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C.M.A.No.2427 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2427 of 2014

and M.P.No.1 of 2014

The Manager,
United India Insurance Company Limited,
Motor Third Party Claims Office,
South India Co-operative Building,
3rd Floor, No.38, Anna Salai, Chennai.
Appellant

...

Vs.

1. P.Pon Buddhar
2. Panneer Selvam
3. The Divisional Manager
New India Assurance Co., Ltd.,
Motor Third Party Claims Officer,
No.69, 70, Sheitpet, Nadu Street,
Kancheepuram.
4.S.R.Elumalai
Respondents

...

Prayer: Civil Miscellaneous Appeal filed under 173 of Motor Vehicles Act to set aside the decree and judgement dated 01.12.2011 made in MCOP.No.51 of 2010, on the file of the Motor



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Accident Claims Tribunal, (District Court No.2), Kancheepuram.

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For Appellants : Mr.D.Bhaskaran

For respondents : Mr.C.Prabakaran for R1
: Mr.J.Chandran for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed by the insurance company/fourth respondent in the award dated 01.12.2011 passed in MCOP.No.51 of 2010 on the file of the Motor Accidents Claims Tribunal, Fast Track Court II, District Judge, Kancheepuram.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. The case of the claimant is that on 27.08.2002, claimant along with his relatives travelled in a Maruthi Esteem car belongs to the first respondent bearing Reg.No. TN 07 E 9002 from Kanchipuram to Mahabalipuram, while the vehicle reached near Nemeli Village Koot Road, a Tata Sumo vehicle bearing Reg.No.TN



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21 D 5000 belongs to the third respondent driven by its driver in a rash and negligent manner and dashed against the Maruthi Esteem car, due to the impact, the claimant and other passengers in the Maruthi Esteem car sustained grievous injuries. Claimant has filed a claim petition seeking compensation for Rs.4,00,000/-.

4. First and third respondents who are owners of Maruthi Esteem car and Tata sumo care respectively have not participated in the proceedings and remained exparte.

5. The second respondent has filed his counter and submitted that the compensation claimed under various heads are on higher side and the driver of Maruthi Esteem car driven the vehicle with due care and caution but the driver of the TATA sumo came in the opposite direction in negligent manner and caused the accident. Hence, the second respondent is liable to pay the compensation.

6. The fourth respondent filed counter and stated that a criminal case was registered against him in Crime No.342 of 2002



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on the file of the Chengai Taluk Police Station and the driver of the Tata Sumo, drove the vehicle in proper manner with due care and caution, by observing the traffic rules, but the Maruthi car driver violated the traffic rules which resulted in accident, hence opposed to grant of compensation to the claimants.

7. Before the Tribunal, on the side of claimants P.W1 and 2 were examined and Exs.P1 to P12 were marked. On the side of the second respondent, R.W1 and RW2 were examined and Exs.R1 was marked. On the side of fourth respondent (Appellant herein) no oral evidence was adduced.

8. Based on the evidence placed on record, the Tribunal in point No.1 has held the driver of the Tata Sumo vehicle has driven the vehicle in a rash and negligent manner and dashed against the car. In point No.2, the Tribunal has quantified the quantum of compensation and award a sum of Rs.2,26,000/-. Aggrieved over the finding that fourth respondent insurance company is liable to indemnify the third respondent for the negligent act of third



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respondent's driver, this Appeal has been filed by the fourth respondent.

9. Learned counsel for the fourth respondent submitted that the injured in this case travelled in the Maruthi Esteem car along with three other passengers who were also sustained injuries in the accident. The other three injured persons have already filed MCOP.Nos.804, 805 & 773 of 2002 on the file of Additional District Judge, Fast Tract Court II, Kancheepuram claiming compensation for the injuries sustained by them and in the enquiry based on evidence placed on record, the Tribunal has given a finding stating that the driver of the Maruthi Esteem car alone responsible for the accident and the driver of the third respondent is not responsible for negligent act and compensation ordered to be paid by the first and second respondent herein. Against the above finding no appeal has been filed and the same reached its finality. In this case, totally contrary evidence was rendered without considering the earlier orders passed in the above claim petitions. In this case, the claimant is claiming compensation from all the respondents



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including the owner and insurer of the Maruthi Esteem car and no evidence on behalf of the fourth respondent was adduced, however without considering its previous order, given contrary to the earlier orders and the same is liable to be set aside and prays to allow the Appeal.

10. Learned counsel for the second respondent insurance company of Maruthi Esteem car has submitted there is no oral evidence adduced on the side of the fourth respondent herein to disprove the evidence of P.W1. However, it is admitted that in the year 2002 itself three claimants approached the very same Court and the Tribunal has awarded compensation holding that driver of the first respondent Maruthi Esteem car is responsible for the accident and the first and the second respondents herein directed to pay compensation and accordingly compensation also paid.

11. Admittedly, the fourth respondent ie., appellant has not adduced any contra evidence to disprove the evidence of P.W.1 who is the claimant. In the evidence of P.W1, he has stated that both the



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drivers drove the vehicle in high speed and both the vehicle have had head on collision which resulted in severe injuries to the injured person. In the cross examination, it was also questioned regarding the claim petitions filed by other persons, more particularly, the claimant in MCOP.No.804 of 2002 namely Aravidha Kumar and the same was also admitted by P.W1 in his cross examination. He has also denied that in MCOP No.773 of 2002 an award was passed against the third and fourth respondents herein. It shows that there was evidence placed on record before the Tribunal that already there was an order passed in batch of claim petitions fixing the liability with regard to the accident on the driver of the first respondent's vehicle and the same was not properly appreciated by the Tribunal. The Tribunal in its discussion has held that the accident is due to head on collision, however the liability for accident was fixed only against the driver of the third respondent which is not sustainable, in view of the admission of P.W1, this Court is of the view that finding of the Tribunal with regard to the liability fixed on the driver of the third respondent alone is not sustainable and the same is liable to be set aside. It is settled law that in case of head on collision, the



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Tribunal ought to have analysed the evidence of claimants. In this case the appellant Insurance Company has not produced any evidence on their side. In the connected claim petition the driver of the Maruthi Esteem car is held to be tort-feasor. Since head on collision is proved and accepted by Tribunal, it ought to have held that both the driver of vehicles as tort-feasor. Since other connected cases third and fourth respondents i.e., owner and insurer of TATA Sumo vehicle are held as tort-feasor and those award are not challenged, and accepted by them, the award passed against the appellant herein is hereby liable to be modified. The owner and the insurer of the TATA Sumo vehicle are liable to pay 50% of compensation fixed by the Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. Award passed by the Tribunal in MCOP.No.51 of 2010 is modified to the effect that 50% of the compensation amount is payable by the 1st and 2nd respondents and 50% of the compensation amount is payable by the 3rd and 4th respondents together with interest at the rate of 7.5% from the date of petition from the date of



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receipt of copy of this order, less the amount, if any, deposited. On

such deposit, the claimant is entitled to withdraw the same by

making appropriate application. There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

29.08.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Motor Accident Claims Tribunal,
(District Court No.2), Kancheepuram.

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

K.RAJASEKAR,J.



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