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C.M.A.Nos.2910 of 2013 & 162 of 2014

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

C.M.A.Nos.2910 of 2013 and 162 of 2014
and
M.P Nos. 1 of 2013 and 1 of 2014

M/s.The New India Assurance Co.Ltd.,
3rd Floor, Rani Seetha Mahal,
No.603, Anna Salai, Chennai – 6.

.. Appellant in both
the Appeals

Versus

1.Ramani
2.R.Babu

3.M/s.The United India Insurance Co.Ltd.,
No.7/A, Varadhanar Street,
Vedhachala Nagar, Chengalpattu.

4.K.S.Mani

.. Respondents in
C.M.A.No.2910 of 2013

1.Elumalai
2.R.Babu

3.M/s.The United India Insurance Co. Ltd.,
No.7/A, Varadhanar Street,
Vedhachala Nagar, Chengalpattu.

4.K.S.Mani

.. Respondents in
C.M.A.No.162 of 2014



C.M.A.Nos.2910 of 2013 & 162 of 2014

COMMON PRAYER: These two Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.07.2011 made in M.C.O.P.Nos.130 and 126 of 2007 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Madurantakam.

In CMA No.2910 of 2013

For Appellant : Mr.M.Krishnamoorthy
For R1 : Mr.K.Govi Ganesan
For R2 & R4 : Exparte

In CMA No.162 of 2014

For Appellant : Mr.M.Krishnamoorthy
For R1 & R3 : No Appearance
For R2 & R4 : Exparte

COMMON JUDGMENT

These two Civil Miscellaneous Appeals have been preferred by the appellant-Insurance Company questioning the correctness of the award dated 30.07.2011 made in M.C.O.P.Nos.130 and 126 of 2007 respectively on the file of Motor Accident Claims Tribunal, Subordinate Court, Madurantakam.



2. Both the appeals arise out of common award passed by the Tribunal in relation to the same accident. The learned counsel for the parties advanced common argument in these appeals and therefore, they are disposed of by this common judgment.

3. Both the appeals are filed by the 4th respondent in the claim petitions namely, M/s. The New India Assurance Co.Ltd., The appellant is aggrieved by the award passed by the Tribunal in so far as it relates to the direction, directing them to pay 50% of the award amount.

4. Both the claim petitions namely M.C.O.P. Nos. 130 and 126 of 2007 have been filed by the respective claimants stating that on 11.07.2007 at about 12.30 p.m., when they are travelling as a passenger in mini bus bearing Reg. No.TNG-437 from Acharapakkam to Kayapakkam, the lorry bearing Reg.No.TSC-418 proceeding from Chennai to Cuddalore was driven by its driver in a rash and negligent manner. Due to the carelessness on the part of the driver of both the vehicle, it is stated by the claimants that they have suffered grievous injuries. Therefore, for the injuries sustained by them they have filed the respective claim petitions claiming a sum of Rs.1,00,000/-, and Rs.2,00,000/- as compensation respectively.



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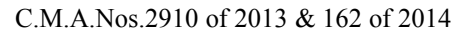
5. The appellant/Insurance Company filed counter statement before the Tribunal denying the averments made in the claim petitions and contended that the accident occurred solely due to rash and negligent driving of the mini bus driven by its driver. It is also stated that the compensation amount claimed by the claimants is excessive. Further, the claimants have to prove their age, income, nature of injuries, medical expenses incurred due to the injuries sustained in the accident by producing documentary evidence. In any event, the total amount claimed as compensation is highly excessive and prayed for dismissal of the claim petitions.

For CMA.No.2910 of 2013:

6. Before the trial Court, the claimant was examined himself as P.W.1, while the Doctor was examined as P.W.2 and Exs.P1 to P10 were marked. On behalf of the respondents in the claim petition, one Mr. Mohan was examined as R.W.1 and marked Exs.R1 and R2.

For CMA.No.162 of 2014:

7. The claimant examined himself as P.W.1, while the Doctor was examined as P.W.2 and Exs.P1 to P10 were marked. On behalf of the



Exs.R1 and R2 were marked.

Company with which the mini bus was insured.

questioning the 50% of the compensation amount directed to be paid by them.

only against the driver of the mini bus and this was not appreciated by the



tribunal while directing the appellant to pay 50% of the compensation amount.

In effect, it is his submission that the driver of the lorry had driven the vehicle very carefully and he has not contributed at all for the accident. While so, it is submitted by the learned counsel for the appellant/Insurance Company that the tribunal ought not to have directed them to pay 50% of the compensation amount instead the tribunal ought to have exonerated the appellant from paying any amount as compensation to the injured.

11. On the above contention of the learned counsel for the appellant, this Court heard the submissions of the learned counsel for the 1st respondent in CMA No.2910 of 2013 and perused the materials placed.

12. It is seen from the record that there was a head on collision between two vehicles namely a mini bus and a lorry. The appellant is the insurer of the lorry involved in the accident. It is settled preposition of law that when there is a head on collision, the liability has to be fixed equally among the vehicles involved in the accident. This is more so that it could not be precisely adjudged as to which of the vehicle contributed more for the accident. Thus, interest of justice would be rendered only when the liability is fixed equally on both the vehicle. The tribunal taking note of the fact that there



was a head on collusion, has rightly fixed 50% of the compensation amount payable by the appellant and the remaining 50% paid by the insurer of the mini bus.

13. Yet another submissions raised by the learned counsel appearing for the appellant is that the First Information Report was registered only against the driver of the mini bus and not as against the driver of the lorry, insured with the appellant. While so, the Tribunal is not justified in directing them to pay 50% of the compensation amount. Here again in case of head on collision, the degree of negligence or carelessness on the part of the driver of the two vehicles cannot be precisely culled out. Merely because the First Information Report was registered against the driver of the mini bus it will not be a ground for the appellant to contend that the driver of the lorry has in no way contributed for the accident. When there is a head on collision the compensation must be directed to be paid equally by both the owner or the insurer as the case may be. While so, the registration of First Information Report as against the driver of the mini bus will not be a ground for exonerating the appellant fully from the liability to pay the compensation to the claimants.



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14. In the result, these two Civil Miscellaneous Appeals are dismissed and the compensation awarded by the Tribunal at Rs.46,000/- and Rs.52,500/- together with interest and costs are hereby confirmed. The appellant-Insurance Company is directed to deposit 50% of the award amount, (i.e., Rs.23,000/-, and Rs.26,250/-) along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, 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.Nos.130 and 126 of 2007 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Madurantakam. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.Nos.130 and 126 of 2007, if the entire award amount has been already deposited by them. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.03.2023

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Index : Yes / No

Speaking/non-speaking order: Yes/ No



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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Madurantakam.

2.The Record Keeper,
V.R.Section,
High Court Madras,
Chennai.



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C.M.A.Nos.2910 of 2013 & 162 of 2014

A.A.NAKKIRAN. J.,

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**C.M.A.Nos.2910 of 2013 and
162 of 2014
and
M.P Nos.1 of 2013 and
1 of 2014**

20.03.2023