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CMA.3547 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2022

PRONOUNCED ON : 06.07.2022

C O R A M :

The Hon'ble Mrs. Justice J. NISHA BANU

CMA.3547 of 2010

V.Jegatheeswaran

...Appellant

.. Vs ..

1.Devendrakumar

2.The Oriental Insurance Co Ltd.,

TAP First floor, Dhapper Plaza Building,

G.T.Road, Bhavan Cinema,

Kaziabad.

3.S.Soundararajan

4.The Branch Manager,

National Insurance Company Ltd.,

1631/1-B, 1st Floor, Salem Main Road,

Sankari-637 301.

..Respondents

CMA filed under 174 of Motor Vehicles Act, 1988, as amended by Act 54 of 1994 to set aside the order dated 01.04.2008 made in MCOP.No.251 of 2006 on the file of Motor Accident Claims Tribunal Sub Court, Sankari,



CMA.3547 of 2010

For appellant : Mr.C.Kulanthaivel

For respondents : Ms.R.Sreevidhya for R2

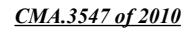
Mr.K.Padmanabhan for R4

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JUDGMENT

This appeal is filed by the claimant raising the main ground that the appellant/claimant is entitled to the rest of 50% of the award amount from the 4th respondent even assuming that there was a contributory negligence on his part, since the 4th respondent is an insurer of the 3rd respondent. There was no dispute that the appellant was working as driver and he sustained injuries while he was working as driver of the 3rd respondent.

2. The case of the appellant is that the accident took place on 24.03.2006 at about 6 am near Sirasa Bridge, A.B.Road, Gwalior, Madhya Pradesh. While the appellant/claimant driving the Taurus lorry bearing Reg.No.KA-01-AA-3848, Eicher Lorry bearing Reg.No.HR-38-L-8038 which came in opposite direction suddenly turned in extreme right side of the road and hit against the driver side of the lorry driven by the appellant. In the said accident, the appellant/claimant sustained grievous injuries, whereas in the



3. The findings of the Tribunal is that P.W.1/claimant has been and he is the eye witness to the accident. The offending lorry driver unhurt but the cleaner died in the accident and in order to help the family to get benefits, charge sheet could have been filed against the P.W.1. However, from the evidence, the tribunal found that if the driver ought to have driven in careful manner and taken the extreme could have avoided the accident. The Tribunal as such given a finding to rash and negligence of both the lorry drivers, the accident occurred. e, contributory negligence of 50% has been imposed on the claimant.

<https://www.mhc.in.gov.in/judis>



CMA.3547 of 2010

50% has to be set aside and the entire compensation may be directed to be deposited before the Tribunal.

5. Alternatively, it is argued by the learned counsel for the appellant that in the course of employment, the accident took place and so 3rd and 4th respondents are parties and in such circumstances, at the rate applicable to Workmen's Compensation Act, 1923, 4th respondent may be directed to pay the compensation. Learned counsel relied upon judgment reported in **2020 (2) TN MAC 78 [Divisional Manager , New India Assurance Co Ltd., Vs. Govindan and others]**.

6. The learned counsel for the 4th respondent on the other hand submitted that the tribunal exonerated the 3rd and 4th respondents of their liability. The appellant's argument over compensation under Workmen Compensation Act is concerned, it is submitted that the appellant having elected forum under one Act in preference to other, cannot be permitted to raise different provisions of the Act, so as to enforce liability of insurer. In this regard, learned counsel relied on decision reported in **2005(2) TNMAC page 264**.



CMA.3547 of 2010

7. It is settled proposition of law that when two remedies available under Doctrine of Election, for the same relief, aggrieved party has option to elect either of them but not both. S.167 provides for option to the claimant where death or bodily injury gives rise to claim compensation both under 1988 Act and 1923 Act, and that the claimant is entitled without prejudice to provision of Chapter X for no fault liability. To claim either of these Act, but not under both. The claimant having chosen forum under Section 166 of the Motor Vehicles Act, 1988, cannot fall back upon provisions of 1923 Act.

8. Going by the facts, it is very clear that FIR and Charge sheet in respect of the accident was filed as against the appellant. The Police after investigation also filed charge sheet against the appellant. So the appellant being the tort-feasor, the ratio of negligence is fixed as 50% and in such a situation, he cannot seek any relief.

9. Even if it is assumed that the claimant is entitled to choose any one of the two fora, depending upon the benefits that he may get before either of them, the claimant should establish that he is entitled to approach the court under Section 166 and that he was not himself a tort-feasor. That is not proved



CMA.3547 of 2010

in the present appeal.

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10. The compensation arrived at by the Tribunal was Rs.3,51,904/- and taking 50% towards contributory negligence, directed the 1st and 2nd respondents to pay Rs.1,75,952/- as compensation. This court do not find any infirmity in the award of the Tribunal. Accordingly, the award dated 01.04.2008 is confirmed. The Civil Miscellaneous Appeal stands dismissed. No costs.

Index :Yes/No

06.07.2022

Internet :Yes/No

nvsri

To

- 1.The Judge, Motor Accident Claims Tribunal Sub Court, Sankari,
- 2.The Section Officer, V.R.Section, High Court, Madras.



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CMA.3547 of 2010

J.NISHA BANU, J.

nvsri

C.M.A.No.3547 of 2010

06.07.2022