

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

Date of Reservation	17.02.2021
Date of Judgment	13.05.2021

WEB COPY

CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A (MD) No.551 of 2016
and
CMP (MD) No.6605 of 2016

National Insurance Company Limited,
through its Branch Manager,
D.No.74A, Paramathy Road,
Namakkal-637 001.

: Appellant/2nd Respondent

Vs.

1.M.Velayutham
2.K.Madheswari
3.M.Pandiarajan

: R1/Petitioner
: R2/1st Respondent

4.Reliance General Insurance Company Limited,
through its Branch Manager,
Shri Lakshmi Complex, 1st Floor,
Bharathi Street,
Omalur Main Road,
Swarnapuri, Salem-636 004.

5.C.Madhu

6.The Oriental Insurance Company Limited,
through its Branch Manager,
No.3L, Siddha Veerappa Chetty Street,
Dharmapuri 636 701.

: R3 to R6/R3 to R6

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 01.10.2015 made in MCOP No.851 of 2012 on the file of Motor Accident Claims Tribunal (III Additional District Court), Tirunelveli.

For Appellant : Mr.J.S.Murali

For R1 to R3 & R5 : No appearance

For 4th Respondent : Mr.V.Sakthivel

For 6th Respondent : Mr.C.Jawhar Ravindran

JUDGMENT

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal, dated 01.10.2015 in MCOP No.851 of 2012 on the file of Motor Accident Claims Tribunal (III Additional

District Court), Tirunelveli.

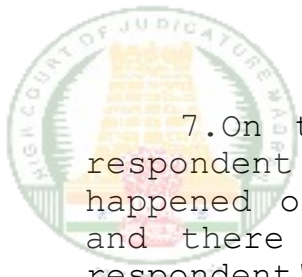
2.The short facts of the case is that on 09.07.2011 at about 02.10 hours, when the claimant was travelling in the Tanker Lorry TN-28-P-1782 in the course of his employment as 'Cleaner' on Trichy-Madurai main road, near Manapatti Duvaravathi Amman Koil Arch, the driver of the said Lorry drove it in a rash and negligent manner and hit against the another Lorry TN-33-A-1213, which was parked for undertaking some repairing works. Immediately, the driver of the Tanker Lorry and claimant were getting down from the Lorry and they were making arrangements to take the said Tanker Lorry, which was dashed on the back side of the Lorry, at that time, another Lorry TN-28-AH-6829 came in a rash and negligent manner and hit against the Tanker Lorry TN-28-P-1782, as a result of which, the claimant and some other persons standing therein, sustained grievous injuries and immediately, the claimant was admitted in the Government Hospital, Melur and thereafter, he was taking treatment as inpatient for 6 days and subsequently, he was taking treatment in Balaji Home, Perumalpuram and finally, in Meenakshi Mission Hospital and Research Centre, Madurai. The claimant filed a claim petition seeking compensation of Rs.15,00,000/- for the injuries sustained by him in the accident.

3.The claim was opposed by the respondents 2, 4 and 6/ Insurance Companies in the claim petition, disputing the manner of accident and their liability to pay compensation.

4.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the drivers of the offending vehicles were responsible for the accident and awarded compensation of Rs.2,50,000/- together with interest @ 7.5% p.a, directing the appellant Insurance Company/2nd Respondent and the 4th respondent Insurance Company/4th respondent to pay the compensation at the ratio of 50:50. Aggrieved by the said award, the National Insurance Company is before this court.

5.Heard the learned counsel appearing for either side and perused the materials available on record.

6.The learned counsel appearing for the appellant/2nd respondent Insurance Company argued that the claimant was travelling as a Cleaner in the Tanker Lorry (TN-28-P-1782) and it is only the Lorry (TN-28-AH-6829) insured with the 4th respondent Insurance Company dashed against the Tanker Lorry, as a result of which, the claimant has sustained injuries and the driver of the Lorry (TN-28-AH-6829) insured with the 4th respondent Insurance Company alone has driven the Lorry rashly and negligently and dashed against the Tanker Lorry and caused the accident and therefore, it is crystal clear that the Lorry insured with the 4th respondent Insurance Company alone is negligent for the accident and prays that the Civil Miscellaneous Appeal has to be allowed.



7. On the contrary, the learned counsel appearing for the 4th respondent Insurance Company argued that the accident was not happened on the hit of the 3rd respondent Lorry (No.TN-28-AM-6829) and there was no negligence or rashness on the part of the 3rd respondent's driver and it being on the left side of the road and the Tanker Lorry, which was going in front of the Lorry (TN-28-ah-6829) driven by its driver in a rash and negligent manner, dashed from behind the 5th respondent's Lorry (TN-33-A-1213), which was parked on the middle of the road without any indicator on the Highways road and therefore, the driver of the 3rd respondent is not in a position to stop the vehicle abruptly and as a result of which, the 3rd respondent Lorry dashed against the Tanker lorry TN-28-P-1782 and the accident had happened only on account of the fault of the driver of the Tanker Lorry, for which the 4th respondent Insurance Company is not liable to pay the compensation.

8. In this case the injured claimant was examined as PW1. PW1 deposed that on 09.07.2011 at night, when he travelled in the Tanker Lorry TN-28-P-1782 as a Cleaner, proceeded on Trichy-Madurai main road, when the above Tanker Lorry reached near Manapatti Duvaravathi Amman Koil Arch, the Driver of the said Tanker Lorry drove the vehicle in a rash and negligent manner and dashed against a parked Lorry and when he and the driver of the Tanker Lorry, in which he travelled, while making arrangement to take the said parked Lorry, at that time another Lorry (TN-28-H-6829) driven by its driver in a rash and negligent manner and dashed against him and some persons and he sustained injuries and hence, the respondent/4th respondent Insurance Company is liable to pay the compensation.

9. The main contention of the appellant/2nd respondent Insurance Company is that when the driver of the Tanker Lorry and the Cleaner are making arrangements for removing the parked Lorry, at that time, the 3rd respondent vehicle came in a rash and negligent manner and dashed against the claimant and some other persons.

10. In this case, the injured gave Ex.P1 complaint. On perusal of Ex.P1, it is stated that at the time of accident, the 2nd respondent herein drove his vehicle in a rash and negligent manner and dashed against a parked Lorry (TN-33-A-1213) and he sustained injuries and afterwards, the 3rd respondent, who is the driver of the Lorry (TN-28-AH-6829) came in a rash and negligent manner and dashed against the claimant and some other persons and they were sustained injuries. Hence, the claimant sustained injuries due to the rash and negligent driving of the 1st respondent and the 3rd respondent. Further, FIR was also registered as against the drivers of the 1st respondent and 3rd respondent herein. Hence, this court is of the considered view that the tribunal correctly came to the conclusion that the accident occurred due to the rash and negligent driving of the respondents 1 and 3, who drove their vehicle in a rash and negligent manner and rightly fixed the negligence at the ratio of 50:50 and awarded fair compensation. Therefore, it is not necessary to interfere into the findings of the trial court.



11. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award of the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concern.

To

1. The Motor Accidents Claims Tribunal-cum-
III Additional District Court, Tirunelveli.

Copy to:-

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s. J.S. MURALI, Advocate (SR-18553[F] dated 13/05/2021)

C.M.A (MD) No. 551 of 2015
13.05.2021

RD(18.08.2021) 4P 5C