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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.4049 of 2019
and
C.M.P.No.22871 of 2019

New India Assurance Company Ltd.,
V.R.V. Complex, 1st Floor, Bhavani Main Road,
Perundurai (Po), Erode District. ...Appellant

Vs.

1.N.Kavitha

2.Minor E.K.Mugil
[Minor represented by her next friend and mother N.Kavitha]

3.K.Nagaveni

4.Krishanu Sasmal

5.M/s.Car Chasssis Carriers,
Office at 18, Muktaram Babu Street,
Chandamari, Nagaland, Kohima – 797 001.

6.Bharti AXA General Insurance Company Limited,
No.49, Sakaram Ganesh Dauskar Sarani,
Kolkata – 700 025, West Bengal.

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7.Raja Pandian

8.R.Selvaraj ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P.No.550 of 2013 on the file of learned Special District Judge, The Motor Accident Claims Tribunal, Erode District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.S.Kaithamalai Kumaran for R1 to R3

Mr.S.Arunkumar for R6

R4, R5, R7 and R8 – Not ready in notice.

****

J U D G M E N T

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

The appeal is at the instance of the Insurance Company challenging the apportionment of negligence as between the two vehicles that are involved in the accident.

2. The claimants are the wife, child and mother of the deceased Ezhil, who died in a road accident that occurred at about 2.30 p.m on 19.08.2011 on the Erode to Coimbatore NH47. According to the claimants,

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Ezhil was the inmate of the Skoda Octavia car bearing Reg.No.TN-57-V-2004 driven by one Raja Pandiyan, the 7th respondent in the appeal. According to the claimants, the container lorry owned by the 2nd respondent and insured with the 3rd respondent suddenly crossed the national highways without any signal. The driver of the car which was proceeding from East to West from Erode to Coimbatore attempted to stop the vehicle by applying the break, but, he could not do so and the car hit the rear wheel of the container lorry. The claimants sought for compensation both from the insurer of the lorry as well as the car.

3. The Tribunal on a consideration of the evidence fixed the compensation at Rs.59,43,965/- and apportioned the negligence at 50% each on both the vehicles. The claimants and the insurer of the lorry had accepted the award. The insurer of the car alone is on appeal questioning the apportionment.

4. Mr.J.Chandran, learned counsel appearing for the appellants would vehemently contend that the Tribunal erred in apportioning the

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compensation at 50% each on the two vehicles involved in the accident. According to him, since the lorry had crossed the highways suddenly, major negligence should have been fixed on the driver of the lorry.

5. Contending contra Mr.S.Arunkumar, learned counsel appearing for the insurer of the lorry would submit that the very fact that the car had hit the rear wheel of the lorry after almost 80% of the lorry had crossed the main carriage way of the national highway would demonstrate that the car was being driven at a hectic speed and even after the driver applied breaks to stop the car citing the lorry before 100 ft, the car did not stop. Mr.S.Arunkumar would rely upon the rough sketch which has been marked as Ex.P7 in support of his contention that the negligence was more on the car driver than the lorry driver. He would also contend that FIR cannot be a sole basis for determination of negligence, as FIRs are always filed against the bigger vehicles when there is collision between two vehicles.

6. We have perused the rough sketch as well as the FIR. The FIR blames the lorry driver for the accident. But, the rough sketch would

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demonstrate that the place at which the lorry crossed the national highways is a place provided for such crossing. The lorry had crossed the service road and entered into the main carriage way. 80% of the container lorry had crossed the main carriage way, when the impact took place. From the rough sketch it is seen that the tyre marks of the car are visible for nearly 100 ft. This by itself would demonstrate that the car was driven at a high speed and despite the driver having cited the lorry very early, he could not stop the car. The container lorry which is crossing the main carriage way of the highway cannot go at a high speed. Therefore, the Tribunal was justified in apportioning the negligence at 50% each on the lorry and the car.

7. We do not see any force in the submission of the learned counsel for the appellant based on the FIR alone. The appeal therefore fails and it is accordingly **dismissed**.

8. It is stated that the appellant had deposited 50% of the award amount as apportioned to it. The appellant is granted eight (8) weeks time to deposit the balance amount. On such deposit, the Tribunal is directed to pay

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out the share of the major claimants and deposit the share of the minor claimants in cumulative Fixed Deposit with auto renewal clause in a Nationalized Bank till the minors attain the age of majority. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) **(K.G.T.,J.)**
10.02.2023

dsa

Index :No
Internet :Yes
Neutral citation :No
Speaking order

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To:-

The Special District Judge,
Motor Accident Claims Tribunal,
Erode District.

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and
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