



CMA No. 2044 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2044 of 2022
and
C.M.P. No. 15712 of 2022

The Branch Manager,
National Insurance Co.,Ltd.,
No.378, Mint Street,
Sowcarpet, Chennai – 600 001.

C/o.The Divisional Manager,
National Insurance Co., Ltd.,
Divisional Office,
No.9, Infantry Road,
Near Alankar Theatre,
Vellore – 632 002.

... Appellant

Versus

1.Ravichandran

2.The Branch Manager,
The IFFCO-TOKIO Gen.Ins.Co.,Ltd.,
Thulasi Chamber, 3rd Floor,
No.185, T.V.Swamy Road,
(W)R.S.Puram, Coimbatore – 641 002.

C/o.The Manager,
The IFFCO-TOKIO Gen.Ins.Co.Ltd.,
No.128, IFFCO Bhavan,
4th Floor, Habibullah Road,
T.Nagar, Chennai – 600 017.

... Respondents



CMA No. 2044 / 2022

WEB COPY

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to allow the Civil Miscellaneous Appeal by setting aside the order dated 22.12.2021 in M.C.O.P. No. 04 of 2017 passed by the Additional District Judge, MACT – Hosur.

For Appellant : Mr. P. Sankaranarayanan.

For Respondents : Mr. P.A. Sudesh Kumar for R1.

No appearance for R2.

J U D G M E N T

The appeal has been filed by the Insurance company challenging the award passed by the Tribunal in M.C.O.P. No. 04 of 2017 dated 22.12.2021.

2.The claimant / first respondent had filed a claim petition before the Tribunal stating that on 09.03.2015, while the petitioner was riding in a two wheeler bearing Registration No. TN 70 L 7041 in Krishnagiri – Hosur NH7 Road, Opposite to Power Grid, near Shoolagiri, the driver of the Maruthi Wagon R car bearing Registration No.TN 06 F 5180 who was driving ahead of the first respondent's two wheeler, suddenly



CMA No. 2044 / 2022

stopped the car without any signal or indication as a result of which, the two wheeler hit the car from behind and the first respondent and the pillion rider sustained grievous injuries. Thus he filed claim petition claiming compensation against the second respondent and the appellant.

3.The appellant filed counter denying all the averments made in the claim petition stating that; The accident occurred only due to the rash and negligent riding by the first respondent who drove the motor cycle without following the traffic rules, rammed the car from behind and caused the accident; and that in any event, compensation claimed by the first respondent is excessive and prayed for dismissal of the appeal.

4.The second respondent filed counter denying all the averments made in the claim petition stating that; The accident occurred only due to the negligence of the first respondent / driver of the car which was plying in front of the motor cycle; and that in any event, compensation claimed by the first respondent is excessive and prayed for dismissal of the appeal.

5.The first respondent examined himself as PW1 and marked 13



CMA No. 2044 / 2022

documents as Ex.P.1 to Ex.P.13. On the side of the appellant, RW1 to RW4 were examined and seven documents were marked as Ex.R1 to Ex.R7.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the car as well as the first respondent who hit the car from behind. Having held so, the Tribunal fixed 90% negligence on the part of the driver of the car and 10% on the first respondent. The Tribunal awarded a compensation of Rs.4,17,111/- to the first respondent to be paid by the appellant and dismissed the claim petition as against R2. Aggrieved by the said award passed by the Tribunal, the appellant had preferred the instant appeal.

7.The learned counsel for the appellant submitted that the instant appeal has been filed challenging the finding as regards negligence. The learned counsel for the appellant was unable to point out any infirmity in the award of the Tribunal with regard to quantum of compensation. The learned counsel submitted that the accident took place on account of the rash and negligent driving of the first respondent. According to the first respondent, the driver of the insured vehicle viz., Wagon R car had



CMA No. 2044 / 2022

stopped suddenly on the National Highway as a result of which the first respondent rammed his motor cycle into the car and sustained injuries.

The learned counsel submitted that this version cannot be believed. The driver of the insured vehicle viz., Wagon R had given a complaint to the Police and on investigation, a final report was filed in S.T.C. No. 138 of 2015 on the file of the Judicial Magistrate Court No.II, Hosur. The first respondent pleaded guilty to the charges against him which was that he rode the two wheeler in a rash and negligent manner and rammed into the running car (insured vehicle). The learned counsel submitted that first respondent has taken contradictory stands in two different proceedings and hence, his claim petition ought to have been rejected.

8.The learned counsel for the first respondent per contra submitted that the first respondent examined himself as PW1 to prove the manner in which the accident took place; that the records of the criminal case has no bearing before the Tribunal; that the Tribunal after independent assessment had held that the first respondent is liable for 10% contributory negligence and the driver of the car is liable for 90% negligence; that the said finding cannot be faulted as it is based on the evidence adduced before the Tribunal; that the appellant has not



CMA No. 2044 / 2022

examined any witness to substantiate their version that the accident occurred due to the negligent act of the first respondent; and that therefore the award of the Tribunal need not be interfered with and prayed for dismissal of the appeal.

9. Though notice has been served, none has entered appearance on behalf of the second respondent.

10. This Court finds that admittedly the first respondent had pleaded guilty before the Criminal Court. However, the said fact alone cannot be the basis to hold that the first respondent was wholly responsible for the accident, while determining the compensation under the Motor Vehicles Act. It is seen that the appellant had not chosen to examine the driver of the car. The first respondent had examined himself as PW1 before the Tribunal. In his deposition, he had stated that the driver of the car had stopped the car suddenly without any signal or indication during night hours. He had also stated that though he was travelling at a distance, he could not control the two wheeler in spite of applying brakes and thus, had to hit the car on the rear side. As stated earlier, the appellant had not examined the driver of the car contradicting



CMA No. 2044 / 2022

the evidence of PW1. The first respondent relied upon the documents filed before the Criminal Court. The documents are the FIR, final report and the plea of guilt by the first respondent. From the said documents, it is clear that the first respondent was also responsible for the accident. In the criminal case, the question of contributory negligence does not arise. Hence, the question of contributory negligence has to be considered on the basis of the evidence adduced before the Tribunal. Though, the first respondent examined himself to prove the manner of the accident, considering the fact that he had pleaded guilty before the Criminal Court admitting negligence on his part, this Court is of the view that he had contributed to the accident. In the facts and circumstances of the case, considering the nature of the accident, the time of the accident, plea of guilt of the accused / first respondent and the fact that the driver of the offending car has not been examined, this Court is of the view that the percentage of contributory negligence on the part of the first respondent can be fixed at 30% instead of 10% fixed by the Tribunal. Thus, the award of the Tribunal of Rs.4,17,111/- (after deducting 10% contributory negligence on the award of Rs.4,63,456/-) is reduced to Rs.3,24,419/- (after deducting 30% contributory negligence on the award of Rs.4,63,456/-).



CMA No. 2044 / 2022

WEB COPY 11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,17,111/- is hereby reduced to Rs.3,24,419/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant / Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit the first respondent is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant is permitted to withdraw the excess amount if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

20.07.2023

ay

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



WEB COPY



CMA No. 2044 / 2022



WEB COPY



CMA No. 2044 / 2022

SUNDER MOHAN, J

To

The Additional District Judge,
Motor Accident Claims Tribunal,
Hosur.

ay

C.M.A. No. 2044 of 2022
and
C.M.P. No. 15712 of 2022

Dated: 20.07.2023