IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.Nos.2160 2161 of 2012

National Insurance Company Ltd.,
Branch-I, Thanthai Periyar Market Complex,
P.B.No.15, No.1, Govindasamy Pillai Street,
Near Old Bus Stand, Salem-1. ... Appellant in both the CMAs

Vs.

1. Raja ..1st Respondent in CMA.No.2161/2012

2. Selvi

3. T. Murali ... Respondents in both the CMAs

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 10.11.2011 made in MCOP.Nos.1231 & 1232 of 2003 on the file of the Motor Accidents Claims Tribunal, Salem (In the court of Additional District Judge and Special Judge for EC Act Cases, Salem).

For Appellant in both the CMAs :Mr.S.S.Vadivel

For Respondents in both the CMAs : Mr.P.Jagadeesan for R1

For R2 in CMA No.2160/2012 and R3 in CMA.No.2161/2012 : No appearance

COMMON JUDGMENT

These appeals have been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 15.07.2016 in MCOP.Nos.1231 & 1232 of 2003 passed by the Motor Accidents Claims Tribunal, Salem (In the court of Additional District Judge and Special Judge for EC Act Cases, Salem).

2. The facts of the case briefly are as under:

On 06.06.2003, at about 02.15 a.m., the claimant/Selvi with her father and minor daughter Vijayalakshmi were travelling in an Auto Rickshaw bearing Regn.No.TCS 8472 owned by the first respondent and insured with the second respondent, which was driven by its driver from Uthamasolapuram Ponnammapet near Sand Market Opposite to Pargava

Plaza of Love-O-Colony in Salem Town side in a rash and negligent manner, rubbed the auto in the side portion of the on-coming bus. Due to the said impact, Selvi sustained grievous injuries and became permanently disabled and the child Vijayalakshmi sustained multiple fractures and she died on the way to hospital. In view of the same, the claimants in MCOP.No.1232/2003 seeks compensation of Rs.1,50,000/- before the Tribunal. The claimants in MCOP.No.1231 of 2003 seeks compensation of Rs.2,50,000/- before the Tribunal. After trial, the claimants were awarded a sum of Rs.95,000/- and Rs.1,50,000/- in MCOP.Nos.1231 of 2003 and 1232 of 2003 respectively as compensation and thus the Tribunal has directed the respondents 1 and 2 jointly and severally to pay a sum of Rs.95,000/- and Rs.1,50,000/- to the claimants as compensation. Being aggrieved over the aforesaid award, the Insurance Company has filed the present appeal seeking for exoneration of the Insurance Company from the liability.

3. The learned counsel for the appellant would submit that the Insurance Company ought to have exonerated from the liability in paying the compensation on behalf of the owner of the offending vehicle. He further submitted that the Tribunal relied on Ex.P1/ FIR for the proof of the accident

ought to have relied on the contents of Ex.Pl, for giving a finding regarding the point of negligence. It cannot rely on the FIR in a piecemeal manner. It failed to see that PW2 is none else than the author of the FIR/EX.PI. It ought not to have allowed PW2 to speak one thing before the police and a totally different version before the Tribunal for the purpose of getting compensation from the appellant. It failed to see that this is a clear case of hit and run and in the said circumstances, ought to have dismissed the claim petition against the claimants. It failed to see that if at all nothing prevented PW2 to take action against the police. It failed to see that the appellant herein had examined RW2, the investigating officer, who investigated the criminal case. It had not considered the evidence of RW2 and Ex.R2 and R3 at all while deciding the point of negligence. The total compensation granted to the claimant of Rs.95,000/- is highly disproportionate to the injuries suffered by the claimant and the length of treatment taken by the claimant/Selvi. It failed to see that PW2 had assessed the disability of the claimant at 45% without any basis and against the medical guidelines. In MCOP.No.1232 of 2003, he submitted that the Tribunal ought to have dismissed the claim petition on the basis of Ex.P1/FIR, R2, marked portion of final report and R3/copy of the final report. The appellant herein is questioning the award of the Tribunal on negligence, quantum and liability. the author of the FIR/EX.PI. It ought not to have allowed PW2 to speak one thing before the police and a totally different version before the Tribunal for the purpose of getting compensation from the appellant. It failed to see that this is a clear case of hit and run and in the said circumstances, ought to have dismissed the claim petition against the claimants. It failed to see that if at all nothing prevented PW2 to take action against the police. It failed to see that the appellant herein had examined RW2, the investigating officer, who investigated the criminal case. It had not considered the evidence of RW2 and Ex.R2 and R3 at all while deciding the point of negligence. The total compensation granted to the claimant of Rs.95,000/- is highly disproportionate to the injuries suffered by the claimant and the length of treatment taken by the claimant/Selvi. It failed to see that PW2 had assessed the disability of the claimant at 45% without any basis and against the medical guidelines. In MCOP.No.1232 of 2003, he submitted that the Tribunal ought to have dismissed the claim petition on the basis of Ex.P1/FIR, R2, marked portion of final report and R3/copy of the final report. The appellant herein is questioning the award of the Tribunal on negligence, quantum and liability.

