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CMA Nos. 903 & 914 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 903 & 914 of 2022
and
C.M.P. Nos. 6689 & 6792 of 2022

C.M.A. No. 903 of 2022:

Bharati AXA General Insurance Company Ltd.,
Fairlands Divya Trade Centre, 1st Floor,
11th Brindavan Road, Fairlands,
Salem – 636 016. ... Appellant

Versus

1. Velmurugan
2. Durairaj ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 01.10.2019 made in M.C.O.P. No. 362 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No. 1, Salem.

For Appellant : Mr. K.Poomalai

For Respondents : Mr. MA.P.Thangavel for R1

R2 - exparte



CMA Nos. 903 & 914 of 2022

C.M.A. No. 914 of 2022:

Bharati AXA General Insurance Company Ltd.,
Fairlands Divya Trade Centre, 1st Floor,
11th Brindavan Road, Fairlands,
Salem – 636 016. ... Appellant

Versus

1. Thulasimani
2. Durairaj ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 01.10.2019 made in M.C.O.P. No. 363 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No. 1, Salem.

For Appellant : Mr. K.Poomalai

For Respondents : Mr. MA.P.Thangavel for R1

R2 - exparte

COMMON JUDGMENT

The appellant has filed the instant appeals challenging the common award passed by the Tribunal in M.C.O.P. Nos. 362 and 363 of 2017 dated 01.10.2019.



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2.The first respondent in both the appeals had filed claim petitions seeking compensation stating that on 24.12.2016, the first respondent in C.M.A. No. 903 of 2022 rode the two wheeler bearing Registration No. TN 30 L 5656 along with the first respondent in C.M.A. No. 914 of 2022, who was traveling as a pillion rider in Kanthampatti Child Hospital Service Road in Bangalore Bypass Road from South to North, a car bearing Registration No. TN 30 AJ 1500 belonging to the second respondent driven by its driver in a rash and negligent manner dashed the two wheeler, as a result of which, the first respondent in both the appeals suffered severe injuries.

3.The second respondent in both the appeals remained exparte before the Tribunal.

4.The appellant in both the appeals filed counter denying all the averments in the claim petitions stating that the accident occurred due to the negligence of the first respondent in C.M.A. No. 903 of 2022, who was the rider of the two wheeler; that the first respondent in C.M.A. No.



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903 of 2022 had suddenly crossed the service road to go to National Highway without noticing the car; that the claim petitions are bad for nonjoinder of necessary parties; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petitions.

5. On the side of the first respondent in both the appeals, PW1 and PW2 has been examined and Ex.P.1 to Ex.P.15 have been marked. The appellant examined three witness on its side as RW1 to RW3 and marked Ex.R.1. Further, Ex.C.1 to Ex.C.4, Ex.W.1 and Ex.W.2 have been marked.

6. The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the car and awarded a sum of Rs. 2,98,488/- to the first respondent in C.M.A. No. 903 of 2022 and a sum of Rs. 1,62,610/- to the first respondent in C.M.A. No. 914 of 2022 towards compensation to be paid by the appellant. Aggrieved by the said award, these instant appeals have been filed.

7. The learned counsel for the appellant submitted that the Tribunal



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had erroneously fixed the entire negligence on the driver of the offending vehicle insured with the appellant although the appellant had examined I.O. to show that the driver of the offending vehicle was not guilty of negligence and the I.O. had closed the case as mistake of fact. The learned counsel further submitted that in any case, the Tribunal ought to have fixed contributory negligence on the deceased and hence, prayed for reduction of the compensation amount.

8.The learned counsel for the first respondent in both the appeals, per contra, submitted that the Tribunal after taking into consideration the evidence adduced before it had correctly come to the conclusion that there is no basis to hold that the rider of the two wheeler has contributed to the accident. The learned counsel further submitted that the Tribunal had also noted the fact that the driver of the car insured with the appellant had not been examined and hence, prayed for dismissal of the appeals.

9.The only question involved in the instant appeal is whether the Tribunal was right in fixing the entire negligence on the driver of the offending vehicle insured with the appellant.



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10. The learned counsel for the appellant was unable to point out any infirmity in the quantum of compensation awarded by the Tribunal. As regards the negligence, it is seen that the driver of the offending vehicle was not examined before the Tribunal. The learned counsel for the appellant relied upon the evidence of I.O. and the final report which is said to have been prepared by him. This Court is of the view that cannot be the basis to hold that the deceased also contributed to the accident. The appellant had not examined the driver or any other eye-witness to the occurrence to dispute the evidence let in on the side of the first respondent in both the appeals. In such circumstances, the finding of the Tribunal holding that the driver of the offending vehicle is guilty of negligence cannot be faulted. Since there is no challenge to the quantum of compensation, no interference is called for.

11. In the result, these appeals are dismissed and the compensation awarded by the Tribunal at Rs. 2,98,488/- to the first respondent in C.M.A. No. 903 of 2022 and at Rs. 1,62,610/- to the first respondent in C.M.A. No. 914 of 2022 is confirmed. The appellant is directed to deposit the amounts determined by the Tribunal together with interest at



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7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit 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 both the appeals are permitted to withdraw their respective award amounts along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, the connected miscellaneous petitions are closed. No costs.

08.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accidents Claims Tribunal,
Special Sub Court No. 1,
Salem.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J

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