



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1195 of 2017

Royal Sundaram Alliance
Insurance Company Limited,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai-600 014.

...Appellant

Vs.

1. R.Srinivasan
2. Palanisamy
3. K.Thiyagarajan
4. The New India Assurance Company Limited,
No.11-19, 20 Government Arts College Road,
Coimbatore-18

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 20.10.2016 made in M.C.O.P.No.3639 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant : M/s.N.Vijayaraghavan

For Respondents : Mr.Elaveera Ravindran for R4



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: M/s.Mukunk R.Pandiyan for R1
: R2 and R3 dispensed with

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the awarded dated 20.10.2016 in M.C.O.P.No.3639 of 2013 passed by the Motor Accident Claims Tribunal, Special Subordinate Court, Krishnagiri wherein the Tribunal has directed the second respondent in M.C.O.P.No.3639 of 2013 to indemnify the first respondent owner of the vehicle for the injuries sustained by the claimant in the accident taken place on 03.12.2006.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the claimant is as follows:

On 03.12.2006 at about 00.45 hours, the claimant was driving was Maxi Cab bearing Regn.No.TN 31 D 7929 from Hosur to Krishnagiri NH.7 road, while the vehicle reached Melumalai, a lorry bearing Regn.No.KA-01-C-392 belongs to the first respondent came in the opposite direction, driven by its driver in a rash and negligent manner, suddenly stopped on the middle of the road without giving signal or



sustained severe injuries. The driver of the Maxi cab also injured. A case in Cr.No.419 of 2006 for the offence under Section 279 and 337 of IPC was registered against the claimant before the Soolagiri Police. After discharge from the hospital, the claimant has come forward to file the claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him under Section 166 of Motor Vehicles Act.

4. The first respondent owner of the Lorry has not contested the claim petition and remained exparte.

5. The second respondent insurer of the Lorry has filed the counter affidavit and contended that the accident was not occurred due to the negligent driving of the lorry driver. The petitioner who has driven the Maxi Cab behind the lorry in high speed and hit on the rear side of the lorry. Hence the second respondent is not liable to pay the compensation and since the accident was occurred due to the rash and negligent driving of the claimant, no compensation could be paid and prays to dismiss the claim petition.



respondent is insurer of the Maxi Cab. Fourth respondent alone contested the claim, filed counter stating that the driver of the lorry drove the vehicle slowly and carefully by observing all the traffic rules and regulations, but the claimant who drove the Maxi Cab has drove the vehicle in rash and negligent manner and lost control of his vehicle and hit on the rear side of the first respondent vehicle, hence, the claimant is not entitle to claim compensation and prays to dismiss the claim petition.

7. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P9 were marked in support of their claim petition and on the side of respondent no witness examined and no documents marked.

8. After enquiry, the Tribunal in Point No.1 has held that even though the FIR was registered against the claimant herein, the driver of the lorry is responsible for the accident since the respondents have not adduced contra evidence. In point No.2, the Tribunal has concluded that the second respondent is liable to pay the compensation to the petitioner on behalf of the first respondent for the injuries sustained by him in the occurrence. In Point No.3, the Tribunal has quantified the quantum of compensation and awarded a sum of Rs.6,85,400/- as compensation for



the injuries sustained by the claimant. Aggrieved over the liability fixed on the part of the second respondent, this Civil Miscellaneous Appeal has been filed.

9. Learned counsel for the second respondent submits that in the occurrence more than 10 persons were injured and 10 claim cases were filed immediately after the accident. In all these 10 cases were heard together and common award was passed on 21.04.2015, holding that both the drivers are equally responsible for the occurrence and both the insurance company are directed to pay the compensation equally to those injured in the accident, who travelled as passenger in the Maxi Cab. Both the insurance companies have satisfied with the award passed against them. After awaiting some period, the claimant herein who is held to be tortfeasor in 10 claim cases, filed claim petition. Since it was filed belatedly, it was not clubbed with those 10 cases and individual award has been passed in this case. Now the claimant is not entitled to say that the lorry driver alone responsible for the accident. Learned counsel also produced the copy of the award passed in batch of MCOP Nos.652 to 661 of 2007 by the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Krishnagiri.



