third party passenger on par with the driver of the vehicle against whom the criminal case was registered for negligence.



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8.The learned counsel appearing for the appellants relied upon the following judgements:-

(1)Vimala Devi and Ors. v. National Insurance Co.Ltd., and Ors reported in 2018(2) TN MAC 724 (SC) and

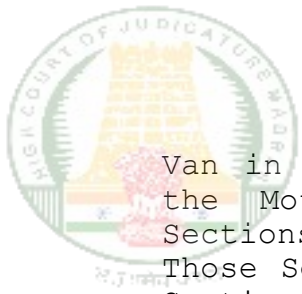
(2)Oriental Insurance Co.Ltd., Oriental House,II Floor, No.216, Prakasam Salai, Broadwa, Chennai v. K.Parthiban and another reported in 2016(2)TNMAC 289(DB)

9.The learned counsel appearing for the 1st respondent/insurance company submitted that the claim petitions filed under Section 166 of the Motor Vehicles Act alleging negligence against the canter van driver. The owner of the canter van and the insurance company of the canter van were made as respondents. Since the facts proved through evidence disclosed that the accident occurred due to the negligence of the Maruthi Van driver, who is one of the claimant and the son is the other claimant, the Tribunal has rightly dismissed the claim petitions. The insurer of the Maruthi van was not arrayed as respondent. As far as the insurance company of the canter van is concerned, it has collected premium to indemnify only the third party claim, if the accident occurred due to negligence or fault of the driver of the vehicle which is insured under them. Though the First Information Report is not the encyclopaedia of offence, the Police has filed final report against the Maruthi van driver for the offence under Sections 279, 337 and 304(A) of IPC. Therefore, the order of the Tribunal need no interference.

10.Heard both sides. Perused records.

11.The First Information Report regarding the accident was given by one Gurumoorthy, owner of the canter van. In the complaint, he has specifically stated that the Maruthi Van proceeding towards Pondicherry rash and negligently dashed against his canter van and caused severe damage to his van as well as the injury to the driver of the canter van. In the said accident, the driver of the Maruthi van and the occupant Sreejeeth also sustained injury. It is found from the records that the driver of the canter van Karthik later succumbed to the injury.

12.The Insurance company has appointed independent investigator to know the truth about the accident. One Ganesan has conducted investigation and filed his report, which is marked as Ex.R2. When there is no contra evidence let in to infer anything contrary to the content found in the First Information Report and the independent investigator's report Ex.R2, the conclusion of the Tribunal that the accident occurred is only due to the negligence of the driver of the Maruthi Omni



Van in M.C.O.P.No.4473 of 2010 is perfectly correct. As far as the Motor Accident Claims are concerned, there are three Sections, which empower the Tribunal to award compensation. Those Sections are 140, 163A and 166 of the Motor Vehicles Act. Section 140 of the Motor Vehicles Act deals with the cases for award of compensation based on the principle of "no fault liability". Fixed compensation is paid in case death and permanent injury, under Section 163A of the Motor Vehicles Act which is a special provision as to payment of compensation based on structured formula as per the Second Schedule of the Act, the claimant need not prove the negligence of the offending vehicle of the driver. As far as the claim under Section 166 of the Motor Vehicles Act is concerned, the claimant is bound to prove wrongful act, neglect or default of the person concern against whom the claim is made. The claim petitions, which are the subject matter of the present appeals are filed under Section 166 of the Motor Vehicles Act. Hence, the claimants are bound to prove the negligence of the canter van driver.

13.Since the claimants had not adduced the evidence to prove the accident occurred due to the negligence of the canter van driver. Contrarily the Insurance Company has adduced the evidence to show that the accident occurred due to the negligence of the Maruthi van, who is also one of the claimants. The judgment of the Hon'ble Supreme Court rendered in Vimala Devi case referred and relied on by the learned counsel appearing for the appellants is not factually applicable to the case in hand.

14.In the petition filed under Section 166 of the Motor Vehicles Act, the claimants are liable to prove the wrongful act/neglects or defaults of the person against whom they have laid the claim. From Ex.R3-First Information Report and Ex.R2-Investigation Report of the private investigator, it is evident that the respondents against whom the claim is made are not at fault. Just because two vehicles are involved in the accident, one cannot infer that both the vehicle drivers are at fault either equally or proportionately. Even to attribute the contributions for the accident, there must be acceptable evidence, since the claim petition filed under Section 166 of the Motor Vehicles Act and the claimants have failed to establish the negligence of the respondent's vehicle driver, the compensation cannot be awarded, on misplace sympathy, contrary to statute and contrary to terms of the agreement between the insurer and the injured.

15.Therefore, this Court finds no error in the order passed by the Tribunal in M.C.O.P.Nos.4473 of 2010 (C.M.A.No.3485 of 2017) and M.C.O.P.No.40 of 2011 (C.M.A.No.3486 of 2017).



16. In the result, these Civil Miscellaneous Appeals in C.M.A.Nos.3485 and 3486 of 2017 are dismissed. No order as to costs.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

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

Copy to

The Section Officer
VR Section
High Court, Madras 104.

C.M.A.Nos.3485 and 3486 of 2017

PP(CO)
SP(21/10/2021)