**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	11/01/21
Date of Judgment	05.02.2021

CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A(MD)No.341 of 2016

WEB COPY

The Branch Manager,
The Oriental Insurance Company Ltd.,
No.159 AA,
Complex 1st Floor Kumaran Road,
Thiruppur.

: Appellant/4th Respondent

Vs.

1.Meenakshisundaram

: R1/Petitioner

2.Karuppasamy

3.The Branch Manager,
Cholamandalam M.S.,
General Insurance Company Limited,
Door No.2, Door House,
2nd Floor, N.S.C Bose Road,
Chennai.

4.Kumar

: R2 to R4/R1 to R3

5.Manjula

6.The Branch Manager,
United India Insurance Company Ltd.,
Door No.77,
Oriental Complex,
UU Street,
Salem.

: R5 and R6/R5 and R6

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 24.03.2015 made in MCOP No.1141 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub Judge), Tirunelveli.

For Appellant	: Mr.C.Jawahar Ravindran
For 1 st Respondent	: Mr.V.Sasikumar
For R2 and R5	: No appearance
For 3 rd Respondent	: M/s.K.R.Shiva Shankari
For 4 Respondent	: Dismissed, vide order, dated 27.06.2018
For 6th Respondent	: Mr.J.S.Murali

**JUDGMENT****(Thro' VC)**

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (Special Sub Judge), Tirunelveli, in MCOP No.1141 of 2013, dated 24.03.2015.

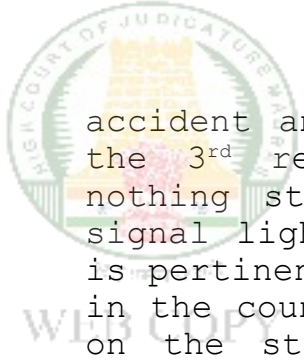
2.The brief facts of the case are that on 16.08.2013 the claimant was travelling in the INDIGO Car TN-30-X-5616 from Villupuram to Thindivanam National Highways and when the Car was nearing Kutteripattu Anjanayar Kovil, the Eicher lorry TN-57-AQ-3511 and mini Lorry TN-39-BE-8663 met with an accident and standing on the road and without noticing the same, the driver of the Car dashed against the Eicher Lorry and due to the accident, the claimant sustained multiple grievous injuries. The claimant, who suffered injury sought compensation of Rs.15,00,000/- on the ground that the driver of the offending vehicle namely Eicher Lorry was responsible for the accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Eicher Lorry and Mini Lorry were responsible for the accident and awarded compensation of Rs.3,57,800/- together with interest @ 9% p.a. Challenging the award of the tribunal, the Oriental Insurance Company as appellant is before this court.

4.Heard both sides and perused the materials available on record.

5.The learned counsel appearing for the appellant/4th respondent argued that as per the FIR, the accident occurred only due to the rash and negligent driving of the Eicher lorry and Car driver, but the tribunal without any evidence held that the driver of the mini lorry also responsible for the accident, even though the complaint was given by the driver of the mini lorry and at the time of accident, the mini lorry was stationed on the left side of the road with indicators as the mini lorry back tyre was burst and hence, there was no negligence upon the driver of the mini lorry and prays that the civil miscellaneous appeal has to be allowed.

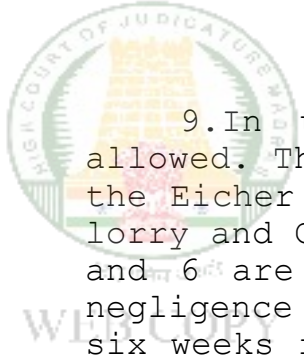
6.On the other hand, the learned counsel appearing for the 3rd respondent/2nd respondent submitted that the driver of the Car in which the 1st respondent/claimant was travelling, dashed against the rear right side of the 3rd respondent Eicher lorry and the negligence is a factual issue and it can only be established through cogent evidence and in the case on hand, the negligence has to be determined from the factual position, emerging from the evidence on record and the appellant's defence that sign and signal lights were on at the time of accident and parked on the corner of the road is not proved either by oral evidence nor by documentary evidence to avoid negligence and liability on the part of the appellant and no documents, except FIR was marked as Ex.P1 to depict the manner of



