IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.06.2023

CORAM

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

**C.M.A.No.2803 of 2014**
**and**
**MP.No.1 of 2014**

M/s. United India Insurance Co.Ltd.,
Branch Office,
2-415, B, N.K.Road, Nandyal Post,
Kurnool Dt, PIN – 518 501
Having Divisional Office at 104-A,
Peramanur Main Road,
Salem-7. ...Appellant

Vs

1.M. Manivannan
2. M.V. Subbiah
3. M/s.ICICI Lombard Insurance Co., Ltd.,
Swarnapuri, Plaza, Salem Omalur Main Road,
Salem – 9. ... Respondents

**Prayer**: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, set aside the judgment and decree dated 09.11.2012 made in M.C.O.P.No.161 of 2008 on the file of the Motor Accident Claims Tribunal ( I Additional Subordinate Judge, Salem).

For Appellant : Mr.S.Arun Kumar
For Respondents : Mrs.R.Sreevidhya for R3
No appearance for R1 & R2

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 09.11.2012 made in M.C.O.P.No.161 of 2008 on the file of the Motor Accident Claims Tribunal ( I Additional Subordinate Judge, Salem).

2. The case of the claimant, in brief, is as follows:

On 03.10.2006 at 2.00 a.m., the vehicle bearing Regn.No.TN-28-W-3406 while running with the tomato load on the Krishnagiri to Salem main road, near Thokkampatty Kumaragiri Spinning Mill, another lorry bearing Regn.No.AP-21/V-5778, came in the opposite direction, in a rash and negligent manner and hit the tomato load lorry., due to which, the lorry bearing Regn.No.TN-28-W-3406 was damaged. Since the claimant is depending on the income of the vehicle, he filed a claim petition in MCOP.No.161 of 2008 before the Tribunal claiming compensation of Rs.2,10,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,22,275/ directing the appellant and the third respondent to pay 50% each to the claimant.

Questioning the liability fixed on the appellant/Insurance Company, the present appeal came to be filed.

3. The learned counsel for the appellant/Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the Tribunal has held that the appellant is liable to pay compensation which is incorrect. The award of the Tribunal is contrary to law, weight of evidence and probabilities of the case. The reason assigned by the Tribunal in apportioning the liability equally is unsustainable. The Tribunal erred in not appreciating the evidence of RW1 & Ex.R1 in proper manner and failed in not answering the legal issue raised by the appellant. It has failed to note that the liability of the appellant is limited only to the extent of Rs.6000/- as per the statue and any award more than the said amount should be borne by the respondents 2 and 3 herein. The Tribunal erred in passing the award against the appellant contrary to the provisions of Motor Vehicles Act and terms of contract. The passed against the appellant in excess to Rs.6000/- has to be set aside following the judgment reported in 1995 AIR Sc 755 and 2003 AIR SCW 3797. Hence, the Insurance Company is not liable to pay 50% of compensation to the claimant. He

further submitted that they have deposited the entire award amount before the Tribunal and they may be permitted to withdraw the same. Stating so, he prays to allow this appeal.

4. The learned counsel for the third respondent has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and also rightly fixed the liability on both the Insurance Companies and hence, the same does not require any interference in the hands of this Court. Hence, she prays for dismissal of the Appeal.

5. Heard the learned counsel for the appellant and the learned counsel for the third respondent and perused the materials available on record carefully and meticulously.

6. Now the question to be decided is only with regard to the liability fixed on the part of the appellant / Insurance Company by the Tribunal.

7. It is stated that the claimant has not paid any premium for TPPD (Third Party Property Damages). Therefore, the Tribunal has erred in

passing award fixing 50% liability on both the Insurance Companies. But, the perusal of Ex.R1 would reveal that the claimant has paid premium of Rs.200/- entitling the claimant for TPPD for a sum assuring Rs.6000/-. In view of the above, as per Section 147 of M.V. Act, the liability of the appellant/Insurance Company is fixed only upto Rs.6000/- and the balance amount has to be paid by the owner of the vehicle namely M.V. Subbiah.

8. In view of the above, this Court is inclined to modify the finding of the Tribunal in respect of percentage of liability fixed on the appellant and the third respondent alone. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal to the claimant.

9. In the result,

(i) This Appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs.

(ii) The appellant/Insurance Company is directed to withdraw the entire amount deposited by them before the Tribunal after deducting a sum of Rs.6000/- only.

(iii) The owner of the vehicle is directed to deposit the balance of the Award amount after deducting Rs.6000/-, as assessed by the Tribunal, to the credit of M.C.O.P.No.161 of 2008, within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the claimant through RTGS within a period of two weeks thereafter.

**20.06.2023**

Index : Yes/No
Internet : Yes/No
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**A.A.NAKKIRAN., J.**

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To

1.The Motor Accident Claims Tribunal
(I Additional Subordinate Judge, Salem).

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

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**and**
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