



C.M.A.No.2155 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2155 of 2017
and
Civil Miscellaneous Petition No.11408 of 2017

The New India Assurance Co., Ltd.,
Divisional Office,
Vellore.

... Appellant / 4th Respondent

Vs.

1. Sulochana
2. Kumar
3. Jayakumar
4. Geetha
5. Ramesh
6. Sasikumar
7. Mr. Baskar Rao
8. The Oriental Insurance Company Ltd.,
Ranipet.
9. Mr. Sampath

... Respondents/Petitioners

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 25.01.2005 made in M.C.O.P.No.907 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court -II, Ranipet, Vellore District.

For Appellant : Mr. K. Padmanabhan



For R1 - R6 : Mr. E.MIK. Yaswanth Rao
For R8 : Mr. M. Krishnamoorthy
For R9 : Dispensed with

JUDGMENT

This Appeal has been filed by the fourth respondent-Insurance Company, challenging the award passed in M.C.O.P.No.907 of 2002, dated 25.01.2005 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court-II, Ranipet, whereby, the Tribunal has directed the fourth respondent-Insurance Company to pay the compensation to the claimants to the extent of 50% of the award amount.

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

3. The case of the claimants is that the claimants are the dependants of the deceased Ganesan, who was died in the road accident held on 29.01.1998. The deceased Ganesan was driving a lorry bearing Registration No.TN X 4756, belongs to the third respondent. The accident took place on National Highways connecting to Bangalore to Walajah, near Pallikonda, a lorry bearing Registration No.KA 34 9099, driven by its driver



in rash and negligent manner, hit against the Lorry driven by the deceased Ganesan. Due to injuries sustained, the deceased died on the spot and his legal heirs have come forward to file Claim Petition under Section 166 of the Motor Vehicles Act, claiming compensation for a sum of Rs.8,00,000/-.

4. Before the Tribunal, the first respondent was not contested the claim and was remained ex-parte. The insurer of the lorry of the first respondent therein filed counter and contended that the driver of the first respondent had driven the vehicle very carefully by abiding traffic rules and regulations and that the deceased had driven the lorry in rash and negligent manner, caused the accident and that the deceased was not having valid driving license at the time of accident. Hence, the first and second respondents are jointly liable to pay the compensation. The compensation claimed is also on the higher side and prays to dismiss the claim petition.

5. The owner of the lorry, driven by the deceased Ganesan was remained ex-parte and the insurer had filed counter and contended that they have not received any intimation regarding the accident and also they have not admitted the allegations of the claimants. Since there is no proper intimation given regarding the accident of the owner of the vehicle, there is a



violation of policy condition and hence, the fourth respondent-Insurance Company, shall not be liable to pay the compensation and prays to dismiss the claim.

6. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 and P2 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and no documents marked.

7. Based on the evidence placed on record, the Tribunal in Point No.1 has held that the driver of the first respondent as well as the deceased are equally responsible for the accident and the negligence was determined at the ratio of 50:50 and in Point No.2, the Tribunal had awarded a sum of Rs.2,16,000/- as compensation and interest at the rate of 9% per annum from the date of Claim Petition till the date of realisation.

8. Aggrieved over the findings of the Tribunal that the fourth respondent i.e., insurer of the lorry driven by the deceased, to pay 50% of the compensation, this appeal has been filed challenging the liability of the fourth respondent.

9. The learned counsel for the Insurance Company has



submitted that there is no evidence to show that there is a contributory negligence on the part of the deceased Ganesan. Without properly appreciating the evidence of eye witness to the occurrence, the Tribunal has wrongly held that the deceased has also contributed for the accident and he is liable for negligence which was fixed as 50%, and prays to absolve the fourth respondent from paying the compensation. Even if the liability is accepted since the deceased Ganesan himself is also a tortfeasor, the Insurance Company/Fourth Respondent is not liable to pay 50% of compensation as ordered by the Tribunal.

