BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.1008 of 2014
and
M.P(MD)No.2 of 2014

M/s.National Insurance Company Limited,
represented by its Divisional Manager,
North Veli Street,
Madurai. :Appellant/Second Respondent

.vs.

1.K.Balasubramanian :Respondent/Petitioner

2.S.Mohammed Ibrahim :Respondent/Ist Respondent

3.S.Sivagamasundari :Respondent/Respondent-3

4.M/s.Reliance General Insurance Company Limited,
represented by its Divisional Manager,
Madurai. :Respondent/Respondent-4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No.1068 of 2012, dated 02.01.2014, on the file of the Motor Accidents Claim Tribunal/Third Additional District and Sessions Judge(PCR),Madurai.

For Appellant :Mr.R.Srinivasan

For Respondent-1 :Mr.G.Venugopal
For Respondent-2 :No appearance

For Respondent-3 :Mr.K.K.Senthil
(No appearance)

For Respondent-4 :Mr.V.Sakthivel

JUDGMENT

****

This Civil Miscellaneous Appeal is directed against the judgment and decree made in M.C.O.P.No.1068 of 2012, dated 02.01.2014, on the file of the Motor Accidents Claim Tribunal/Third Additional District and Sessions Judge(PCR),Madurai.

2.The second respondent before the Tribunal is the appllant herein/Insurance Company. The appellant Insurance Company has filed this appeal challenging the finding rendered by the Tribunal fixing composite negligence at 75% : 25% between the drivers of the respondent No.1 and respondent No.3 before the Tribunal.The respondents 2 and 4 are the respective Insurance Companies of the respective buses. According to the first respondent/claimant, the accident took place on 7.4.2010. It is the case of the Petitioner that the deceased Mayilsamy was riding a two-wheeler bearing Registration No. TN 38 W 2628 on the left side of the road on the four way track road from Dindigul to Madurai directions. Whileso, the first respondent's vehicle and third respondent's vehicle came in the wrong way on the opposite direction one behind another. The first Respondent's vehicle came infront of the third respondent's vehicle. Both the vehicle was driven by its dirvers in a rash and negligent manner and dashed against the two wheeler driven by the deceased. Hence the deceased sustained fatal injuries and inspite of the treatment, he succumbed to injuries on 13.4.2010. Due to the injuries he succumbed and then died.

3.On the point of quantum of compensation, there is no challenge. The sole point that was urged before this Court is that the appellant Insurance Company vehicle is insured for the vehicle having Registration No. TN 58 T-9867. To prove the manner of the accident, P.W.2 was examined. He would set the criminal law in motion by filing the complaint under Ex.P3. In the Criminal Court, as per Ex.P7-charges were framed and it is against the third respondent's vehicle and charge has been framed under Section 304-A of IPC. In the final report, both of them are shown as accused. Based upon the evidence of P.W.2, the Tribunal has come to the conclusion that the accident has taken place due to the composite negligence on the part of both the drivers of both the buses and they have dashed against the deceased who was travelling in the two wheeler.

4.Admittedly, none of the drivers of both the buses are examined by either of the owner, assumes significance. On perusal of Ex.P3-FIR and the evidence of its author P.W.2, the Tribunal has come to the conclusion that the vehicle insured with the appellant Insurance Company dashed against the deceased at the first instance and the other vehicle that was following that vehicle, also dashed against that vehicle from the behind and made the accident more grave. Accordingly, the Tribunal fixed the composite negligence at

75% : 25% and hence, I find that the accident has taken place due to the rash and negligent driving of the driver of the vehicle insured with the appellant-Insurance Company which made the accident more grave by subsequent dashing of the bus following the first vehicle and hence, the ratio fixed by the Tribunal cannot be said to be fault and hence, the contention of the learned counsel for the appellant-Insurance Company cannot be countenanced, besides, none of the drivers of the buses were examined to let in contra evidence on the part of the second respondent which is insured with the appellant-Insurance Company and hence I find that the findings rendered by the Tribunal is just and reasonable and the apportionment of negligence made by the Tribunal does not warrant any interference by this Court.

5.Accordingly, the Civil Miscellaneous Appeal stands dismissed. The appellant Insurance Company is directed to deposit the their ratio of apportionment in the award amount, as ordered by the Tribunal, with propotionate accrued interest and costs, less the award amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent-claimant is permitted to withdraw the amount so deposited, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal. No costs. Consquently, connected Misellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsn

To

1.The Motor Accidents Claim Tribunal/
Third Additional District and Sessions Judge(PCR),
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-17466[F] dated 08/04/2022)

+1 CC to M/s.R. SRINIVASAN, Advocate (SR-17720[F] dated 11/04/2022)

+1 CC to M/s.K.K. SENTHIL, Advocate (SR-17699[F] dated 11/04/2022)

+1 CC to M/s.V. SAKTHIVEL, Advocate (SR-17728[F] dated 11/04/2022)

C.M.A(MD)No.1008 of 2014
and
M.P(MD)No.2 of 2014
07.04.2022

RK(21/04/2022) 4P 8C