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C.M.A.No.1697 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**C.M.A.No.1697 of 2017
and C.M.P.No.9096 of 2017**

M/s. United India Insurance Co Ltd.,
Branch Office, Neyveli.
(Policy No.012301/31/06/01/11111451)

... Appellant

-VS-

1.Rajathi
2.Minor.Arunkumar
3.Minor.Sasikumar
4.Minor.Vijayakumar
5.Bakkiyam
6.R.Madhu
7.A.Deivasigamani
8.M/s.New India Assurance Co.Ltd.,
Office at 127-A, Thiru.V.Ka.road,
Villupuram 605 602.

... Respondents

Prayer:- Civil Miscellaneous Appeal Petition filed under Section 173 of the Motor Vehicle Act, against the award and decree dated 14.12.2016 made in M.C.O.P.No.22/2007 on the file of the Motor Accidents Claims Tribunal (Sub Court), Attur.

For Appellant	: Mr.D.Bhaskar
For Respondent	: Mr.M.Devaraj for R1 to R5 Mr.A.Salomi for R8 R7-Died R6- Not ready in notice



C.M.A.No.1697 of 2017

J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company against the award and decree dated 14.12.2016 made in M.C.O.P.No.22/2007 on the file of the Motor Accidents Claims Tribunal (Sub Court), Attur.

2. It is the case of the appellant that the first respondent is the wife of the deceased, respondents 2 to 4 are the children and 5th respondent is the mother. The respondents/claimants filed a claim petition before the Tribunal alleging that on 30.04.2006, the deceased viz., Vadivel was travelling in the tempo bearing Registration No.TN 29 B 6426 owned by the 6th respondent, insured with the appellant, by standing on it backside. At that time, the tractor attached with trailer bearing Registration No.TN 32 Z 5360, came into opposite direction, owned by the 7th respondent insured with the 8th respondent, in a rash and negligent manner, dashed against the tempo, due to which, one Vadival was sustained grievous injuries and died. Alleging that the accident was due to negligent driving of the driver of the tractor, the respondents/claimants have filed a claim Petition before the Motor Accidents Claims Tribunal under Section 166 M.V.Act, claiming compensation of Rs.10,00,000/- and the same was taken on file in MCOP. No.22 of 2007.



C.M.A.No.1697 of 2017

WEB COP

3. Before the Tribunal, during trial, in order to prove the case of the claimants, they have examined two witness and marked eight documents viz., Exs.P1 to P9. On the side of the respondents, no one was examined and no document was marked. The Tribunal, after hearing the arguments on either side and after considering the oral and documentary evidences, awarded a sum of Rs.11,70,000/-. As the 6th respondent's tempo was insured with the appellant insurance company and the 7th respondent's tractor was insured with the 8th respondent, the Tribunal fixed 50% negligence on the 6th respondent and appellant and fixed another 50% negligence on the respondents 7 and 8.

4. Aggrieved by the said award dated 14.12.2016, the appellant Insurance Company has filed this appeal before this Court for questioning the liability fixed as against the appellant.

5. The learned counsel appearing for the appellant-Insurance Company submitted that the Tribunal erred in granting 50% of the award against the appellant inspite of the fact that the appellant is not liable to pay the compensation. Further the FIR lodged as against the driver of the tractor-trailer and charge sheet has filed against the driver for the offence committed. The



C.M.A.No.1697 of 2017

learned counsel further submitted that the appellant has no liability, as the deceased travelled in the tempo van as an unauthorized passenger in the goods vehicle and also the Tribunal erred in applied pay and recovery method.

6. The learned counsel for the appellant further submitted that in respect of the other fatal accident involved in the same vehicle, one of the Dependant has filed a claim petition before the Tribunal in OP.No.114/2007 and the Tribunal has fixed entire responsibility as against the owner of the tractor and the insurance company. In the present case, the learned Tribunal, without considering the factual position, has fixed the liability as against the appellant insurance company, which is not sustainable one and the same is contrary to the earlier decision taken by the Tribunal and prayed for setting aside the award of the Tribunal.

7. The learned counsel for the 8th respondent did not dispute the submission made by the learned counsel for the appellant. Admittedly, both the vehicle have come from opposite direction and dashed against each other, in which, the Tribunal fixed 50% responsibility against the appellant and fixed 50% responsibility against the 8th respondent, which cannot be interfered with.



C.M.A.No.1697 of 2017

8. Heard the learned counsel for the appellant Insurance Company as well as the learned counsel for the respondents and also perused the materials available on record.

9. The instant appeals have been filed by the insurance company challenging the findings of the Tribunal in fixing 50% liability on them. It is an admitted fact that on 30.04.2006, When the deceased Vadivel was returning to Athur by standing backside in the tempo van, at the time, a tractor coming into opposite direction, dashed against the tempo, due to which, the said Vadivel sustained head injuries and admitted in the hospital and died on 05.05.2006 due to the grievous injuries. It is also an admitted fact that in the very same accident, one Vijayakumar, who travelled in the very same tempo backside, sustained grievous injuries and died on the spot. The Dependants of the said Vijayakumar have claimed compensation before the very same Tribunal. The Tribunal has also awarded compensation and fixed 50% responsibility as against the owner of the tractor and 50% responsibility as against the insurance company.

10. The learned counsel for the appellant has rightly submitted that the accident had happened when the driver of the tractor overtaking on going



C.M.A.No.1697 of 2017

vehicle, without noticing on coming vehicle and the FIR has also registered as against the owner the tractor and charge sheet has also filed. This Court also feels that without any basis, the Tribunal has given an erroneous finding that the appellant has to pay 50% award amount for the death of the deceased Vadivel on the contrary to the award passed in other case in the very same accident, which is contrary to law and the appellant has no liability to pay the compensation in the present case.

11. In the light of the above observations, it is clear that the driver of the tractor has committed violation and this Court fixed the responsibility as against the owner of the tractor and the insurance company. Hence, this Court sets aside the award and passes the following orders:

(i) The 8th respondent-Insurance Company is directed to pay remaining 50% compensation awarded by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization , within a period of four weeks from the date of receipt of a copy of this order.

(ii) the appellant shall withdraw the compensation as already deposited before the Tribunal.

(iii) the 8th respondent is permitted to recover the 50% of the compensation amount deposited by them from the owner of



C.M.A.No.1697 of 2017

the tractor, who is the 7th respondent herein in accordance with law.

(iv) on such deposit, the claimants are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, by filing necessary applications before the Tribunal.

12. With the above directions, the appeal is allowed. No costs.

Consequently, connected miscellaneous petition is also closed.

07.11.2023

Rli

Index: Yes/No

NCS : Yes/No

To

The Judge,
Motor Accidents Claims Tribunal (Sub Court),
Attur.



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C.M.A.No.1697 of 2017

M.DHANDAPANI, J.

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C.M.A.No.1697 of 2017

07.11.2023