



C.M.A.No.2822 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 10.06.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No. 2822 of 2017

and

C.M.P.No.16125 of 2017

The Oriental Insurance Company Limited,
II Floor, Parimalam Complex,
No.11, EVN Road,
Erode – 638 011.

... Appellant/5th respondent

Vs.

1.Aachiammal

...1st Respondent/Petitioner

2.R. Velusamy

3M. Mallika

4.M/s.National Insurance Company Limited,
No.78, Thiruvenkatasamy Chetty Street,
Erode – 638 001.

5.S.Velusamy

... Respondents 2 to 5/
Respondents 1 to 4



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 18.01.2017 in M.C.O.P.No.739 of 2013 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Erode.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondents : Mr.C.S.Saravanan for R1

Mr.D.Bhaskaran for R4

R2, R3 and R5 - Served
No appearance

JUDGMENT

The insurer of the motor cycle bearing Registration No.TN 38 BC 0384 belonging to the husband of the petitioner/1st respondent is the appellant before this Court.



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2.The brief resume of the facts that has been culminated in filing of the present appeal is narrated herein below:

The 1st respondent has filed M.C.O.P.No.739 of 2013 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Erode, claiming compensation of a sum of Rs.4,31,000/- which was restricted to a sum of Rs.4 lakhs for the injuries sustained by her in a motor vehicle accident. It is her contention that on 16.09.2013 about 01.00p.m., the 1st respondent's husband Velusamy was riding his Bajaj Platina motor cycle, bearing Registration No.TN 33 BC 0348 on the left side of the Kangayam to Erode Road with her travelling pillion in a very careful and cautious manner and its moderate speed. While so, a Tipper lorry, bearing Registration No.TN 36 1284 belonging to the 3rd respondent and insured with the 4th respondent, driven by the 2nd respondent rashly and negligently and in a high speed dashed against the motor cycle, as a result of which, both the petitioner and her



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husband had been thrown away and sustained injuries. Therefore, the 1st respondent had filed the above claim petition.

3.By order dated 27.02.2015, the owner and the insurer of the motor vehicle were impleaded as 4th and 5th respondents, respectively, in M.C.O.P.No.739 of 2013 by the Tribunal and the 5th respondent is the appellant herein. The owner and the driver of the Tipper lorry remained *ex parte* and it was only the Insurer of the Tipper lorry who filed a counter.

4.The 5th respondent/appellant had filed a counter statement contending that even as per the claimant, the accident was only the result of the negligence of the driver of the Tipper lorry and therefore, there was no necessity to implead the appellant and the owner of the motor cycle.



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5.The Tribunal, after considering the evidence, came to the conclusion that the accident was solely on account of the negligence of the driver of the motor cycle and that the driver of the Tipper lorry was in no way responsible for the accident. The Tribunal has relied upon the First Information Report which has been closed as a mistake of fact by the police authorities and also relied upon Ex.P.4 - MVI Report which shows that there were no damages to the lorry and that it was only the two wheeler that sustained damages which would clearly show that the accident had occurred in the manner described in the claim petition.

6.That apart, the Tribunal has also considered the prevaricating evidence of the claimant/1st respondent herein. Ultimately, the Tribunal has awarded a compensation of a sum of Rs.2,20,600/- and the liability has been fixed on the 4th respondent motor cycle and



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consequently, on the insurer, the appellant herein. Challenging the same, the 5th respondent has filed the above appeal.

7.Heard the learned counsel appearing on either side and perused the papers.

8.A perusal of the Award passed by the Tribunal would clearly show that the Tribunal has considered the Ex.P.1 – First Information Report as well as Ex.P.3 - Observation Mahazar and Ex.P.4 and Ex.P.5 - MVI Reports to come to the conclusion that the lorry was not involved in the accident. That apart, the evidence of PW1 in her cross examination would also show that it was only the driver of the motor cycle who is responsible for the accident. Therefore, in the light of this overwhelming evidence, I see no reason to interfere with the order passed by the Tribunal.



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Accordingly, this Civil Miscellaneous Appeal is dismissed.

Consequent to the dismissal of the appeal, the appellant Insurance Company is directed to deposit the entire amount, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.739 of 2013 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Erode, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the 1st respondent is permitted to withdraw the entire award amount with proportionate accrued interest and costs, by making necessary applications. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To
The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.



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P.T. ASHA, J,

mps

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