accident and though, the FIR is registered against the driver of the 3rd respondent insured vehicle Eicher lorry (TN57-AU-3511), nothing stated in the FIR as to the existence of indicators or signal lights on the appellant's mini Lorry (TN-39-BE-8663) and it is pertinent to note that the appellant has not raised any pleadings in the counter filed before the tribunal with respect to indicators on the stationed vehicle and in the absence of pleadings, the factual ground cannot be raised before for the first time at the appellate stage and the root cause for the accident resulting injuries to the 1st respondent is due to the negligence on the part of the driver of the appellant's mini Lorry (TN-39-BE-8663) and the driver of the Indico Car (TN-30-AX-5616) owned by the 5th respondent, insured with the 6th respondent as rightly found by the tribunal by fixing negligence and liability against the appellant and the 6th respondent in equal proportion and prays for dismissal of appeal.

7. In this case, with regard to the accident, the driver of the mini lorry gave Ex.P1 complaint. On perusal of Ex.P1 complaint, it is stated that when the tyre of the mini lorry was burst, then the body halted by turning and facing opposite side of the road and at that time, Eicher Lorry TN-57-AV-3511 dashed against the mini lorry and thereafter, a Car TN-30-AX-5616 dashed against the Eicher Lorry. It was not stated in Ex.P1 that the mini lorry was stationed with signal or reflection lights. Further, on perusal of the counter filed by the appellant/4th respondent, it was not stated that at the time accident, the mini lorry was stationed with indicator or reflection lights. No witness was examined on the side of the appellant/4th respondent to prove that the mini lorry was stationed with indicator or reflection lights. Hence, the argument put forth on the side of the appellant/4th respondent stating that the mini lorry TN-39-BE-8663 was stationed with proper signal is not at all acceptable.

8. On careful perusal of the evidence of the witnesses, it reveals that the accident occurred in the middle of the road. Hence, it is held that the accident occurred due to composite negligent of the driver of the mini lorry, Eicher lorry and the Car. Even though, in respect of the accident, FIR was registered as against the driver of the Eicher lorry, the tribunal failed to fix the negligence on the part of the driver of the Eicher lorry. But, this court found that the accident was occurred due to composite negligence on the part of the driver of the mini lorry, Eicher Lorry and Car. Hence, the negligence is fixed at 40% on the part of the driver of the Eicher lorry and 30% each on the side of the driver of the Mini lorry and Car. The compensation awarded by the tribunal is Rs.3,57,800/- together with interest at the rate of 9% p.a. In respect of compensation amount of Rs.3,57,800/-, this court held that the same is confirmed. With regard to interest, the claimant is entitled to interest @ 7.5% p.a for the award amount from the date of petition till the date of deposit.



9. In the result, this Civil Miscellaneous Appeal is partly allowed. The negligence is fixed at 40% on the part of the driver of the Eicher lorry and 30% each on the side of the driver of the Mini lorry and Car. The appellant Insurance Company and the respondents 3 and 6 are liable to pay the amount as per the apportionment of negligence fixed by this court to the claimant, within a period of six weeks from the date of receipt of a copy of this judgment, with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. On such deposit the claimant is entitled to withdraw the entire amount without filing any formal petition before the tribunal. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To,

1. The Motor Accident Claims Tribunal/
Special Sub Judge,
Tirunelveli.

2. The Record Keeper, (2 COPIES)
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.R.SHIVA SANKARI, Advocate (SR-3725[F] dated 08/02/2021)

+1 CC to MR.V.SASI KUMAR, Advocate (SR-3638[F] dated 08/02/2021)

+1 CC to MR.J.S.MURALI, Advocate (SR-3844[F] dated 08/02/2021)

C.M.A(MD)No.341 of 2016
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VB (01.03.2021) 4P 7C