



CMA.No.144 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.144 of 2022

Kuppusamy

... Appellant

-Vs-

1.Karunanithi
2.United India Insurance Co., Ltd.,
No.146-N, Kumar Complex,
Tiruchengode, Namakkal District.
3.Balan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the Judgment and Decree in MCOP.No.767 of 2010, dated 23.03.2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge Court, Sankari.

For Appellant	: Mr.T.S.Arthanareeswaran
For R1 & R3	: Notice D/w Vide order dated 09.06.2023
For R2	: Mr.J.Chandran

JUDGMENT

The appellant herein was a claimant in MCOP.No.767 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankari.



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2.He had filed the said petition seeking Rs.5,00,000/- as compensation for the injury he had sustained while traveling as a pillion rider in a motor cycle bearing Regn.No.TAN 873 driven by the third respondent. The accident had occasioned when a tanker lorry bearing Regn.No.TN 33 AC 8626 belonging to the first respondent and insured with the second respondent came from the opposite direction and knocked down the motor cycle. In the accident, the claimant suffered fracture to his legs and he was admitted in the hospital and expended Rs.2,13,000/- towards medical expenses. His disability was assessed at 51%, and the Tribunal had awarded a compensation of Rs.1,53,000/- at Rs.3,000/- for every percentage of disability. After adding other conventional heads of compensation, the Tribunal had arrived at a sum of Rs.4,60,000/- as compensation.

3.Where the appellant is aggrieved is that the Tribunal had held that the accident had occasioned due to the negligence of the third respondent and not due to the negligence of the driver of the alleged offending vehicle. Therefore, the Tribunal directed the appellant to realize the



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compensation amount from the third respondent. In arriving at the above conclusion, the Tribunal had disbelieved the case of the claimant that the lorry in question which came from the opposite direction swirled to its right and knocked the ongoing motor cycle and relied on Ext.P4, the report of the Motor Vehicle Inspector and also Ext.P6, the rough sketch prepared by the investigating agency. Indeed, in his report in Ext.P4, the MV Inspector has recorded that the front left head light of the lorry is seem to be broken and also noted some damages to the left portion of the front bumper of the lorry and as per Ext.P6, rough sketch the entire accident had happened on the western extreme of a north-south running road, which is admittedly the lane on which the lorry was traveling from south to north.

4.The learned counsel for the appellant submitted that both the third respondent and also the claimant had suffered injuries and were removed to the hospital and the accident report and the investigation report were all prepared in their absence. Further, Ext.P4 cannot be the conclusive evidence to indicate that the left head light of the lorry suffered a damage only due to the impact.



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5.The learned counsel for the second respondent advanced his arguments along the line of reasoning of the Tribunal.

6.The issue herein is not so much about the quantum of compensation but, about the liability of the first and second respondents to whatever that has been determined by the Tribunal. The evidence is scanty. Admittedly, at the time of accident both the lorry and the two wheeler in question were coming from opposite direction. The point is whether it was the negligence of the lorry driver that led to the accident or whether the third respondent had also contributed to the accident.

7.Here, the mere fact that the MV Inspector has recorded some damage to the left head light of the lorry or the left front bumper of the lorry cannot be conclusive unless it is also established that the same occasioned in the very accident. The larger question still is whether the driver of the lorry had the best opportunity to avoid an accident. After all, the dynamics of no accident can be explained and it may have to be gathered from whatever information that are available and attempt must



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be made to recreate the accident to the extent the evidence in the case may support. Ext.P6 sketch shows that the road is a straight road without any by lane either from the east or west of the road at the point of accident. Therefore, from an elevated position, the lorry driver would have an occasion to observe the motor cycle, even if it were driven on the wrong side of the road and could have avoided the accident. However, his negligence can be attributed only to the extend of 50% and no more. It may have to be noted that the third respondent, the rider of the motor cycle neither chose to participate in the enquiry nor opted to enter the witness box.

8.To conclude this Court considers that the driver of the lorry has also contributed to the accident but, it can be no more than 50%. Therefore, this Court modifies the Award of the Tribunal and fastens joint and several liability on respondents 1 and 2 but, only to the extent of 50% of the award sum as passed by the Tribunal. As to the remaining 50%, the appellant is free to realize it against the third respondent. The respondents 1 and 2 either jointly and severally are required to deposit 50% of the awarded sum of Rs.4,60,000/- with interest at 7.5% within a



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period of six (6) weeks from the date of receipt of a copy of this order.

Once deposited, the entire sum is allowed to be withdrawn by the appellant.

9.The Civil Miscellaneous Appeal is partly allowed on the above terms.

No costs.

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Tsg



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To

- 1.The Motor Accidents Claims Tribunal,
Subordinate Judge Court, Sankari
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

Tsg

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