10. Learned counsel for the first respondent submitted that in this case insurance company has not filed any evidence to disprove the contention of the claimant that the lorry driver alone is responsible for the accident. Having failed so, now the insurance company is not entitled to claim that the accident was occurred only due to the negligence act of the claimant. It is also contended that the compensation awarded under various heads are also on higher side, hence prays to confirm the same.

11. Learned counsel for the fourth respondent insurance company of the Maxi Cab submits that claim petitions were filed by the persons injured in the accident and in all those cases, it has been held that the driver of the Maxi Cab i.e., claimant herein and driver of the lorry are equally responsible for the accident and accordingly the claimant herein is also liable for the 50% of the accident and now he is not entitle to say that the drive of the lorry alone is responsible for the accident and prays to modify the award to the extent of fixing the 50% liability for the accident on the part of the claimant herein.

12. I have considered the submissions made by both sides and perused the records.



13. On a perusal of evidence of P.W.1, shows that on 03.12.2006 at about 00.45, the claimant was driving was Maxi Cab vehicle bearing Regn.No.TN 31 D 7929 from Hosur to Krishnagiri NH.7 road, while the vehicle reached Melumalai, a lorry bearing Regn.No.KA-01-C-392 belongs to the first respondent came in the opposite direction, driven by its driver in a rash and negligent manner, suddenly stopped in the middle of the road without giving signal or indication, due to which both the vehicles colluded and the claimant has sustained severe injuries. The driver of the Maxi cab i.e., claimant also injured. A case in Cr.No.419 of 2006 for the offence under Section 279 and 337 of IPC was registered against the claimant on the file of the Soolagiri Police Station. In the cross examination, it is also elicited that lorry driver has applied sudden brake while proceeding in front of him, due to which he has hit the lorry in the rear side. It is a specific case that the lorry driver has applied sudden brake which resulted in accident. Admittedly, the accident was occurred at mid night and it is the duty of the driver to take due care and caution while driving the passenger vehicles, he ought to have driven the vehicle cautiously by maintaining appropriate distance between the two vehicles. In the case on hand, according to the claimant, the driver of the lorry has applied sudden brake due to which he could not able to stop the vehicle and hit the rear side of the lorry which shows that the driver has driven the



vehicle without due care and caution and he has also stated that at the time of accident visibility was very low. The Chief Judicial Magistrate, Krishnagiri in nine cases has given a finding that the claimant also has contributed to the accident, since he has driven the vehicle in high speed and without maintaining the proper distance between the two vehicles and having suffered a finding that the claimant herein is also responsible for the accident, after pronouncing of judgement in all nine case and without challenging the same, the claimant herein cannot contend that he is not responsible for accident. The facts discussed also shows that on the date of accident, the road was filled with fog, the lorry which is proceeding in front of the Maxi Cab has suddenly applied sudden brake, the claimant herein has drove the vehicle behind the lorry without maintained proper distance shows that the claimant has also contributed to the accident.

14. In the light of the previous orders passed in MCOP.Nos.652 to 661 to 2007 and also in view of the discussions made above, this Court inclined to accept the case of the insurance company that the claimant herein is also responsible for the accident and the manner in which the accident also shows that he is also equally responsible for the accident. Accordingly, I am inclined to modify the award passed by the Tribunal by directing the second respondent who is the insurer of the lorry to pay the



50% of the award amount alone and with regard to the remaining 50% of the award amount, the claimant herein is not entitled to claim the same.

15. In the result, this Civil Miscellaneous Petition is partly allowed and the award of the Tribunal is modified, the first and second respondents are jointly and severally liable to pay 50% of the compensation awarded by the Tribunal along with interest as ordered. The claim petition against third and fourth respondents are dismissed. The first and second respondent in the claim petition are directed to deposit the compensation within a period of six weeks from the date receipt of copy of this order and on such deposit being made, the claimant is permitted to withdraw the same by filing appropriate petition in this regard. No costs.

12.09.2023

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Index : Yes/No

Neutral Citation : Yes/No

K.RAJASEKAR, J.

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To:

1. The Motor Accident Claims Tribunal,
Special Subordinate Court,
Krishnagiri.
2. The Section Officer,
VR Section,
High Court,
Madras.

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