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C.M.A.No.1385 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

**C.M.A.No. 1385 of 2018
and
C.M.P.No.11087 of 2018**

The United India Insurance Company Limited,
Zonal Office No.1,
Peramanur Main Road,
Salem -7.

... Appellant

Vs.

1.Kanakasabapathy (Died)
2.Subramaniyan
3.National Insurance Co.Ltd.,
No.74A, Paramathy Road,
Namakkal – 1.
4.Vasanth
5.Chellamal
6.Sneha
7.Ajay Karthi

... Respondents

[Respondents 4 to 7 are brought on record as L.Rs of the deceased R1 viz., Kanakasabapathy vide Court order dated 28.6.2023 made in C.M.P.Nos.17105, 17106 and 17109 of 2019 in C.M.A.No.1385 of 2018]



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Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act to set aside the Award and decree dated 06.02.2018 made in M.C.O.P.No.629 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge II) Salem.

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : R1 – Died
R2 – Notice dispense with

Mr.J.Chandran
for R3
Mr.H.Manojin
for R4 to R7

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the Award and decree dated 06.02.2018 passed in M.C.O.P.No.629 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge II) Salem.

2. The first respondent herein is the injured claimant and during the pendency of this appeal, he died and his legal heirs are brought on record as respondents 4 to 7 herein. The second respondent herein is the



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owner of the offending Car bearing Registration No.TN 37 S 7950 and the appellant herein is the insurer of the said offending Car. The third respondent herein is the insurer of the claimant's Car bearing Registration No.TN 27 R 3288.

3. It is the specific case of the claimant/first respondent (died) before the Tribunal that on 18.01.2011 at about 4.30 p.m., the claimant was driving a Fiat Uno Car bearing Registration No.TN 27 R 3288 from Coimbatore to Namakkal on the Trichy Road. While he was nearing Karanampet Petrol Bunk, a Zan Car bearing Registration No.TN 37 S 7950, came from opposite direction, which was insured with the appellant herein, driven by its driver in a rash and negligent manner and dashed against the claimant's Car. Due to the said impact, the claimant sustained injuries. The claimant took first-aid treatment in N.G.Hospital, Singanallur, and then he was admitted in the Ganga Hospital, Coimbatore for further treatment.

3.1 It is the further case of the claimant that he was working as a bus operator and mill owner and earning a sum of Rs.25,000/- per month. Thus, he made a claim for a sum of Rs.10,00,000/- as compensation.



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4. The said claim was resisted by the Insurance Companies by filing a counter statements denying the date, time, place, occupation and avocation of the deceased. They also denied the manner of the accident as stated by the claimant in the claim petition. Thus, they sought for dismissal of the claim petition.

5. In order to prove the claim before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P14 were marked. On the side of the appellant/United India Insurance Company, R.W.1 was examined and Ex.R1 and Ex.R2 were marked. On the side of the third respondent/National Insurance Company, R.W.1 was examined and Ex.R3 was marked.

6. The Tribunal, after analysing the entire evidence, had come to the conclusion that there is negligence on the part of the injured claimant as well as the driver of the offending Car. Thus, the Tribunal fixed 25% negligence on the part of the claimant and 75% on the part of the driver of



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the Zan Car bearing Registration No.TN 37 S 7950. By coming to such conclusion, the Tribunal has passed an award for a sum of Rs.3,52,335/- as compensation to the claimant and directed the appellant-United India Insurance Company and the third respondent/National Insurance Company to pay the said compensation indemnifying the owner of the cars. The break-up details of the amount awarded by the Tribunal under various heads are as follows :

<i>S. No.</i>	<i>Heads under which the amount is awarded by the Tribunal</i>	<i>Amount in Rs.</i>
1.	Permanent Disability	1,27,200
2.	Pain and Suffering	50,000
3.	Loss of Amenities	20,000
4.	Medical Expenses	1,05,135
5.	Loss of Income	19,500
6.	Transport Expenses	10,000
7.	Extra Nourishment	10,000
8.	Attender Charges	10,000
9.	Damages to cloth	500
	Total	3,52,335

7. Challenging the liability and quantum of compensation



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awarded by the Tribunal, the United India Insurance Company Limited has filed the present appeal.

