



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2022

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.922 of 2017

and

C.M.P (MD) No.9736 of 2017

The Branch Manager,
ICICI Lombard General Insurance
Company Ltd.,
Madurai.

...Appellant/4th Respondent

Vs.

1.Thaaasikani
2.Packiyaraj
3.The Branch Manager,
Branch Office,
National Insurance Company Ltd.,
175A, Great Garden Road,
Thoothukdi - 628 001.

...1st Respondent/Petitioner

4.Kasi

...Respondent Nos.2 to 4/
Respondent Nos.1 to 3

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 24.03.2016 in MCOP.No.129 of 2010 on the file of the Motor Accident Claims Tribunal cum Sub Court, Vallioor and allow the above Civil Miscellaneous Appeal.

For Appellant	:Mr.K.K.Ramakrishnan
For R1	:Mr.S.Muthumalai Raja
For R2	:No Appearance
For R3	:Mr.S.Srinivasa Ragavan
For R4	:Mr.M.Gururaj

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment and decree, dated 24.03.2016 in M.C.O.P.No.129 of 2010 on the file of the Motor Accident Claims Tribunal cum Sub Court, Vallioor.



2.It is a case of accident, which took place on 28.08.2009, at about 5.30 p.m. while the claimant drove the van bearing Registration No.TN-69-M-2337 belonging to the first respondent, when he came near Manaloore Vaigai Vinayagar Kovil, a lorry bearing Registration No.TN-63-C-8075 driven by its driver in front of the petitioner's van applied sudden break. Due to which, the petitioner dashed against the back side of the lorry and the petitioner sustained multiple injuries all over his body and fracture on his right leg. Immediately the petitioner was taken to the Preethi Hospital, Madurai and admitted as inpatient from 28.08.2009 to 22.09.2009.

3.The claimant has filed a petition in M.C.O.P.No.129 of 2010 on the file of the Motor Accident Claims Tribunal cum Sub Court, Vallioor, seeking compensation of Rs.7,00,000/-.

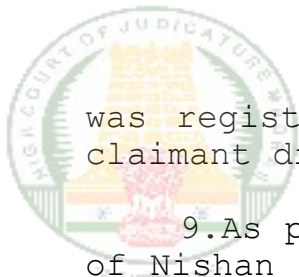
4.Before the Tribunal, on the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and eight documents were marked as Exs.P.1 to P.8. On the side of the respondents, one witness was examined as P.W.1 and one document was marked as Ex.R1

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondents and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the third respondent, directed the fourth respondent to pay compensation of Rs.3,83,300/-. Against which, the appellant/4th respondent has filed the present appeal to set aside the award of compensation passed by the Tribunal.

6.Heard the learned counsel for the appellant and perused the materials available on record.

7.The learned counsel appearing for the appellant contended that only due to the rash and negligent driving of the claimant, he dashed with the back side of the appellant insured vehicle. He further contended that F.I.R. was registered against the claimant and charge sheet was also filed. Further, from the evidence of RW1, it is clear that the claimant also pleaded guilty before the Criminal Court and sustained the conviction for his rash and negligent driving. So the driver is not responsible for the accident. Hence, the appellant/Insurance Company is not responsible for paying compensation.

8.A perusal of records would show that FIR was registered against the claimant, which was marked as Ex.P1 and after investigation, charge sheet has also filed and the same was also marked as Ex.P3. One Manokar, who was examined as RW1, has stated in his evidence that the claimant pleaded guilty before the Magistrate and no document was filed in support of the same. Based on the information given by the lorry driver/4th respondent, FIR (Ex.P1),



was registered, in which, there was no averment to show that the claimant drove the van in a rash and negligent manner.

9.As per judgment of Hon'ble Supreme Court of India in the case of Nishan Singh and Others Vs. Oriental Insurance Company Ltd., and others, reported in **(2018) 6 Supreme Court Cases 765**, wherein, in paragraph No.12 held as follows:

'12.....

'23.Distance from vehicles in front. -

The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.'

The expression 'sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10-15 ft between the truck and Maruthi car was certainly not a safe distance for which the driver of the Maruthi car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants'.

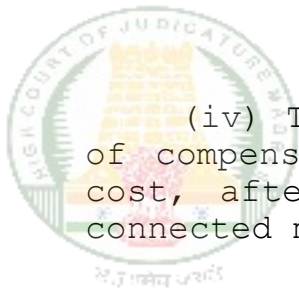
10.Considering the averments set out in the FIR and charge sheet, the claimant might have avoided the accident by following sufficient distance. Therefore, negligence is fixed at 70% on the driver of the lorry bearing Registration No.TN-63-C-8075 and 30% of the driver of van bearing Registration No.TN-69-M-2337. As far as the quantum is concerned, it is just and reasonable.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. The quantum of compensation awarded by the Tribunal is upheld.

(ii) The orders passed by the Tribunal with regard to the liability is modified and the negligence on the part of the driver of the lorry bearing Registration No.TN-63-C-8075 and the driver of the van bearing Registration No.TN-69-M-2337 in the ratio of 70:30.

(iii) Therefore, the appellant/Insurance Company is liable to pay 70% of the compensation amount awarded by the Tribunal, less the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.129 of 2010 on the file of the Motor Accident Claims Tribunal cum Sub Court, Vallioor, within a period of six weeks from the date of receipt of a copy of this order.



(iv) The first respondent/claimant is permitted to withdraw 70% of compensation awarded by the Tribunal with accrued interest and cost, after following due process of law. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Motor Accident Claims Tribunal cum Subordinate Judge,
Vallioor

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-2877[F] dated 28/01/2022)

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-2985[F] dated 28/01/2022)

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RK(02/03/2022) 4P 6C