IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 263 of 2021
and
C.M.P. No. 1768 of 2021

The Branch Manager,
M/s. Iffco Tokio General Insurance
Company Limited,
No.28, 1st & 2nd Floor,
North Usman Road,
Chennai - 600 017. ... Appellant / 2nd Respondent

Vs.

1. Selvi Priyangaa ... 1st Respondent / Petitioner

2. Thiru. Udditpa Ray ... 2nd Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 12.03.2020 passed in M.C.O.P. No.455 of 2018 on the file of the District Judge, Motor Accident Claims Tribunal, Pondicherry.

For Appellant	:	Mr. E. Rajadurai
For R1	:	No Appearance
For R2	:	Mr. J. Prasanna Kumar

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the liability fixed on them in payment of compensation as per the Judgment and Decree passed in M.C.O.P. No.455 of 2018, dated 12.03.2020 on the file of the District Judge, Motor Accident Claims Tribunal, Pondicherry.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 23.02.2018, at about 06:00PM, she was riding her two wheeler bearing Registration No. PY-01-CE-9366 on the Ambur Salai from South to North direction and while she reached near Chetty Street, a car bearing Registration No. PY-01-BV-0990 driven by its driver in rash and negligent manner overtook the claimant and stopped in front of her and suddenly the driver of the car has opened the door, due to this sudden action, the claimant dashed on the door of the car and fell down and at the same time, another unknown car, which came behind and dashed on her, which resulted in causing injuries to the claimant.

She has also lodged a criminal complaint stating the very same fact and the same was registered in Crime No.47 of 2018 u/s. 279, 338 of I.P.C. Due to the injuries sustained, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.10,00,000/-.

4. The first respondent is the owner and the second respondent is the insurer of the car bearing Registration No. PY-01-BV-0990. The first respondent has not contested the claim before the Tribunal and remained ex-parte. The second respondent - insurance company, who is the insurer of the offending car bearing Registration No. PY-01-BV-0990 has filed a counter and contested the claim by disputing the manner in which the accident has taken place and also contended that the claimant has sustained injuries only due to negligent act on the part of the driver of the unknown car, hence the claim petition shall be maintained only against the unknown car and not against this respondent and also the compensation claimed under various heads is on the higher side, and prayed to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.19 were marked. On the side of the respondent,

R.W.1 was examined and Ex.R.1 to R.3 were marked. The disability certificate of the claimant is also marked as Ex.C.1.

6. Based on the evidence placed on record, the Tribunal in point No.1 has held that the negligent act on the part of the driver of the car bearing Registration No. PY-01-BV-0990 is responsible for the accident. In point No.3, the Tribunal has quantified and granted a compensation for a sum of Rs.5,11,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point No.4, the Tribunal has fixed the liability on the second respondent - insurance company to pay the compensation to the claimant.

7. Aggrieved over the liability fixed on the second respondent-insurance company, this appeal is filed by the insurance company.

8. The learned counsel appearing for the insurance company has mainly contended that initially the driver of the first respondent has opened the door and without noticing, the claimant has hit on the car door and fell down, and thereafter, the claimant was hit by another unknown car, which

resulted in causing injuries to the claimant. Hence, the major extent of liability is on the side of the unknown car and the Tribunal has also failed to appreciate the evidence placed on record, including the final report filed by the police and oral evidence of the claimant, but, fixed the entire liability on the second respondent - insurance company / appellant herein to pay compensation to the claimant, hence, prays to set aside the award of the Tribunal.

9. The learned counsel appearing for the first respondent, who is the owner of the car has submitted that there is no violation of policy condition and the policy was in force at the time of occurrence, hence, the insurance company is liable to indemnify the owner of the car bearing Registration No. PY-01-BV-0990.

10. Heard submissions made by the insurance company, who is the appellant herein and perused the materials placed on record:

11. The case herein is based on the composite negligence, the driver of the first respondent car bearing Registration No. PY-01-BV-0990

has opened the car door in the middle of the road suddenly and the claimant has dashed against the door and fell down. Subsequently, an unknown car, which came behind the claimant has hit on her and due to this, the claimant has sustained injuries. The Full Bench judgment of the Hon'ble Apex Court in ***Khenyei vs. New India Assurance Company Limited and others, [(2015) 9 Supreme Court Cases 273]*** has held a reference for fixing the liability in paying the compensation in respect of composite negligence by referring various judgments has held as follows:

> *"26. On the same principle, in the case of joint tortfeasors where the liability is joint and several, it is the choice of the claimant to claim damages from the owner and driver and insurer of both the vehicles or any one of them. If claim is made against one of them, entire amount of compensation on account of injury or death can be imposed against the owner, driver and insurer of that vehicle as their liability is joint and several and the claimant can recover the amount from any one of them. There cannot be apportionment of claim, of each tortfeasor in the absence of proper and cogent evidence on record and it is not necessary to apportion the claim.*
>
> *27. To sum up, we hold as under-*
>
> *(i) Owner, driver and insurer of one of the vehicles can be sued and it is not necessary to sue the owner, driver and insurer of both the vehicles. The claimant may implead the owner, driver and insurer of both the vehicles or any one of them.*

> *(ii) There cannot be apportionment of the liability of joint tortfeasors. In case both the joint tortfeasors are impleaded as party and if question of apportionment can be considered by the Claims Tribunal. However, on general principle of law, there is no necessity to apportion the inter se liability of joint tortfeasor."*

12. The very same principle was laid down by the Apex Court in ***Pawan Kumar and another etc., vs. M/s. Harikishan Dass Mohan Lal and others [2014 (3) SCC 590].***

13. In this case, the claimant has made claim only against the first respondent car bearing Registration No. PY-01-BV-0990. The negligent act on the part of the driver of the car that sudden opening of the car door in the middle of the road has lead to the occurrence. The claimant has dashed on the car door and fell down and subsequently, hit by an unknown car which came behind her. As per the Hon'ble Apex Court judgment stated supra, the claimant is having right to claim compensation against both the cars, which involved in the cause of the occurrence or any one of the tortfeasor. In this case, the claimant has filed a claim petition against the first respondent car bearing Registration No. PY-01-BV-0990, since, the unknown car could not be traced by the police as per their final report marked as Ex.P.3. Hence, the claimant has no other option to claim the compensation against the appellant

insurance company herein, who is the insurer of the car bearing Registration No. PY-01-BV-0990 and the same is permissible as per the Hon'ble Apex Court judgments cited supra.

14. In view of the above aspects, the Tribunal need not fix the extent of liability in dealing with composite negligence and has rightly fixed the entire extent of liability on the side of the appellant - insurance company herein. Hence, this Court is of the view that the liability fixed on the insurance company by the Tribunal is permissible and the contention of the appellant - insurance company has no merit and hence, this appeal is liable to be dismissed.

15. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, connected civil miscellaneous petition stands closed. No costs.

22.11.2023

stn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The District Judge,
   Motor Accident Claims Tribunal,
   Pondicherry.

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

K. RAJASEKAR, J.

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