



WEB COPY

C.M.A. No.1596 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1596 of 2018 and
C.M.P. No.12744 of 2018

Iffco Tokio General Insurance Co. Ltd.,
Tulsi Chambers, 3rd Floor,
195, TV Samy Road,
RS Puram, Coimbatore

... Appellant

Vs.

1. V.Mahendran
2. Sankar
3. K.R.Muthusamy

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.155 of 2011 dated 24.02.2014 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Perundurai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.C.Ramaraj for
Mr.M.Guru Prasad for R1
Mr.S.Kaithamalai Kumaran for R2
Notice to R3 dispensed with by
order dated 15.06.2023



WEB COPY

C.M.A. No.1596 of 2011



JUDGMENT

The Civil Miscellaneous Appeals is filed against the judgment and decree in MCOP No.155 of 2011 dated 24.02.2014 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Perundurai.

2. The 1st respondent is the claimant. The 2nd respondent is the driver, 3rd respondent is the owner and the appellant is the insurer of the opposite motor cycle bearing Regn. No.TN-56-6339.

3. The case of the claimant is that on 10.09.2009 at about 9.00 p.m., the claimant was riding a motor cycle bearing Regn. No.TN-56-8925 on the Chenniamalai to Perundurai road from north to south at moderate speed and cautious manner observing the traffic rules and regulations keeping left side of the road. Near 1010 Weavers Colony Pirivu, a motor cycle bearing Regn. No.TN-56-6339, which came from the opposite direction ridden by the 1st respondent namely Sankar along with a pillion rider namely Bagavathy, in a rash and negligent manner, hit against the claimant's motor cycle due to which, the claimant fell down on the road and sustained multiple grievous



injuries and also bone fracture. Immediately, he was taken to Kovai Medical Centre Hospital, Perundurai where first aid was given and then shifted to Kovai Medical Centre Hospital, Coimbatore, where, he underwent treatment as inpatient for two months.

4. The claimant filed a claim petition in MCOP No.155 of 2011 on the file of the Motor Accident Claims Tribunal (Subordinate Court) Perundurai, claiming compensation of Rs.15,00,000/- against the rider, owner and insurer of the opposite motor cycle, for the injuries sustained by him in the accident stating that due to the accident, he sustained grievous injuries and bone fractures on the head and right fore arm for which he went surgeries. At the time of accident, the claimant was aged 24 years and was working as a Manager at Sri Devi chits and Finance, Perunduri and was earning Rs.8,000/- per months and he was the only earning member of his family and due to the accidental injuries, he lost his earning capacity and not able to do any work as before the accident.

5. Before the Tribunal, the 1st respondent therein/2nd respondent herein/driver of the opposite motor cycle remained ex-parte.



WEB COPY

6. In order to substantiate the claim before the Tribunal, on the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 16 documents were marked as Ex.P.1 to Ex.P.16. On the side of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and 4 documents were marked as Ex.R1 to Ex.R4.

7. The Tribunal, after hearing the arguments on either side and considering the materials, awarded compensation of Rs.5,28,000/- and directed the respondents 1 to 3 therein/driver, owner and insurer of the opposite vehicle, to pay the compensation jointly and severally with cost and interest at 7.5% per annum from the date of claim petition till the date of deposit.

8. Challenging the Award passed by the Tribunal, the 3rd respondent therein/Insurance Company has filed the present appeal before this Court.

9. The learned counsel for the appellant/Insurance Company



submitted that the appellant is the insurer of the opposite motor cycle bearing Regn. No.TN-56-6339 alleged to have been involved in the accident. The learned counsel submitted that the accident had occurred due to the rash and negligent riding of the claimant/1st respondent herein. The FIR was also registered against the claimant since he was the tort-feasor to the accident and that as a tort-feasor to the accident, he is not entitled to get any compensation. Even the charge sheet and other records related to the investigation of the police, reveals that the accident had occurred only due to the rash and negligent riding of the claimant. The rough sketch and observation mahazar also confirmed the same. The Tribunal failed to consider all these facts just because the driver of the opposite motor cycle/2nd respondent herein, was not examined and thereby, fixed the liability on the opposite motor cycle. All the records would clearly show that the claimant is the tort-feasor to the accident. Therefore, the findings of the Tribunal is erroneous which warrants interference.

10. The learned counsel for the claimant/1st respondents submitted that there is no material to show that the claimant is the tort-feasor to the accident. On the side of the appellant/Insurance Company, no eye



witness was examined. The claimant himself was examined as P.W.1 who has clearly spoken about the manner of the accident and stated that only due to the rash and negligent riding of the rider of the opposite motor cycle, the accident had occurred. Therefore, the Tribunal rightly fixed the liability. There is no merit in the appeal and the same is liable to be dismissed.

11. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 2 and perused the materials available on record.

12. Admittedly, 2 two wheelers are involved in the accident. One of the motor cycle was ridden by the claimant and the another vehicle was ridden by the rider of the appellant's insured vehicle. Due to the accident, the claimant sustained injuries and the pillion rider of the opposite vehicle/appellant's insured vehicle succumbed to the injuries.

13. The Motor Vehicle Inspector's Report clearly shows that the front side of both the motor cycles got damaged. A careful perusal of the Motor Vehicle Inspector's Reports viz. Ex.P.4 and Ex.P.5 shows that the



accident is a head on collision of 2 two wheelers. If any one of the riders of the two wheelers were cautious, they could have avoided the accident.

Therefore, this Court finds that the accident had happened due to the rash and negligent riding of riders of both the two wheelers. The riders of both the two wheelers have equally contributed their negligence to the accident.

14. The Tribunal failed to consider the materials especially the Motor Vehicle Inspector's Report and since the respondents therein have not examined the rider of the opposite motor cycle, fastened the entire liability on the opposite motor cycle and fixed the liability on the respondents therein who are the rider, owner and insurer of the opposite motor cycle.

15. As far as quantum is concerned, there is no dispute. The claimant has not filed any appeal for enhancement of compensation and the Insurance Company only has filed the present appeal against the liability fixed by the Tribunal.

16. As stated above, since the riders of both the two wheelers have equally contributed their negligence to the accident, the owners of both



the two wheelers are equally liable to pay the compensation. Since the claimant himself has contributed his negligence upto 50%, he is entitled for only 50% of the compensation from the appellant/Insurance Company. Hence the appellant/Insurance Company if already deposited the full award amount, they are permitted to withdraw the remaining 50% of the compensation amount.

17. Accordingly, the Civil Miscellaneous Appeals is partly allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to the costs.

12.09.2023

ksa-2

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1. The Motor Accident Claims Tribunal
(Subordinate Court), Perundurai.

3. The Section Officer,
VR Section, High Court, Madras.



WEB COPY

C.M.A. No.1596 of 2018



P.VELMURUGAN. J.

ksa-2

C.M.A. No.1596 of 2018

12.09.2023