IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1077 of 2013
and M.P.No.1 of 2013

K. Duraisamy ... Appellant

..Vs..

1.Sivagami
2.The United India Insurance Company Ltd.,
146, N.Kumar Complex,
Tiruchengode
Namakkal District. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 19.07.2012 made in MCOP.No.369 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional District Court, Namakkal)

For Appellant : Mr.T.Murugamanickam

For Respondents : Mr.R.Nalliyappan for R1
Ms.I.Malar for R2

JUDGMENT

This appeal has been filed by the appellant seeking to set aside the impugned award dated 19.07.2012 passed in MCOP.No.369 of 2011 by the Motor Accidents Claims Tribunal (Additional District Court, Namakkal).

2. The facts of the case, in brief, are as under:

On 18.02.2011 at about 4.15 p.m., the first respondent who was riding her TVS XL Super bearing Regn.No.TN-28-AE-4055 in Jedarpalayam to Kabilarmalai main road, a Tractor bearing Regn.No.TN-28-L-6167 in a rash and negligent manner, hit against the two wheeler of the first respondent and thereby caused the accident due to which she sustained multiple injuries all over her body. In view of the same, the claimant seeks compensation of Rs.5,00,000/- before the Tribunal. After trial, the claimant was awarded a sum of Rs.1,85,000/- as compensation, fixing negligence on the driver of the appellant being the owner of the vehicle and hence fixed liability on the appellant to pay the compensation to the claimant/first respondent herein. In view of the fact that the accident had occurred due to the negligence of the driver of the Tractor, the Tribunal has imposed the entire liability on the appellant/owner of the vehicle. Being aggrieved over the aforesaid award, the appellant herein /first respondent therein has filed the present appeal seeking to set aside the award granted by the Tribunal.

3. The learned counsel for the appellant would submit that appellant/first respondent therein has filed an additional counter denying the allegations made by the claimant. He denied the manner of occurrence of the accident. He submitted that the accident occurred due to the negligence of the claimant and the driver of the Tractor is not responsible for the accident. He further denied the age, income, occurrence of the accident, medical expenses and period of treatment, avocation, income and injuries sustained by the claimant and he has put to strict proof of the same. There is no Trailor attached with the Tractor. Therefore, there is no negligence on the part of the driver of the Tractor. Hence the appellant/owner of the vehicle is not liable to pay compensation. He has also relied on the Judgment rendered by this court in ***CMA(MD)No.557 of 2019 & CMP (MD) No.6696 of 2019 & CMP (MD) No.2924 of 2020 dated 16.12.2022*** reported in ***2023 (1) TN MAC 64*** where in it was held as follows:

> *6....... Since a Trailer is a Motor Vehicle within the meaning of Section 2(28) of the M.V.Act, it necessarily has to be insured and hence the Insurance Company of the Tractor can justly deny and defy its liability. Here, it needs*

to be underscored that even though a Trailer falls within the definition of a Motor Vehicle, yet it is not a self-propelling vehicle, and it requires another Motor Vehicle with propulsion to pull it. The duty, therefore, is on the Driver of the Tractor to ensure that no part, either the Tractor or the Trailer attached to it, that their use in the public place does not lead to the death or bodily injury to Third parties. In other words, it is the negligence of the Driver of the Tractor that led to the accident involving the Trailer. This Court, therefore, fixes the liability of the Insurance Company at 50% and that of the Owner of the Tractor at 50%.".

However, the compensation amount being borne by the appellant alone is not sustainable and liable to be quashed. Hence he prays to allow this appeal.

4. On the contrary, the learned counsel for the first respondent/petitioner therein would submit that the driver of the Tractor had caused the accident. Thus the Tribunal has rightly awarded the reasonable compensation to the claimant. Since the vehicle was not insured with the

aforesaid second respondent/Insurance company at the time of the accident, the owner of the vehicle is made liable to pay the entire compensation to the claimant. Hence, it does not require any interference of this court and prays for dismissal of the appeal.