8. The learned counsel for the appellant/United India Insurance Company submitted that the accident had occurred only due to the rash and negligent driving of the claimant/first respondent herein and the First Information Report/Ex.P1 was also registered against him. The Tribunal has also given a finding that the claimant has not produced any document to prove that the accident had occurred only due to the rash and negligent driving of the driver of the second respondent's car. In such circumstances, the Tribunal ought to have dismissed the claim petition. Even otherwise, if the Tribunal comes to the conclusion that there was contributory negligence, the Tribunal ought to have fixed 50% negligence on the part of the driver of the second respondent's car as well as the claimant, instead the Tribunal had fixed only 25% negligence on the part of the claimant. Thus, the learned counsel for the Insurance Company prayed to set aside the award of the Tribunal or with an alternative prayer to fix negligence at 50% on the part of the claimant and consequently, reduce the compensation in proportion to the percentage of negligence.



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9. The learned counsel for respondents 4 to 7 submitted that the claimant/first respondent died, during the pendency of the appeal and his legal heirs are impleaded as respondents 4 to 7 in this appeal. He further submitted that though the First Information Report was registered against the claimant, to prove the allegations against the claimant, the driver, who drove the second respondent's car was not examined. Further, the appellant/ Insurance Company has not examined any other independent witness or eye witness to prove that the accident occurred only due to rash and negligent driving of the claimant alone. Therefore, considering the materials and damages caused to both the vehicles, the Tribunal rightly fixed 75% negligence on the part of the driver of the second respondent's car and 25% on the part of the claimant/first respondent and there is no merit in the appeal and the same is liable to be dismissed.

10. Heard the learned counsel for the appellant and the learned counsel for respondents 2, 4 to 7 and perused the materials available on record.



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11. On a careful perusal of the records, it is seen that admittedly the case was registered against the claimant. The driver, who drove the Zen vehicle i.e. Second respondent's Car had given information to the police and based on that, the case was registered against the claimant, but he was not examined. However, the claimant, who is the injured-cum-eye witness, examined himself as P.W.1 and he clearly spoken about the manner of the accident. Neither the driver of the opposite vehicle i.e., Zan Car bearing Registration No.TN 37 S 7950 nor eye witness or independent witness on the side of the appellant/Insurance Company were examined. Since there was no contra evidence, the Tribunal after considering the entire materials and the damages caused to both the vehicles came to the conclusion that there was a head on collision between both the cars and fixed 75 % negligence on the part of the driver of the second respondent's car and 25% negligence on the part of the claimant/first respondent.

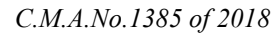
12. This Court, as an appellate Court, and also being a fact-finding Court, had analysed the issue independently and re-appreciates the evidence to render an independent finding.



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13. This Court, as a final Court of fact finding re-appreciated the entire evidence and finds that there was a head on collision between both the cars, hence, both the claimant and the driver of the second respondent's car contributes to the accident. Further, the claimant examined himself as P.W.1 and he has clearly spoken about the said accident. Even though the case was registered against him, neither the driver nor the occupants of the opposite vehicle were examined. Therefore, this Court is of the view that the Tribunal has rightly fixed 75% negligence on the part of the driver of the second respondent's car bearing Registration No.TN 37 S 7950 and the 25% on the part of the claimant/first respondent herein. At the time of accident, there was insurance coverage to both the vehicles, therefore, the Tribunal rightly directed the appellant/United India Insurance Company being insurer of the offending car and the third respondent/National Insurance Company being insurer of the claimant's car, to pay the said compensation. This Court does not find any perversity in the liability fixed by the Tribunal. This Court also finds that the impugned Award passed by the Tribunal by granting compensation is "just, fair and



14. There is no merit in the present appeal, and hence, the same is dismissed. Therefore, the impugned Award passed by the Tribunal is confirmed. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

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fifth respondent/mother of the claimant is entitled for a sum of **Rs.1,00,000/-**, the sixth respondent/daughter of the claimant is entitled for a sum of **Rs.50,000/-**, and the seventh respondent/son of the claimant is entitled for a sum of **Rs.50,000/-** and they are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs.

13.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ms

To

1. The Special Sub Judge-II
Motor Accidents Claims Tribunal,
Salem.

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

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P.VELMURUGAN, J.

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