THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.Nos.4433 of 2019 & 270 of 2021
and
C.M.P.Nos.25138 of 2019 & 1818 of 2021

C.M.A.No.4433 of 2019

M/s.SBI General Insurance company Limited,
"Natraj" 101, 201 & 301, Junction of Western Express Highway,
Andheri Kurla Road, Andheri (East),
Mumbai – 400 069. ... Appellant

Vs.

1.Manokaran
2.M.Kannan

3.M/s.Cholamandalam MS General Insurance Company Limited,
Namakkal. ... Respondents

C.M.A.No.270 of 2021

Cholamandalam MS General
Insurance Co. Ltd,
138/2 LMR Shopping Arcade,
II Floor, Opp. to MGM Theatre,
Namakkal. ... Appellant

Vs.

1.Manoharan
2.M.Kannan

3.SBI General Insurance Co. Ltd.,
"Natraj" 101, 201 & 301, Junction of Western Express Highway,
Andheri Kurla Road, Andheri (East),
Mumbai – 400 069. ... Respondents

Prayer in C.M.A.No.4433 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree made in M.C.O.P.No.107 of 2014 dated 25.04.2019 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

Prayer in C.M.A.No.270 of 2021 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 25.04.2019 in M.C.O.P.No.107 of 2014 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Namakkal.

C.M.A.No.4433 of 2019

For Appellant : Ms.C.Harini
for M/s.MB Gopalan Associates

For Respondents : Mr.K.T.S.Sivakumar [R1]
No appearance [R2]
Ms.R.Sreevidhya [R3]

C.M.A.No.270 of 2021

For Appellant : Ms.R.Sreevidhya

For Respondents : Mr.K.T.S.Sivakumar [R1]

No appearance [R2]
Ms.C.Harini
for M/s.MB Gopalan Associates [R3]

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COMMON JUDGEMENT

Assailing the judgment and decree dated 25.04.2019 passed by the Motor Accident Claims Tribunal, Cholamandalam MS General Insurance Company Limited and SBI General Insurance Company Limited have filed appeals individually.

2. As per the claim petition, on 03.08.2013 at about 5.15. a.m., when the claimant was travelling as an additional driver in the Eicher Van bearing Regn.No.TN-28-AM-7369 driven by one Srinivasan, belonging to the 1st respondent/M.Kannan and insured with the 2nd respondent/insurance company on Dindigul-Karur Main Road, near Pungambadi Muthu Nivas House, from South to North direction, the driver of the Taurus lorry, who was going in front of the Eicher van applied sudden brake. As a result, the driver of the Eicher Van turned the vehicle towards right hand side and hit on the back side of the Taurus lorry. Due to the same, the claimant, who was also riding in the Eicher

van as an additional driver, sustained grievous injuries. Hence, he has filed claim petition seeking compensation as against the owner and insurer of the Taurus lorry/appellant in C.M.A.No.4433 of 2019 and the insurer of the Eicher van/appellant in C.M.A.No.270 of 2021.

3. Before the Tribunal, the 1st respondent/owner of the Taurus lorry remained ex-parte. On the side of the claimant, he examined himself as P.W.1 and examined the doctor as P.W.2 and marked 12 documents viz., Exs.P.1 to P.12. On the side of the insurance company, two witnesses were examined viz., R.W.1 and R.W.2 and marked 6 documents viz., Exs.R.1 to R.6.

4. The Tribunal, after considering the oral and documentary evidence came to the conclusion that the accident had happened due to the rash and negligent driving of both the driver of the Eicher van as well as the driver of the Taurus lorry. Accordingly, the Tribunal fixed 25% negligence on the part of the driver of the Eicher van and 75% on the part of the driver of the Taurus lorry and awarded compensation of Rs.6,54,630/-. In so awarding, the Tribunal directed the insurer of the

Eicher van to pay 25% and the insurer of the Taurus Lorry to pay 75%. Aggrieved by the same, the present appeals have been filed by the respective insurance company.

5. The learned counsel appearing for the insurer of the Taurus Lorry/appellant in C.M.A.No.4433 of 2019 submits that due to the rash and negligent driving of the Eicher van, the accident had happened, since the Taurus lorry was going in front of the Eicher van, which hit on the back of the lorry. Further, the driver of the Eicher Van had admitted the guilt and paid fine for having caused the accident. Hence, the Tribunal is erred in directing the insurer of the Taurus Lorry to pay 75% compensation. Accordingly, he prays for appropriate orders.