4. The learned counsel for the Insurance Company would further submit that the age, avocation and income of the claimant Selvi was denied. It is false to state that the accident took place due to the rash and negligent driving of the driver of the Auto Rickshaw. On the other hand, the accident took place due to the rash and negligent driving of the oncoming Government bus, which was not traceable. Thus, the claimants are not entitled for compensation. The amount of compensation claimed is excess. In view of that the accident had occurred due to the rash and negligent driving of the offending vehicle, the Tribunal has imposed the liability on the Insurance Company to pay compensation to the claimants. However, the compensation amount being directed to pay to the claimants by the Insurance company is not sustainable and liable to be quashed.

5. On the other hand, the learned counsel for the first respondent has submitted that the Tribunal has rightly awarded the compensation since the vehicle was insured with the aforesaid Insurance company at the time of the accident. He further submitted that the learned counsel for the first respondent has submitted that the Tribunal has granted reasonable

compensation under various heads and no modification is required in this case. Hence, he prays to dismiss the Appeal.

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

7. During the trial, on the side of the claimants, P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.8 were marked. On the side of the Insurance Company, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R3 were marked.

8. On perusal of the entire records, it is seen that the Tribunal has fixed the liability on the respondents 1 and 2, as owner and insurer of the auto rickshaw, directed to pay a sum of Rs.95,000/- and Rs.150,000/- jointly and severally to the claimants in MCOP.Nos.1231 and 1232 of 2003 respectively as compensation.

9. A perusal of the FIR, PW1, RW1 and RW2, it is seen that the driver of the auto has also contributed to the accident to some extent. In the

event of both the parties are liable for the accident, the ratio of negligence has to be fixed. Therefore, this court is inclined to fix a ratio of liability as 75% on the auto rickshaw and 25% on the bus since both are responsible for the accident, particularly, the ratio of negligence of the driver of the auto is more.

10. Thus, the appellant/Insurance Company is hereby directed to pay the 75% of award amount which works out to Rs.71,250/- and Rs.1,12,500/- together with interest @ 7.5% p.a. from the date of petition till the date of deposit, to the credit of MCOP.Nos.1231 and 1232 of 2003 respectively on the file of the Motor Accident Claims Tribunal, (In the court of Additional District Judge and Special Judge for EC Act Cases, Salem), within a period of six weeks from the date of receipt of copy of the Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank accounts of the appellants/claimants, as per the same ratio ordered by the Tribunal, through RTGS within a period of two weeks thereafter. No costs. Other terms of the award shall remain the same.

11. In the result, these appeals are allowed in part and the award passed by the Tribunal in MCOP.Nos.1231 and 1232 of 2003 are modified accordingly. There shall be no order as to costs.

25.04.2023

Index:Yes/No
Internet: Yes/No
gv

To

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

2. The Motor Accidents Claims Tribunal
(In the court of Additional District Judge and
Special Judge for EC Act Cases, Salem).

A.A. NAKKIRAN.J.

gv

C.M.A.Nos.2160 2161 of 2012

25.04.2023