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C.M.A.No.1709 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1709 of 2018
and C.M.P.No.18730 of 2016

Cholamandalam MS General Insurance

Company Limited

“Dare House”, 2nd Floor

N.S.C.Bose Road, Chennai – 1

.. Appellant

Versus

1.S.Selvam

[P.Appoji – Died]

2.Bajaj Allianz General Insurance

Company Limited

GE Plaza, Airport Road

Yerwada, Pune – 411 006

3.S.Narayanan

4.A.M.Saravanan

5.Bangaramma

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal (Special Subordinate Court) Dharmapuri made in M.C.O.P.No.1551 of 2014 dated 16.02.2016.

For Appellant

: M/s.C.Harini

for M.B.Gopalan Associates

For Respondents

: Mr.V.Kumaravelan (No appearance) for R1

Not ready in notice for R3 to R5



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JUDGMENT

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The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accidents Claims Tribunal (Special Subordinate Court) Dharmapuri made in M.C.O.P.No.1551 of 2014 dated 16.02.2016.

2.On 08.10.2011, the first respondent/claimant was riding in the third respondent's motor car from Dharmapuri to Kolar, at about, 9 pm, the fifth respondent's tractor dashed and the claimant sustained injury. Hence, this claim petition.

3. The appellant herein is the Insurance Company of the third respondent's Motor Car seeking to challenge the award passed by the Tribunal in M.C.O.P.No. 491 of 2013 on the ground of quantum.

4. The first respondent is the claimant, third respondent is the owner of Motor Car rode by the appellant and the fourth respondent is the driver of the Motor Car. The fifth respondent is the owner of the offending Tractor Tractor and the second respondent is the Insurer of the Tractor Tractor. For the sake of convenience, the parties are referred to as per their ranking before the trial



5. During the trial before the Tribunal, the claim petitioner examined himself as PW1. Exs.P1 to P9 were marked. Ex.P1 is the FIR, Ex.P3 is the Injury Certificate, Ex.P4 is the Discharge summary, Ex.P7 is the medical bills, EX.P8 is the permanent disability. The Tribunal on consideration of both oral and documentary evidences came to conclusion that the mishap had occurred by the negligent driving of both the fourth respondent/driver of the motor car as well as the driver of Tractor trailer and fixed the liability both on the insurer of the fifth respondent Tractor Trailer as well as the insurer of the third respondent car at the ratio of 75:25. Accordingly, granted compensation as tabulated below:

<i>Calculation</i>	<i>Rs.</i>
Towards 55% Permanent Disability and future prospects	Rs.4,45,500/-
Pain and sufferings	Rs.40,000/-
Two months loss of income	Rs.9,000/-
Medical Expenditure (including bills)	Rs.86,000/-
Travelling expenses	Rs.10,000/-
Loss towards nutritional expenses	Rs.15,000/-
Towards mental agony and loss of estate	Rs.35,000/-
Loss towards Attender charges	Rs.10,000/-
Total compensation	Rs.6,50,500/-



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6. The learned counsel for the appellant submitted that the driver of the Motor Car did not possess a valid driving license at the time of mishap and the Tribunal ought not to have put the liability on the appellant Insurance Company. Further, it was her contention that the Tribunal failed to appreciate the documents such as FIR and police records that the fault was entirely on the part of the driver of the Tractor Trailer and simply fastened the liability on the Insurance Company. Hence, seeks to allow this Civil Miscellaneous Appeal.

7. Heard M/s.C.Harini, learned counsel for the appellant and perused the records.

8. Admittedly, the facts of the present case are not dispute. On 08.10.2011, the first respondent/claimant was riding in the third respondent's motor car from Dharmapuri to Kolar, at about, 9 pm, the fifth respondent's tractor dashed and the claimant sustained injury. The claimant filed the above claim petition before the above Tribunal. The Tribunal on consideration of oral and documentary evidences, had awarded a compensation of Rs.6,50,500/- by putting liability on the head of the insurer of the fifth respondent Tractor Trailer



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as well as the insurer of the third respondent car at the ratio of 75:25 and further, ordered the same may be recovered from the fifth respondent and the third respondent respectively.

9. On perusal of the impugned award, this Court is of the considerate view that the Tribunal has properly appreciated both oral and documentary evidences and has awarded the compensation to the claimant. The main contention of the learned counsel for the appellant is that the Tribunal has overlooked the Exhibits placed before it and had fastened the liability on the appellant also. Such contention cannot be countenanced by this Court. The Tribunal, only, on the basis of the oral and documentary evidences has come to the conclusion that both the driver of the Tractor Trailor and driver of the Motor Car had caused the accident by driving negligently. Hence, the Tribunal, on proper appreciation of evidences had fixed the liability as 75% on the Insurer of the Tractor Trailor and 25% on the Insurer of the Motor Car.

10. Thus, this Court is of the view that the Tribunal's Order cannot be found fault with as the Tribunal has rightly fixed the liability fairly. In view of the above discussion, this Civil Miscellaneous Appeal stands dismissed. No



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costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No
Speaking Order/Non-Speaking Order
dhk

To

The Presiding Officer,
Motor Accidents Claims Tribunal
(Special Subordinate Court)
Dharmapuri

A.A.NAKKIRAN, J.

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