



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.2840 & 2841 of 2017
and
CMP.No.16251 of 2017

IFFCO - TOKIO
General Insurance Company Ltd.,
Represented by its Branch Manager,
No.306-A, 1st Main Road,
Viruthampet, Vellore

...Appellant in both CMAs

Vs.

1.D.Udayakumar ...1st respondent in CMA.No.2840 of 2017

1.Poovendiran ...1st respondent in CMA.No.2841 of 2017

2. Yajnarayana Somayaji ..2nd respondent in both CMA

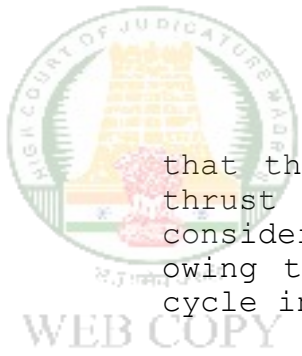
Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common order and decree made in M.C.O.P.Nos.76 & 85 of 2014 dated 22.09.2016 on the file of the Motor Accidents Claims Tribunal (III-Additional District Court), Vellore at Tirupattur.

For Appellants in both CMA : Ms.Saraswathi for
Mr.C.R.Krishnamoorthy

For Respondents in both CMA: Mr.Terry Chella Raja for R1
R2-Exparte

C O M M O N J U D G M E N T

The 2nd respondent / Insurance Company in MCOP.No.76 of 2014 and in MCOP.No.85 of 2014, which were both disposed of by a common judgment dated 22.09.2016 by the III-Additional District Court, Vellore at Tirupattur / Motor Accident Claims Tribunal is the appellant before this Court. They can be termed as the Insurer. They are aggrieved by the grant of compensation to injuries suffered by the two respective claimants in the aforementioned Motor Accident Original Petitions and they claim



that the compensation even if so granted, should not have been thrust on them in entirety and the Tribunal should have considered the possibility of the accident having occurred, owing to the negligence contributed by the driver of the motor cycle in which the two claimants were riding as pillion riders.

2.A better examination of the facts would reveal that the two claimants, D.Uthayakumar, the claimant in M.C.O.P.No.76 of 2014 and Poovendiran, the claimant in M.C.O.P.No.85 of 2014 were riding pillion in a motor vehicle bearing registration number KA-01-EF-5759, which motor cycle was driven by Perumalsamy, who was not a party to the Motor Accident Claims Original Petitions.

3.The accident occurred on 05.08.2011 at around 8.00 p.m. At that time, when the motor cycle was proceeding near Sandiyoor turning in Vaniyambadi to Krishnagiri Road, a Maruti Swift Car bearing registration No.KA-01-MJ-2925, had taken a 'U' Turn in the cutting of the road and at that point of time, the motor cycle dashed against the car. This is one aspect, which is taken up by the learned counsel for the appellant to emphasize that it was the motor cycle, which caused the accident. Rejection of this contention has necessitated the filing of the present appeals.

4.There were no witnesses to the accident. This Court can only take recourse to the documents filed during the course of trial to determine, the probable manner in which the accident occurred and whether the motor cycle dashed against the car or whether when the car took 'U' Turn, it dashed against the motor cycle leading to the accident, which caused the injuries to the two claimants.

5.The Tribunal proceeded to conduct trial on the issues framed. The first issue was with respect to the nature of the accident which had occurred and the discussion on that aspect had been read by both the learned counsel for the appellant and by the learned counsel for the 2nd respondent in both the appeals.

6.In the relevant portion, the Tribunal had stated that Ex.P8, report of the Motor Vehicles Inspector of the car, showed that there were damages to the car on the left side and observed that Exs.P9 and P10, rough sketch and observation Mahazar also supported the case of the claimants that the accident took place in the middle of the road and taking into consideration the fact the unwritten principle then when there is an accident between two vehicles, to a little extent, presumption can be drawn against the driver of the larger or heavier vehicle, the Tribunal arrived at the conclusion that the cause of the accident was only owing to the manner in which the car was



driven at the time when it took a 'U' turn. The fact that there were two pillion riders paled into insignificance. Since the car had been insured, the appellant is before this Court.

7. On examination of Ex.P8, which is the report of the motor Vehicle Inspector, who inspected the car bearing registration number KA-04-MJ-2925, Maruti Swift, the following are the damages:-

“Left hand side front fender, Bumper damaged, Left hand side wind shield glass broken, Left hand side rear view mirror broken, Left hand side front door dented”.

8. It is significant to point that the damages are on the left hand side of the vehicle from the front fender to the bumper, to the wind shield, to the rear side left mirror and also to the left hand side door. This would naturally mean that since the car had damages on the left side while taking a 'U' turn the bike must have been moving in front of the car. Only then, the left hand side of the car suffer damages. The documents also reflect that the car had dashed against the motor cycle which was in front when the car took the 'U' Turn.

9. It is evident that therefore, the accident was caused primarily only because of the manner in which the car being driven. There were no damages to the car on the right hand side. Ex.P9 is the sketch which shows the cutting in the road in which the 'U' Turn was taken and Ex.P10 is the observation Magazhar.

10. The learned counsel for the appellant placed strong reliance on the fact that the police investigation had been closed as a mistake of fact but I do not give any credit on that particular fact as normally in these cases, during the course of investigation, the Investigation Officers attempt to strike a balance and are comfortable in closing any case relating to an accident on mistake of fact.

11. It is also clear that this has no binding effect on the Tribunal under Section 168 & 169 of the Motor Vehicles Act, 1988, the procedure in which the enquiry should be conducted by the Tribunal had been given and though it is a summary procedure, during the course of recording of evidence, the Tribunal is vested with the powers of a Civil Court and therefore, can issue summons and direct production of documents. If compensation is determined, the Tribunal can also decide the compensation which should be paid and to whom and by whom. In the instant case, the Tribunal had undertaken such an exercise and placed the liability on the insurer of the motor car. I am not inclined to interfere with that finding of fact.



12. In view of the above observations, both the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13. It is stated that the entire amount has been deposited by the appellant. Liberty is granted to the respective 2nd respondent in both the appeals to withdraw the same together with accrued interest. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:

The Motor Accident Claims Tribunal,
III-Additional District Court,
Vellore at Tirupattur.

+2cc to M/s.C.R.Krishnamoorthy, Advocate, S.R.No.13987, 13988

+1cc to M/s.F.Terry Chellaraja, Advocate, S.R.No.14323

C.M.A.Nos.2840 & 2841 of 2017
and
CMP.No.16251 of 2017

PMK (CO)
RGA (27/04/2022)