

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

Date of Reservation	06.01.2021
Date of Judgment	05.02.2021

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CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A(MD)No.1 of 2015andMP(MD)No.1 of 2015

The Branch Manager,
National Insurance Co. Ltd.,
Door No.2A, Thirumkulam,
North Street,
Thallakulam,
Madurai-2.

: Appellant/2nd Respondent

Vs.

1.Raja Mohan @ A.R.Mohan

: R1/Claimant

2.N.Ponraj

3.C.Arokkiaraj

4.The Divisional Manager,
New India Assurance Co. Ltd.,
Egmore, Chennai.

: R2 to R4/R1, R3 and R4

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 11.02.2009 made in MCOP No.361 of 2006 on the file of Motor Accident Claims Tribunal (I Additional Subordinate Court), Tirunelveli.

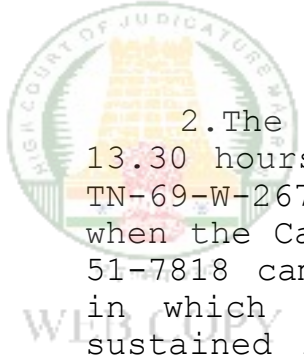
For Appellant : Mr.S.Srinivasa Raghavan

For 1st Respondent : Mr.S.Siva Thilakar

For R2 and R3 : Dismissed
(vide order, dated 26.06.2018)

For 4th Respondent : Mr.J.S.Murali**JUDGMENT****(Thro' VC)**

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (I Additional District Judge), Tirunelveli, in MCOP No.361 of 2006, dated 11.02.2009.



2.The brief facts of the case are that on 23.06.2005 at about 13.30 hours, the claimant was travelling as a passenger in the Car TN-69-W-2678 on Madurai to Kanyakumari National Highways road and when the Car coming north of Kangaikondan Petrol Bunk, the Lorry TN-51-7818 came in the opposite direction and dashed against the Car, in which the claimant was travelling. Due to it, the claimant sustained lacerated injuries and other injuries all over the body and immediately, he was taken to Sree Sudharsan Hospital, Tirunelveli where he was inpatient between 23.06.2005 and 15.07.2005. The claimant, sought compensation of Rs.5,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

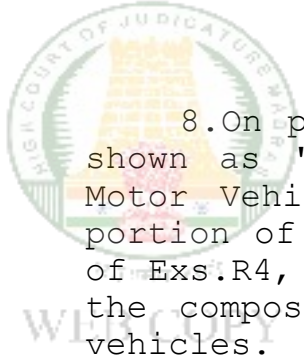
3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.1,69,560/- with interest @ 7.5% p.a. Aggrieved by the award of the tribunal. The appellant Insurance Company is before this court with this appeal.

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

5.In this case, the dispute is with regard to negligence. The learned counsel appearing for the appellant Insurance Company/2nd respondent submitted that the accident in question took place as a result of head on collision of two vehicles and the claimant is the injured, who was travelling in the Car TN-69-W-2678 and there was no negligence on the part of the driver of the lorry TN-51-7815 and a cursory perusal of Exs.P4 and P5 would prove the absence of guilt on the part of the driver of the lorry and also would prove that the competent Magistrate court had acquitted the driver of the lorry from the criminal prosecution alleging negligence on the part of the driver of the lorry and the accident had taken place as a result of sole negligence on the part of the driver of the Car and it is a case of composite negligence and the tribunal ought not to have fastened the entire liability on the owner of the lorry and the Insurance Company of the lorry involved in the accident and prays that the civil miscellaneous appeal has to be allowed.

6.On the other hand, the learned counsel appearing for 4th respondent Insurance Company argued that the accident occurred only due to the negligent driving on the part of the lorry and prays that the civil miscellaneous appeal has to be dismissed.

7.In this case, PW1 and PW2 stated that the accident occurred due to the rash and negligent driving of the lorry. But on the side of the appellant/2nd respondent, it is stated that the accident occurred due to the rash and negligent driving of the Car. Hence, it is necessary to be decided whether the accident took place due to the negligent on the part of the driver of the lorry or on the part of the driver of the Car. For that, it is necessary to refer the rough sketch Ex.P3 and observation mahazar Ex.R4.



8. On perusal of Ex.R4 rough sketch, the place of occurrence is shown as 'on the middle of the road'. Further, on perusal of Motor Vehicle Inspection Report Ex.P3, it reveals that the front portion of both the vehicles were found damaged. On careful perusal of Exs.R4, R5 and P3, it reveals that the accident took place due to the composite negligence on the part of the drivers of both the vehicles. Hence, the trial court finding that the accident took place due to the rash and negligent driving of the lorry driver is not correct.

9. It is pertinent to note here that the driver of the lorry has not chosen to give the complaint stating that the accident took place only due to the rash and negligent driving of the driver of the Car. Further, the driver of the lorry has not sent any petition opposing registration of the criminal case against him. Hence, this court held that the accident occurred only due to composite negligence on the part of the drivers of both the Car and the lorry. Therefore, this court fixed the negligence at 70% on the part of the driver of the lorry and 30% fixed on the part of the Car driver.

10. It is to be noted that the learned counsel appearing for the appellant Insurance Company has not disputed the quantum award by the tribunal and he has challenged this appeal on the basis of the negligence. Hence, this court, while confirming the award passed by the tribunal, fixed the negligence at the ratio of 70% on the side of the lorry driver and 30% on the part of the Car.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is confirmed. The negligence is fixed at 70% on the part of the lorry Driver and 30% on the part of Car Driver. The appellant Insurance Company and the 4th respondent Insurance Company are directed to deposit their apportionment of negligence amount as fixed by this court before the tribunal together 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. The excess amount if any, shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To,

1. The Motor Accident Claims Tribunal/
I Additional Sub Court,
Tirunelveli.

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

+1 CC to MR.S.SIVA THILAKAR, Advocate (SR-4041[F] dated
09/02/2021)

C.M.A(MD)No.1 of 2015
05.02.2021

VB (05.03.2021) 4P 5C