10. The learned counsel for the claimants submits that, the Tribunal has not properly appreciated the evidence of eye witness, who has deposed that, the driver of the lorry belongs to the Respondent No.1 is negligently drove the same and the Tribunal has wrongly fixed the contributory negligence against the deceased-driver and prays to confirm the award and directed the respondents to pay compensation.

11. Eventhough the Respondent No.2-Insurance Company of the Lorry bearing Registration No.TN X 4756 which was drive close and also had appeared and contended that they have not filed any appeal against



the liability fixed on the deceased Ganesan, and prays to confirm the award.

WEB COPY

12. I have considered the submissions on both sides and also perused the materials placed on record.

13. Before the Tribunal, the claimants have examined P.W.2 who is eye witness to the occurrence, took place on 29.01.1998. He has deposed before the Tribunal that he was a lorry driver and while he was driving the vehicle on Chennai-Bangalore Highway, near the place of incident, a lorry had driven by the deceased overtook his lorry and at the same time another lorry came in opposite direction, hit on the lorry driven by the deceased. Based on the evidence placed on record, the Tribunal has held that the deceased Ganesan has overtook P.W.2's lorry and contributed to the negligence. There is no other eye witness examined on the side of the respondents with regard to the manner in which the accident had occurred. Evidence of P.W.2 has supports the case of the Respondent No.2 that, the deceased has also driven the vehicle negligently and without taking safety precautions, drove the vehicle dangerously and hit on the vehicle, which came in the opposite direction and accident is taken place in the middle of the road and same is head on collusion. This shows that both the vehicles



have colluded against each other and both drivers are equally responsible for the accident.

14. Under the said circumstances, the findings of the Tribunal that the deceased has also contributed to the accident is acceptable and this Court is not able to take another view, since the view taken by the Tribunal is based on the evidence available. Accordingly, the findings of the Tribunal that the deceased Ganesan is also contributed to the accident is hereby confirmed. However, the fourth respondent is the insurer of the lorry, driven by the deceased Ganesan, is directed to pay the compensation of another 50% for the tortious act committed by the deceased herein.

15. In this case, since the driver i.e., the deceased himself is a tortfeasor, is not entitled to get compensation from his employer or the indemnitor of his employer. The Tribunal after holding that the deceased is liable for the accident to the extent of 50%, it ought to have absolved the owner of the vehicle as well as the insurer of the vehicle driven by the deceased from paying compensation. The Tribunal has committed error in directing the Insurance Company to pay the compensation to the extent of 50% to the deceased.

16. As discussed above, the liability fixed on the Insurance



WEB COPY

Company of the lorry which was driven by the deceased is not valid under law and accordingly, the Award passed by the Tribunal is modified to the effect that the claimant is entitled to get only 50% of the compensation, from the Respondent Nos.1 and 2.

17. In the result, this Civil Miscellaneous Appeal is allowed. The Award and Decree passed by the Tribunal in M.C.O.P.No.907 of 2002, dated 25.01.2005, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court -II, Ranipet, Vellore District, against the Respondent Nos.3 and 4 in M.C.O.P.No.907 of 2002 is dismissed and Respondent Nos.1 and 2 in M.C.O.P.No.907 of 2002, shall pay 50% compensation awarded by the Tribunal. Accordingly, the first and second respondent is directed to deposit a sum of Rs.1,08,000/- [Rupees One Lakh and Eight Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of realisation less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.907 of 2002, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.II, Ranipet. On such deposit, the claimants are permitted to withdraw their



C.M.A.No.2155 of 2017

respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

17.08.2023

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

To:

1. The Additional District and Sessions Judge,
Fast Track Court No.II,
Motor Accidents Claims Tribunal,
Ranipet.
2. The Section Officer,
V.R.Section, High Court,
Chennai.

K.RAJASEKAR,J.

ssi



WEB COPY



C.M.A.No.2155 of 2017

C.M.A.No.2155 of 2017

17.08.2023