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CMA.No.3561 to 3564 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 02.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.3561 to 3564 of 2014

The Divisional Manager
M/s. Oriental Insurance Company Limited
Neyveli 607801

Appellant in all CMAs

Vs

1. Bakthavachalam
2. Latha
3. Anitha
4. Inudmathi
5. Kolanjiappan
6. Manikandan

Respondents-CMA.3561/2014

1. Sumathi
2. Minor Vetriselvan
3. Minor Anbuselvan
4. Minor Aruna
5. Kolanjiappan

Respondents-CMA.3562/2014

1. Anbalagan
2. Kolanjiappan

Respondents-CMA.3563/2014

1. Vaithiyanathasamy
2. Amutha
3. Uma
4. Kolanjiappan
5. Manikandan

Respondents-CMA.3564/2014

Prayer:- These Civil Miscellaneous Appeal have been filed, against the common judgement and decree, dated, 30.01.2014, made in MCOP.Nos.75, 54, 55 and, 73 of 2013, by the Principal District Court (MACT) Ariyalur.



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For Appellant : Mr.J.Chandran

For Respondents : Mr.S.Kaithamalaikumaran-RR1to4-CMA.3561/2014
RR5 and 6-CMA.3561/2014-No Appearance

Mr.C.Sivakumar-RR1 to 4-CMA.3562/2014
RR5 and 6-CMA.3562/2014-No Appearance

Mr.C.Sivakumar-R1-CMA.3563/2014
R2-CMA.3563/2014-No Appearance

Mr.S.Kaithamalaikumaran-RR1to3-CMA.3564/2014
RR4 and 5-CMA.3564/2014-No Appearance

JUDGEMENT

1. These Civil Miscellaneous Appeal have been filed, against the common judgement and decree, dated, 30.01.2014, made in MCOP.Nos.75, 54, 55 and, 73 of 2013, by the Principal District Court (MACT) Ariyalur. For the sake of convenience, the parties are herein after referred to as they were arrayed before the Tribunal.
2. According to the claimants, when, on 06.12.2012 at about 00.45 hours, the injured petitioner, Anbalagan, was travelling as a passenger in a Santro Car bearing Reg.No.TN-05-8-9748 on the Jayankondam-Cuddalore Cholapuram Sambodai Weigh Bridge, the Lorry, bearing Reg. No.TN-28-C-8793, owned by the 1st Respondent, coming in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the Car. In that accident, the petitioner in MCOP.No.55 of 2013 had sustained multiple injuries and fractures. The husband of the 1st Petitioner in MCOP.No.54 of 2013, namely, Chinnakkutty died on the spot. The son of the 1st Petitioner in MCOP.No.73 of 2013, namely Krishnakumar died on the spot itself. The son of the 1st



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Petitioner in MCOP.No.75 of 2013, namely, Rengarajan died on the spot itself. Hence, the above four claim petitions in MCOP.Nos.55, 54, 73 and 75 of 2013, have been filed, claiming compensation amounts of Rs.10,00,000/-, Rs.30,00,000/-, Rs.45,00,000/- and Rs. 30,00,000/- by the injured and the legal representatives of the deceased persons, respectively. The 1st Respondent is the owner of the Lorry and he remained exparte before the Tribunal and the 2nd Respondent is the insurer of the Lorry. The 3rd Respondent is the owner of of the Santro car. The claim petitions were resisted by the 2nd Respondent Insurance Company and the 3rd Respondent, owner of the Santro Car, by filing separate counters.

3. Since the accident involved is one and the same in all four cases, a joint trial was conducted. The evidence recorded in MCOP.No.55 of 2013 was treated as evidence for other claim petitions. On the side of the claimants, PW.1 to PW.6 were examined and Ex.P1 to Ex.P36 were marked. On the side of the Respondents, RW.1 and RW.2 were examined and Ex.R1 to R3 were marked.
4. The Tribunal, finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending Lorry and that there was no contributory negligence on the part of the driver of the Santro Car, the Tribunal has awarded a total compensation of Rs.1,60,000/- in MCOP.No.55 of 2013, Rs.8,96,400/- in MCOP.No.54 of 2013, Rs.10,74,000/- in MCOP.No.73 of 2013 and Rs.8,18,000/- in MCOP.No.75 of 2013, respectively, with interest at 6% p.a. from the date of the petition, to be



deposited by the Insurance Company within a period of one month from the date of receipt of a copy of the order, failing which, it shall carry penal interest at the rate of 9% p.a. for the period of delay. Aggrieved by the same, these appeals have been filed by the Insurance Company.

5. This Court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.
6. According to the learned counsel for the Appellant/ Insurance Company, the accident had occurred only due to the rash and negligence driving on the part of the driver of the Santro Car, for which a First Information Report was also filed against him and he used the Car without name transfer and without insurance and also he did not possess a valid driving licence on the date of the accident and all the occupants of the Santro Car were under the influence of alcohol. The evidence of RW.1, Sub Inspector of Police, RW.2, Private Investigator, Ex.R1 rough sketch all would go to show that the accident was due to the reckless driving of the driver of the Santro Car and hence, the Appellant Insurance Company is not liable to pay the compensation.
7. On the other hand, it is argued on behalf of the claimants that the conclusion arrived by the Tribunal in fixing the liability on the Appellant Insurance Company is just and proper and hence, it need not be interfered with.
8. RW.1, the concerned Sub Inspector of Police has deposed that he examined as many as 15 witnesses in respect of the manner, in which the accident had occurred and they have all spoken to the effect that when the Lorry was



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coming from West to East on the left side of the road, the Santro Car, coming in the opposite direction on the wrong side, came in a rash and negligent manner and dashed against the lorry coming on the left side of the road from West to East direction. A perusal of Ex.R1 rough sketch also confirms the said version of the above said witness that the Santro Car dashed against the Lorry on the Northern side of the East West road direction. He further deposed that on coming know that the driver of the Santro Car was responsible for the accident, the First Information Report was registered against him. It is also mentioned that the accident had occurred on the Northern side of the East West Road direction.

9. RW.1, who is a Private Investigator of the Appellant Insurance Company has deposed that when the Lorry was coming from West to East direction on the left side of the road, the driver of the Santro Car under the influence of alcohol drove the Car in a rash and negligent manner on the wrong side and dashed against the lorry and that the accident had occurred only due to the rash driving of the driver of the car and the First Information Report was also registered against him for having caused the accident in a rash and negligent manner.

10. From the above evidence, it is clear that the driver of the Santro Car has also contributed to the accident. Hence, it would be appropriate to fix liability on the Appellant Insurance Company and the driver of the car in the ratio of 75:25. Hence, the Appellant Insurance Company is liable to pay 75% of the impugned compensation in all the claim petitions.



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A.A.NAKKIRAN, J.

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11.In the result, this Civil Miscellaneous Appeal is partly allowed. The Appellant Insurance Company is directed to deposit 75% of the impugned compensation awarded by the Tribunal,in all the respective claim petitions, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the major claimants are entitled to withdraw their respective proportionate shares with proportionate interest. The share of the minor claimants shall be deposited in any one of the Nationalised Banks, till they attain majority. The interest accrued from the deposit of the minor claimants shall be withdrawn by their parents or guardian periodically. No costs.

02.08.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Principal District Court (MACT) Ariyalur
2. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement
in CMA.No.3561 to 3564 of 2014