



C.M.A.No.3018 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3018 of 2013
and
Miscellaneous Petition No.1 of 2013

The National Insurance Company Ltd.,
No.165, Nethaji Road,
Manhakuppam,
Cuddalore

... Appellant / 4th respondent

Vs.

1. S.Raman

... Respondent / Petitioner

2. P.Krishnamurthy

3. United India Company Ltd.,
Cuddalore.

4. M.Gnanavel

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.09.2010 made in M.A.C.T.O.P.No.1871 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge No.1, Cuddalore.

For Appellant	:	Mr.S.Vadivel
For R1	:	No appearance
For R2 & R4	:	Dispensed with
For R3	:	Mr.S.Arunkumar



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the liability fixed by the Insurance Company as per award passed in M.C.O.P.No.1871 of 2006, dated 30.09.2010 by the Motor Accidents Claims Tribunal, Additional Subordinate Judge No.1, Cuddalore.

2. The appellant-Insurance Company is the fourth respondent in M.C.O.P.No.1871 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge No.1, Cuddalore.

3. The case of the claimants in brief is that on 08.03.2001 at about 5.30 a.m., Raman and his relatives were travelling in Auto bearing Registration No.TN 51 U 5191 towards Devanampattinam Beach, at that time, another Auto bearing Registration No.TN 32 Y 4284 came in the opposite direction very rashly and negligent manner, hit against the auto which the petitioner was travelling, the accident has occurred. Due to which, he sustained head injury and fracture on his left leg and also sustained injuries all over the body. Immediately, he was admitted into Government



Hospital, Pondicherry for treatment. Hence, the claimant filed a Claim Petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the road accident.

4. The appellant-Insurance Company filed counter statement, denied all the averments made by the claimant and countered that the accident was occurred only due to rash and negligent driving of the driver of the auto which the claimant was travelled. At the time of accident, the driver of the auto was not having valid driving license. The Tribunal has to permit the Insurance Company to adduce additional evidence. In any event, the total compensation claimed by the claimants is highly excessive and prayed for dismissal of the appeal.

5. The driver and owner of the vehicle remained ex-parte before the Tribunal.

6. Before the Tribunal, the claimant was examined as P.W.1 and the Doctor, who treated the injured and issued Disability Certificate was examined as P.W.2 and Exs.P1 to P12 were



marked. On the side of the respondents R.W.1 was examined and Exs.R1 to R4 were marked.

7. Based on the oral and documentary evidence placed on record, the Tribunal in Point No.1 has considered the negligence as alleged against both the vehicles and came to the conclusion that even though, FIR was registered against the driver of the first respondent, based on the evidence of the claimant, it is held that both the Autos were collided with each other and both the drivers are responsible for the accident. Aggrieved over the fixation of liability for the accident, on the driver of the third respondent vehicle, the Insurer of auto of third respondent filed this appeal.

8. Learned counsel for the respondent No.4 would submit that the Tribunal has not properly appreciated the evidence of P.W.1 and held that the driver of both the vehicles are responsible for the accident and the same is not sustainable and prays to set aside the finding of the Tribunal, and to absolve the respondent No.4 from liability.



9. Admittedly, no drivers of either of the vehicle was examined

before the Tribunal to disprove the evidence adduced by the claimant regarding the manner in which the accident has occurred. It is settled law in the absence of contra evidence, if the evidence of the claimant is supported and corroborated by any other oral or documentary evidence, the same has to be accepted.

10. Accordingly, in this case, the Insurance Company has not adduced any contra evidence and more particularly, the appellant who has challenged the finding of fact regarding fixation of liability herein, has not adduced any contra evidence and he has only relied on the FIR registered against the driver of the first respondent. The evidence of P.W.1 is that, on 08.03.2001, at about 5.30 a.m., he was travelling in the passenger Auto bearing Registration No.TN 31 O 5191, on the Devanampattinam Beach Road, at that time, another Auto belongs to the first respondent, driven by its driver in negligent manner on the opposite direction, dashed on the passenger Auto, resulted in causing injuries to the claimant. The evidence of P.W.1 is against the driver of the first respondent Auto alleging negligent driving. In the cross examination, it was admitted that, both the vehicle



dashed against each other.

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11. Admittedly, criminal case is registered against the driver of the Auto belongs to the first respondent. The Tribunal after considering the above evidence, and on the basis of fact that the accident is head on collision between both the vehicles has held that both the drivers are equally responsible for the accident. Both sides have not produced the Rough Sketch or any other document to show that the manner of accident. In the cross examination, it is also stated by the P.W.1 that, he was seated inside the auto and he could not explain how the vehicles collided each other, totally 5 persons travelled in the Auto. In the absence of any evidence to show that, the accident is not head on collision and the driver of the auto belongs to the third respondent drove his vehicle in cautious manner to avoid accident, the finding of Tribunal that both the drivers are responsible for the accident is proper and this Court is not inclined to take different view than the view taken by the Tribunal. No appeal is filed challenging the quantum of compensation is awarded. Accordingly, this appeal is liable to be dismissed.

12. In the result, the Civil Miscellaneous Appeal is dismissed



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confirming the apportionment of liability for the accident fixed by the Tribunal. The Judgment and Decree passed by the Tribunal in M.C.O.P.No.1871 of 2006, dated 30.09.2010, by the Motor Accidents Claims Tribunal, Additional Subordinate Judge No.1, Cuddalore is hereby confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

05.07.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Additional Subordinate Judge No.1,
Motor Accidents Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K.RAJASEKAR,J.

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