



C.M.A.No.2300 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2300 of 2013
and
Miscellaneous Petition No.1 of 2013

The United India Insurance Company Ltd.,
44-46, Murugesu Naicker Complex,
Greens Road, Chennai -6.

... Appellant / 3rd respondent

Vs.

1. A.Hameed Basha

... Respondent/Petitioner

2. The Managing Director,
Tamil Nadu State Express Transport Corporation,
Pallavan Salai, Chennai.

3. K.Karvannan

... Respondents/Respondents

[R3 remained ex-parte before Tribunal.
Hence, notice to R3 dispensed with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 04.02.2013 made in M.C.O.P.No.2244 of 2011 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes Court, Chennai.

For Appellant	:	Mr. D.Bhaskaran
For R1	:	Name printed
For R2	:	Mr.K.Kathiresan
For R3	:	Dispensed with



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C.M.A.No.2300 of 2013

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award passed in M.C.O.P.No.2244 of 2011, dated 04.02.2013, passed by the Motor Accident Claims Tribunal, III Court of Small Causes Judge, Chennai, whereby, liability fixed on the Insurance Company to indemnify the third respondent.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The case of the claimant is that on 19.05.2011 at about 1.45 a.m., while the claimant was driving the tanker lorry bearing registration No.TN 04 AB 3859 on Pondicherry to Cuddalore Road at Hariyankuppam Village, at that time, the Transport Corporation Bus, bearing registration No.TN 01 N 5379 came in the opposite direction and hit against the tanker lorry, which resulted in causing injuries to the claimant and he filed the Claim Petition against the Transport Corporation Bus as well as the owner and Insurance Company of the lorry which he was driven.

4. The Transport Corporation and the owner of the lorry



remained ex-parte before Tribunal and the Insurance Company alone had contested the claim.

5. The claimant has alleged that, driver of the bus belongs to the Transport Corporation is tortfeasor and being the owner of the lorry, which was driven by the claimant, second respondent is not liable to pay compensation. The Insurance Company is only indemnitor for second respondent, hence claim against the Insurance Company is liable to be dismissed.

6. Before the Tribunal, the claimant was examined as P.W.1 and one Dr.Saichandran was examined as P.W.2 and marked documents as Exs.P1 to P10 and on the side of the second respondent, no witness was examined and no documents marked.

7. The Tribunal has awarded total compensation of Rs.3,74,676/- on the following heads: Loss of income at Rs.22,500/-; Transport to Hospital at Rs.5,000/-; Extra Nourishment at Rs.10,000/-; Medical Expenses at Rs.2,12,176/-; Pain and Suffering at Rs.35,000/- and



Permanent Disability at Rs.90,000/-.

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8. The Tribunal in point No.1 has held that, the occurrence was taken place due to the negligent driving of both the drivers of the bus and lorry. It has held in paragraph No.7 as follows:

“Even though it is stated in the FIR as above, in the petition it is stated that the bus directly hit against the tanker lorry head on collision . On perusal of the evidence of P.W.1, counter averments and FIR averments, it is proved that two vehicles were head on collision and hence the driver of the lorry and the driver and conductor of the bus sustained injuries and the front portion of the bus was damaged. Hence this Court decides that the above two vehicles lorry and bus were head on collision and this accident occurred due to the rash and negligent driving of both vehicle drivers and the ratio of negligence is fixed at 50:50 and both drivers are equally responsible for the occurrence of accident.”

After holding that, both the drivers are responsible for the accident, Tribunal has directed both the Insurance Company of Lorry which was driven by the claimant and the Transport Corporation to pay compensation equally to the claimant.

9. This direction has been challenged by the Insurance



Company on the ground that since the driver of the lorry is also a tortfeasor and liable for 50% of the accident, the owner of the lorry as well as the Insurance Company shall be absolved from paying compensation.

10. Learned counsel for the Insurance Company relied on the Judgment of the Hon'ble Supreme Court in ***Tamil Nadu State Transport Corporation, Tanjore vs. Natarajan and Others*** reported in (2003) 6 SCC 137, to support his contention.

11. The Transport Corporation or the claimant have not challenged the finding of Tribunal fixing liability for causing accident. However, before this Court, Transport Corporation appeared through their counsel. Claimant even though served but not appeared before this Court.

12. In this appeal, no challenge regarding the finding that the driver of both vehicles responsible for the occurrence, is made. Similarly, claimant has not come forward to challenge the findings of contributory negligence fixed on him. Only point arising for consideration before this Court is whether the Insurance Company is liable to pay compensation to



the extent of 50% for the act committed by the driver of the second respondent.

13. In ***Tamil Nadu State Transport Corporation, Tanjore vs. Natarajan and Others*** reported in (2003) 6 SCC 137, in paragraph No.9 which reads as follows:

“From the facts of the case and nature of the claim stated above, we find absolutely no justification in law for the Division Bench of the Madras High Court in its impugned order imposing liability to the extent of 50% on the appellant/Corporation. The Division Bench of the High Court completely overlooked that the claimant himself was driver of the Corporation bus and was found negligent to the extent of 50% for causing accident. In view of the above finding of contributory negligence on the part of the claimant as driver of the Corporation bus, the Corporation as an employer cannot be held to be vicariously liable for the negligence of the claimant himself.”

14. As per the statutory obligation imposed, as per Section 147 of the Motor Vehicles Act, as well as the contractual obligation created as per the agreement of Insurance policy, the insurer is liable to indemnify the insured i.e., owner of the vehicle. In this case, the driver of the vehicle, who himself is a tortfeasor and the Tribunal has fixed to the extent of his partial



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liability as 50% in the accident. The owner of the vehicle is vicariously liable for the act of his employee and the insurer as an indemnitor to the owner of the vehicle shall pay the compensation to the person who suffered any injury. In this case, since the driver i.e., the claimant himself is a tortfeasor, is not entitled to get compensation from his employer or the indemnitor of his employer. The Tribunal after holding that the claimant is liable for the accident for the extent of 50%, it ought to have absolved the owner of the vehicle as well as the insurer of the vehicle driven by the claimant from paying compensation. The Tribunal has committed error in directing the Insurance Company to pay the compensation to the extent of 50% to the claimant.

15. As discussed above, liability fixed on the Insurance Company is not maintainable and accordingly, the award passed by the Tribunal is modified to the effect that the claimant is entitled to get compensation only for 50% of the compensation arrived by the Tribunal. Accordingly, he is entitled to claim only quantum for 50% from the first respondent/Transport Corporation.

16. Accordingly, the Civil Miscellaneous Appeal is allowed and



C.M.A.No.2300 of 2013

the compensation awarded by the Tribunal is at Rs.3,74,676/- [Rupees Three Lakhs Seventy Four Thousand Six Hundred and Seventy Six only] together with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit. The first respondent-Transport Corporation is directed to deposit 50% of the compensation amount i.e., 1,87,338/- [Rupees One Lakh Eighty Seven Thousand Three Hundred and Thirty Eight only] awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2244 of 2011, on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai. The appellant-Insurance Company is permitted to withdraw 50% of the compensation amount along with interest and costs if any already deposited. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

27.06.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



C.M.A.No.2300 of 2013

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To:

1. The III Judge, Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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C.M.A.No.2300 of 2013

K.RAJASEKAR,J.

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C.M.A.No.2300 of 2013

27.06.2023