



C.M.A. No. 925 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM

THE HONOURABLE MR. JUSTICE **A.A.NAKKIRAN**

C.M.A. No.925 of 2018

M/s.Cholamandalam MS General
Insurance Company Limited,
Represented by its Branch Manager,
'K.K. Towers' II Floor,
Vishnavi, Next to Hosur Durga,
Main Road, Hosur.

... Appellant

Vs.

1. M.Sriramu
2. Vadivel

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1989, against the judgment and decree dated 11.11.2016 passed in M.C.O.P. No.1125 of 2013 by the Motor Accidents Claims Tribunal, (In the Court of Special Sub.Judge), at Krishnagiri.

For Appellants : Mr.J.Michael Visuvasam

For R1 : Mr.M.Sivakumar
R2 : No appearance



C.M.A. No. 925 of 2018

JUDGMENT

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This appeal has been preferred by the insurance company against the judgment and decree dated 11.11.2016 passed in M.C.O.P. No.1125 of 2013 by the Motor Accidents Claims Tribunal, (In the Court of Special Sub.Judge), at Krishnagiri.

2. The facts of the case in brief:

On 01.02.2009 while the first respondent was driving a two wheeler bearing Reg.No.TN-24-U-5442 with two persons as pillion riders in Hosur-Krishnagiri road, a lorry bearing Reg.No.TN-24-W-1960 belonging to the second respondent and insured with the appellant hit the first respondent's vehicle and due to which the first respondent sustained fatal injuries and he was taken to Government Hospital, Hosur. Claiming compensation for a sum of Rs.5,00,000/- from the insurance company, the appellant filed a claim petition before the Motor Accidents Claims Tribunal, (In the Court of Special Sub.Judge), at Krishnagiri.



3. During trial, in order to prove the case of the claimant, he had examined two witnesses viz., P.W.1 & P.W.2 and marked eleven documents viz., Exs.P1 to P11. On the side of the respondents therein, three witnesses were examined viz., R.W.1 to R.W.3 and marked one document viz., Ex.R1. The Tribunal, after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident had occurred due to rash and negligent driving by the driver of the vehicle belonging to the 1st respondent. As the first respondent's vehicle was insured with the second respondent insurance company, the Tribunal held that the 2nd respondent-Insurance Company is liable pay a sum of Rs.3,45,900/- as compensation to the claimants with interest at the rate of 9% per annum from the date of the petition till the date of realization.

4. Not being satisfied with the amounts so awarded by the Tribunal, the appellant / insurance company has come out with the present appeal seeking reduction of compensation.

5. The learned counsel for the appellant / insurance company contended that the accident had occurred due to the negligence on the part of the first



respondent and the Tribunal without properly considering the materials placed on record, fixed 100% liability on the appellant. The Tribunal had failed to consider the fact that the version of the first respondent was contrary to the statement made in Ex.P-1 – First Information Report in which the first respondent was shown as accused. The Tribunal had held that the alleged road traffic accident had occurred due to rash and negligent driving of the second respondent's vehicle though it was found that the first respondent was riding the two wheeler with two other persons on the pillion and dashed behind the stationary lorry. Even as per Ex.P6 – Motor Vehicle Inspector's report, the tyre of the lorry was flat and mudguard was bent. The Tribunal had disbelieved the evidence of the driver of the second respondent (P.W.3) on the ground that FIR was delayed by 23 days and the inspection of the lorry was done a month after the alleged occurrence. The Tribunal failed to notice the fact that the first respondent has not even produced his driving license to prove that he was duly authorized to drive a 'motorcycle with gear' by the competent authority. The grievance of the learned counsel for the appellant is that the Tribunal had failed to appreciate the fact that the reckless driving of the first respondent in dashing behind the stationary lorry, by carrying two persons on the pillion had caused the death of one pillion rider and brushed aside the case of contributory



negligence. Further the compensation awarded by the Tribunal under each head is excessive and the Tribunal had failed to fix negligence on the part of the first respondent and hence, prays to set aside the judgment and decree passed by the Tribunal.

6. The learned counsel appearing for the first respondent submitted that the police had filed a false case against the first respondent by taking advantage of his unconscious state. The criminal case as against the petitioner regarding the occurrence has not been duly proved by the appellant. Even if the first respondent has been convicted in the related criminal case, the conviction judgment is not binding upon the Tribunal and hence the negligence has to be determined only on the appellant.

7. Heard both sides and perused the materials available on record.

8. From the materials available on record, as per Ex.P1 – First Information Report, the first respondent has been arrayed as accused. It is alleged by the appellant that the first respondent along with two persons on the pillion of the vehicle, dashed the stationary lorry and caused the accident. But



the first respondent contended that the accident had occurred only when the lorry driver drove the lorry in a rash and negligent manner and hit the first respondent's vehicle. On perusing Ex.P6-MVI Report, it is seen that the tyre of the lorry was flat and mudguard was bent. So from Ex.P6 it is clear that the first respondent's two wheeler had dashed against the lorry's right rear portion. The Tribunal had suspected the delay in inspection of lorry and delay in registering the FIR against the first respondent. Delay in conducting inspection and delay in registering FIR alone cannot be a ground to prove negligence on the part of the appellant. Further Ex.P-3, clearly indicates that the first respondent was "alert" oriented and conscious during his oral evidence. Hence it cannot be said that the unconscious state of first respondent was taken advantage by the police to register a false case.

9. Considering the facts and circumstances of the case, this Court is of the view that the first respondent is also equally responsible for the accident that had occurred and equal amount of negligence has to be fixed on the first respondent also. Hence, 50% negligence has to be placed on the first respondent and the first respondent is only entitled to 50% of the award amount granted by the Tribunal. i.e. Rs.1,72,950/-.



C.M.A. No. 925 of 2018

10. At this juncture, the learned counsel for the appellant submitted that the appellant had already deposited the entire award amount i.e. Rs.3,45,900/- as directed by the Tribunal. This Court, vide order dated 20.04.2018, has recorded the same and permitted the first respondent to withdraw 50% of the award amount. In such circumstances, the appellant is permitted to withdraw the remaining 50% from the award amount lying in the credit of M.C.O.P. No.1125 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub-Judge, Krishnagiri.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed.
Connected miscellaneous petition is closed. No costs.

25.04.2023

Internet: Yes
Index: Yes/no
Speaking/Non speaking order
bkn

To:

The Motor Accidents Claims Tribunal,
Special Sub-Judge,
Krishnagiri.

7/8



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C.M.A. No. 925 of 2018

A.A.NAKKIRAN, J

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C.M.A. No.925 of 2018

25.04.2023