5. The learned counsel for the second respondent/Insurance Company has submitted that in the FIR, it was stated that the Tractor bearing Regn.No.TN-28-L-6167 attached with two chasis / boxes came in a rash and negligent manner and hit against the claimant and thereby she sustained injuries. RW2 in his deposition has stated that the Tractor is meant only for agriculture and it alone was insured with the insurance company and the policy copy was marked as Ex.R4 and there is no provision to attach the Trailor. The owner of the vehicle do not prove that he did not attach Trailor with the Tractor. Further, he did not taken any steps to deny the contention of the FIR and charge sheet. RW1/owner of the vehicle himself has admitted that as per the policy copy, there is no provision to attach the trailors in the Tractor. It is also submitted that the multiplier adopted by the Tribunal is erroneous. Therefore, the Tribunal has fastened the entire liability on the

owner of the vehicle and accordingly directed the appellant to pay the compensation to the claimant. Hence, he prays for dismissal of the appeal.

6. Heard both sides and perused the entire documents produced before this Court.

7. During the trial, on the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and twelve documents were marked as Ex.P.1 to Ex.P.12. On the side of the respondents, two witnesses were examined as P.W.1 and P.W.2 and four documents were marked as Ex.P.1 to Ex.P.4.

8. On perusal of the award, it is seen that the Tribunal has exonerated the Insurance Company on the ground that the trailer had no RC, permit for the Trailer and the insurance. Since there is a grave fundamental violation and policy condition of the Motor Vehicles Act, the Insurance Company is not liable to indemnify the owner of the vehicle.

9. On perusal of Ex.P1/FIR and Ex.P4/charge sheet and deposition of PW1, Tractor was attached with 2 chasis or boxes and the 2nd chasis /box hit against the claimant. The owner deposed that he is having tractor alone and there is no trailors. But he does not prove his contention and also not taken any steps to to deny the same. The 2 chasis/boxes has not any Registration number and it does not insured with insurance company.

10. In view of the above Judgement cited by the appellant and considering the facts and circumstances of the case, this court modifies the liability in the ratio of 50% : 50% on the Insurance Company and the Owner of the Tractor respectively.

11. In respect of calculation of compensation, the Tribunal has adopted multiplier method as 16 which is erroneous. But the correct multiplier to be adopted is 15 since the age of the claimant is 39 years. Considering the nature of injuries and age of the claimant and since the year of accident is 2011, this court is of the considered view that it would be appropriate to adopt percentage method.

12. After considering the aforesaid fact and circumstances of the case, this court opines that the income fixed by the Tribunal at Rs,3000/- does not needs modification. The claimant is aged about 42 years at the time of accident and was earning Rs.5000/- per month as a tailor and agriculturist. But the Tribunal has assessed Rs.3000/- as the monthly income of the claimant. Considering the nature of injuries, this court is inclined to modify the percentage of disability from 30% to 25 %. Therefore, the loss of income is fixed at Rs.75,000/-(Rs.3000 x 25 %). The pain and sufferings fixed by the Tribunal does not require any modification and the same is confirmed at Rs.12,200/-. Thus the total compensation is modified to **Rs.87200/-(75000 + 12200).** The Insurance Company is hereby directed to pay the 50% of award amount which works out to Rs.43,600/- and the appellant is directed to pay the 50% of award amount which works out to Rs.43,600/- together with interest @ 7.5% p.a. from the date of petition till the date of deposit, to the credit of M.C.O.P.No.369 of 2011 on the file of the Motor Accident Claims Tribunal, (Additional District Court, Namakkal) within a period of six weeks from the date of receipt of copy of the

Judgment. Other terms of the award of the Tribunal shall remain the same.

13. In the result, the appeal is partly allowed and the award passed by the Tribunal in M.C.O.P.No.369 of 2011 is modified accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14.03.2023

Index:Yes/No
Internet:Yes/No
gv

To

1.The Motor Accidents Claims Tribunal
(Additional District Court, Namakkal)

2. The Section Officer
V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.

gv

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