



CMA.No.4279 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2023

PRONOUNCED ON : 07 .06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.4279 of 2019

The Divisional Manager
New India Assurance Company Limited
Attur, Salem District

Appellant

Vs

1. Samydurai
2. P.Muthukumar
Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement
and decree, dated, 05.02.2019, made in MCOP.No.366 of 2016, by the Special
Subordinate Judge-II (MACT) Salem.

Respondents

For Appellants : Mr.J.Chandran

For Respondents : No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the Insurance Company, against the judgement and decree, dated, 05.02.2019, made in MCOP.No.366 of 2016, by the Special Subordinate Judge-II (MACT) Salem.
2. The 1st Respondent has filed the claim petition before the Tribunal, seeking a compensation of Rs.25,00,000/- on various heads, for the injuries sustained by him in a motor road accident, which took place on 30.12.2015. The claim



CMA.No.4279 of 2019

WEB COPY

petition was resisted, on various grounds, by the Appellant Insurance Company, by filing a counter. The 2nd Respondent is the owner of the offending two wheeler, in which, the claimant was travelling as a pillion rider and the Appellant is the Insurance Company, with which the two wheeler is insured. In the alleged accident, there were two offending vehicles, namely, the two wheeler and one unknown vehicle (Tipper Lorry) involved. On the side of the claimant, the claimant examined himself as PW.1 and Ex.P1 to Ex.P9 were marked. On the side of the Insurance Company, RW.1 was examined. CW.1 was examined and Ex.C1 was marked.

3. Finding that the accident had occurred due to the rash and negligent driving of both the driver of the offending two wheeler, belonging to the 2nd Respondent and the driver of the unknown lorry, coming in the opposite direction, the Tribunal has awarded a total compensation of Rs.12,33,500/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the Appellant Insurance Company. Hence, this appeal has been filed by the Appellant Insurance Company.
4. This Court heard the learned counsel for the Appellant and also perused the entire materials placed on record.
5. There is no quarrel over the quantum of compensation. However, the learned counsel for the Appellant has disputed the negligence aspect, as there were two offending vehicles involved in the alleged accident. The learned counsel submits that when the Tribunal has categorically held that both the drivers of



CMA.No.4279 of 2019

WEB COPY

the offending two wheeler and offending lorry were responsible for the accident, it grossly erred in fastening the entire liability on the Appellant Insurance Company and the Tribunal ought to have applied the theory of composite negligence on both the drivers of the offending vehicles.

6. According to the claimant, when on 30.12.2015 at 11.30 p.m., while he was travelling as a pillion rider in the two wheeler, bearing Reg.No.TN 77 E 3135 from Salem side towards Kallakurichi side at Salem Kallakurichi Bye Pass Road, due to the rash and negligent driving of the rider of the two wheeler, it dashed against the unknown Tipper Lorry, coming from the opposite direction, due to which, both of them fell down and sustained severe injuries.
7. It is seen from the records that the First Information Report was filed against an unknown vehicle. The claimant as PW.1 has deposed that the rider of the two wheeler was responsible for the accident. Based on the oral evidence of PW.1 and that of RW.1 Investigating Officer and also the First Information Report, the Tribunal found that both the rider of the two wheeler and the driver of the unknown vehicle were responsible for the accident. Hence, the Tribunal ought to have applied theory of composite negligence, but, it erred in fastening the entire liability on the Appellant Insurance Company. Therefore, in the facts and circumstances of the case, it would be appropriate to fasten the composite negligence in the ratio of 60:40 on the rider of the offending two wheeler and the driver of the unknown vehicle respectively.

A.A.NAKKIRAN, J.



CMA.No.4279 of 2019

Srcm

WEB COPY

8. In fine, this Civil Miscellaneous Appeal is partly allowed. The Appellant Insurance Company is directed to deposit 60% of the impugned compensation, with interest at 7.5% p.a. from the date of the petition till the date deposit, 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 claimant is permitted to withdraw the same, by filing appropriate application. No costs.

07.06.2023

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Srcm

To

1. The Special Subordinate Judge-II (MACT) Salem
2. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.No.4279 of 2019