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C.M.A.No.2773 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2773 of 2017

The United India Insurance Corporation Ltd.,
No.48, Chandira Plaza,
No.17, Vallalar Street,
Noombal, Chennai-600077.

...Appellant

Vs.

1.M.Ajeethkumar @ Ajeeth @ Ajaj

2.S.Sudha

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the award and decree dated 06.06.2017 made in M.C.O.P.No.452 of 2013 on the file of Motor Accidents Claims Tribunal, (2nd Additional District Judge), Poonamallee.

For Appellant : Mr.A. Dhiraviyanathan
For Respondents : Mr.M.Sivakumar for R1
No appearance for R2

JUDGMENT

This appeal has been filed by the appellant/Insurance Company to set aside the award and decree dated 06.06.2017 made in M.C.O.P.No.452 of 2013 on the file of Motor Accidents Claims Tribunal, (2nd Additional District Judge), Poonamallee.



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2. The case in brief is as follows:

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On 19.04.2013, the first respondent was travelling in a motor cycle bearing Regn.No.TN-20/BR-1423, as a pillion rider, rode by his friend on the Tambaram-Puzhal Bye Pass Road. While they were coming near Sai Baba Temple, Menambedu, a container lorry bearing Regn.No.TN-03/J-1245 belonging to the second respondent, the motor cycle dashed with container lorry and thus the accident occurred, due to which, the first respondent and rider sustained multiple grievous injuries and the rider of the motor cycle died on the spot.

3. Heard the learned counsel for the appellant and the learned counsel for the first respondent.

4. The learned counsel for the appellant has submitted that the Tribunal has failed to consider the evidence of PW2 eye witness, pillion rider was examined as PW2 in MCOP.No.436 of 2013. In his cross-examination, he admitted that the deceased and pillion rider were speaking with each other at the time of accident. Further the rider was not in sound mind at the time of giving FIR and hence, it clearly shows that the rider alone real tort feaser. He further submitted that the rider dashed against the standing lorry but the



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Tribunal failed to consider the entire negligence on the rider. But it has fixed the negligence at 25% towards the rider and 75% on the part of the appellant in the connected MCOP.No.436 of 2013. The only contention raised by the appellant/Insurance Company is that the Tribunal has erroneously fixed the contributory negligence of the vehicle insured with the appellant at 75%. According to the appellant, the insured container lorry was stationary at the time of accident and hence they cannot be held responsible to pay the compensation. The claimant was the pillion rider of the motor cycle which dashed against the container lorry which is insured with the appellant and the accident happened on 19.04.2013. He further submitted that the rider of the motor cycle was the real tortfeasor. The police ignored the FIR given by the owner of the Selvam Hotel and fabricated the delayed FIR against the first respondent vehicle. The question of violation of rules by lorry does not arise because it has left 9 metres space in the road side for free flow of traffic. Hence, he prays to allow this appeal.

5. The learned counsel for the first respondent has submitted that the accident was solely due to the negligent action of the driver of the container lorry. The appellant and second respondent are vicariously and statutorily liable to compensate the first respondent. Therefore, he prays to dismiss the appeal.



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6. The Tribunal after considering the arguments of both sides and perusing the materials has awarded Rs.40,000/- to the first respondent/petitioner therein, payable by the Insurance Company within a period of two months from the date of filing the petition with interest and costs.

7. This Court in CMA.No.2692 of 2016, has observed that based on the sketch submitted by the police which has been marked as Ex.R1 before the Tribunal, the Tribunal has fixed the contributory negligence of the driver of the insured container lorry at 75% and the deceased at 25% respectively. Hence, this Court has dismissed the appeal on 21.06.2021. However, it has not fixed any negligence on the pillion rider of the motor cycle.

8. Considering the facts and circumstances of the case, this Court is of the opinion that the Tribunal has rightly fixed 25% of negligence on the rider of the motor cycle and 75% of negligence on the Insurance Company in the connected MCOP.No.436 of 2013. In the case on hand, the claimant is only a pillion rider. In view of the order passed in CMA.No.2692 of 2016, this court deems it correct to fix the same ratio of 25% of negligence towards the pillion rider and 75% of negligence towards the appellant/Insurance Company as



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fixed by the Tribunal.

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9. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

10. The Appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs as assessed by the Tribunal after deducting the amount already deposited if any to the credit of M.C.O.P.No.452 of 2013 on the file of Motor Accidents Claims Tribunal, (2nd Additional District Judge), Poonamallee, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P.No.452 of 2013 to the bank account of the first respondent as per the ratio apportioned through RTGS within a period of one week thereafter. No costs.

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Index :Yes/No

Internet:Yes/No

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A.A.NAKKIRAN, J.

gv

To

1. The (2nd Additional District Judge),
Poonamallee.
2. The Section Officer,
V.R.Section,
High Court, Madras.

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