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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.2067 of 2012

and

M.P.No.1 of 2012

The Divisional Manager,
United India Insurance Co.Ltd.,
Katapadi Road,
Vellore - 632 004.

... Appellant/4th Respondent

Vs.

1. Ammu @ Amul

...1st Respondent/Petitioner

2. S.Senthil Kumar

... 2nd Respondent/1st Respondent

3. The Divisional Manager,
National Insurance Co.Ltd.,
Vellore - 632 004.

... 3rd Respondent/2nd Respondent

4. M/s.A.B.T.Ltd.,
10/14-15, Kalingarayan Street,
Ram Nagar,
Coimbatore - 641 009.

... 4th Respondent/3rd Respondent

(II & IV Respondents remained exparte in the
lower Court and therefore notice may be
dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicle Act, 1988 against the award and decree dated
28.11.2011 passed in M.C.O.P.No.266 of 2004 by the Chief
Judicial Magistrate, Motor Accidents Claims Tribunal,Vellore.

For Appellant : Ms.R.Rathna Thara

For Respondents : Mr.Sivakumar for R1
Mr.S.Vadivel for R3
No appearance for R2 & R4



J U D G M E N T

This appeal is directed against the award dated 28.11.2011 passed in M.C.O.P.No.266 of 2004 by the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Vellore.

2.For the sake of convenience, the parties are described as per their ranking before the Tribunal.

3. The brief facts in a nutshell are as follows :

On 30.08.2004 at about 12.00 noon, the claimant was travelling along with other persons in a lorry bearing Registration No.TN-23-H-2289, belonging to the 1st respondent and insured with the 2nd respondent and when the lorry was nearing Polur-Kunnathur junction road, the driver of the 1st respondent's lorry drove the same in a rash and negligent manner and hit against another lorry bearing Registration No.TAG 663, belonging to the 3rd respondent and insured with the 4th respondent. Due to the impact, the claimant sustained grievous injuries and she was taken to Vellore Medical College Government Hospital. Hence, the petitioner filed M.C.O.P.No.266 of 2004 seeking compensation of Rs.1,50,000/-.

4.According to the claimant, the accident had occurred due to the rash and negligent driving of the drivers of the Lorries, hence, the owners as well as the insurers of the offending vehicles are jointly and severally liable to pay compensation.

5.Resisting the claim petition, the 2nd and 4th respondent/Insurance Companies filed their counter statements disputing the manner of accident, age, avocation and income of the claimant and their liability to pay the compensation.

6. The respondents 1 and 3, being the owners of the lorries bearing Registration Nos.TN-23-H-2289 and TAG-663 respectively, remained ex-parte before the Tribunal.

7. To substantiate the case on the side of the claimant, the petitioner herself was examined as P.W.1 and Dr.Riyaz Ahamed was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. On the side of the respondents, one Gnanasekaran was examined as R.W.1 and three documents were marked as Exs.R1 to R3.

8.The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the drivers of the lorries bearing Registration Nos.TN 23 H 2289 and TAG 663, respectively, belonging to the respondents 1 and 3 and fixed negligence in the ratio 50% : 50% and awarded a sum of Rs.80,000/- as compensation



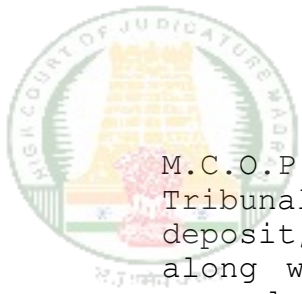
to the claimant. By coming to such conclusion, the Tribunal directed both the 2nd respondent-National Insurance Company, being the insurer of the 1st respondent's lorry as well as the 4th respondent-United India Insurance Company Limited, being the insurer of the 3rd respondent's lorry to pay Rs.40,000/- each to the claimant.

9. Against the said award dated 28.11.2011 made in M.C.O.P.No.266 of 2004, the 4th respondent -United India Insurance Company has filed the present appeal.

10. Ms.R.Rathna Thara, learned counsel appearing for the appellant/United India Insurance Company Ltd., contended that the accident had occurred only due to the negligence of the driver of the lorry, belonging to 1st respondent and the First Information Report was also registered against the driver of the lorry, in which, the claimant travelled as unauthorized passenger. In such circumstances, the Tribunal ought to have fixed the entire negligence on the part of the respondents 1 and 2, but, instead of doing so, the Tribunal fixed 50% liability on the respondents 3 and 4 and passed the award. She further contended that the Tribunal failed to see that the claimant is not authorized to travel in the goods vehicle even with the consent of the driver of the 1st respondent's lorry. The Tribunal ought to have dismissed the claim petition as the claimant was only an unauthorized passenger.

11. The learned counsel further argued that challenging the said award dated 28.11.2011 made in M.C.O.P.No.266 of 2004, the 2nd respondent/National Insurance Company already filed C.M.A.No.2581 of 2013. This Court by judgment dated 10.11.2020, allowed the appeal by setting aside the liability on the side of 2nd respondent/National Insurance Company and directed the 1st respondent-owner of the lorry bearing Registration No.TN-23-H-2289 to deposit 50% of the award amount. Hence on the same lines, she prayed for setting aside the award of the Tribunal directing the appellant/United India Insurance Company to pay 50% of the compensation award and allow the appeal.

12. Per contra, the learned counsel appearing for the claimant contended that the claimant and others travelled in the goods vehicle for their business purpose with the consent of the driver of the 1st respondent's lorry. The claimant is not an unauthorized passenger. The Tribunal, considering the evidence let in by the claimant, held that claimant is not an unauthorized passenger and the Insurance Company of both the lorries are liable to pay the compensation. The Tribunal has given valid reasons for directing the appellant/4th respondent to pay 50% of the compensation awarded and prayed for dismissal of the appeal.



M.C.O.P.No.266 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Vellore. On such deposit, the claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Vellore.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Vadivel, Advocate, S.R.No.14095

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.14222

C.M.A.No.2067 of 2012
and
M.P.No.1 of 2012

MG(CO)
UMA(27/06/2022)