6. The learned counsel appearing for the insurer of the Eicher van/appellant in C.M.A.No.270 of 2021 submits that, the claimant being the occupant of the vehicle, he cannot claim compensation as a third party. He further submits that the liability of the insurance company is only limited to owner as per the policy terms and conditions. Under the policy coverage, the owner of the vehicle is entitled to get coverage only

in case of injury specified in the contract. The nature of injury sustained does not fall within the parameters of Section 3 of the policy. Further, the insured in this case has paid additional premium under P.A. owner driver. Hence, the Tribunal has erred in directing the insurance company to pay 25% of the compensation. Accordingly, he prays for appropriate orders.

7. Per contra, the learned counsel appearing for the additional driver of the Eicher Van/claimant before the Tribunal submits that, since the driver of the Taurus lorry, which was going in front of the Eicher Van, had applied sudden brake, the accident had happened. Hence, the accident had happened only due to the negligence on the part of the driver of the Taurus lorry. Further, it is submitted that the Tribunal ought to have fastened the entire liability on the insurer of the Taurus lorry. Therefore, he submitted that the award passed by the Tribunal does not warrant any interference. Accordingly, he prays for dismissal of appeals.

8. Heard the learned counsel for the respective insurance company as well as the claimant and also perused the materials placed on record.

9. It is seen from the award of the Tribunal that the accident had happened due to the negligence on the part of both the drivers. If both the drivers have been alert and careful, the accident could have been averted. Further as per the first information report, the Eicher Van coming behind the Taurus lorry came in a rash and negligent manner. If the driver of the Taurus lorry noticed such rash driving, he could have stopped the lorry on the side of the road. Hence, both the drivers are negligent and are responsible for the accident. Therefore, there is no error in the Tribunal fixing the negligence as 25:75 on the Eicher Van and Taurus lorry and directing the insurer of the Taurus lorry to pay 75% compensation. Hence, this Court is not inclined to interfere with the same and accordingly, the award of the Tribunal in directing the insurer of the Taurus lorry/appellant in C.M.A.No.4433 of 2019 to pay 75% compensation is confirmed.

10. Coming to the case of the appellant in C.M.A.No.270 of 2021, insurer of the Eicher Van, when there is a specific term of contract between the insured and the insurer, the same should not be deviated. The insured in this case has paid additional premium of Rs.100/- for

personal accident coverage to maximum limit of Rs.2,00,000/-. Section 3C of the insurance terms and conditions reads as follows:

Section 3: Personal Accident cover for Owner-Driver

The Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle, in direct connection with the vehicle insured or while driving or mounting into/dismounting from the vehicle insured or whilst travelling in it as a co-driver, caused by violent accidental external and visible means which independent of any other cause within six calendar months of such injury result in:

Nature of injury	***Scale of compensation***
(i) Death	100%
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
(iii) Loss of one limb or sight of one eye	50%
(iv) Permanent fatal disablement from injuries other than named above	100%

c) such compensation shall be payable directly to the insured or to his/her legal representatives who receipt shall be the full discharge in respect of the injury to the insured."

11. The injury sustained by the claimant, as per the evidence of

P.W.2 was i) fracture of left thigh bone, ii) fracture of right leg tibia and fibula and iii) laceration of skin.

12. The insurer of the Eicher van cannot claim that the injured is not entitled to any compensation, as the injured was travelling as an additional driver and the contract covers owner-driver. However, the injured is entitled to get compensation only if the injury falls under any of the injuries mentioned in the contract. Since the injury sustained by the claimant does not fall within the scope of the personal accident cover, the insurer would not be liable to compensate the injured under the owner-driver clause. However, without properly appreciating the above, the Tribunal had treated the claimant/additional driver of the vehicle as third party and awarded compensation, which cannot be sustained and the same deserves to be set aside as it is erroneous. Accordingly, the award of the Tribunal in directing the insurer of the Eicher van/appellant in C.M.A.No.270 of 2021 to pay 25% compensation is set aside.

M.DHANDAPANI, J.,

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13. In the result, the appeal in C.M.A.No.4433 of 2019 is dismissed and the appeal in C.M.A.No.270 of 2021 is allowed. As a consequence thereof, amount, if any, deposited by the insurer of the Eicher van, they are permitted to withdraw the same by filing appropriate petition. No costs. Consequently, the connected miscellaneous petitions are closed.

15.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Namakkal.

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

C.M.A.Nos.4433 of 2019 & 270 of 2021