



C.M.A.No.4069 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.4069 of 2019

and

C.M.P.No.22987 of 2019

National Insurance Company Limited,
Door No.10/3/74,
Seshapuram Street,
Chittoor – 517 001.

... Appellant

Vs.

1.A.Ramaswamy
2.R.S.Mani

3.Bajaj Allianz General Insurance Company Limited,
Flat No.F-2, Ground Floor,
Door No.30, M.G.Road,
Sashtri Nagar,
Thiruvanmiyur,
Chennai – 600 041.

4.A.Srinivasulu

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2017 in M.C.O.P.No.35 of 2011 on the file of the Motor Accident Claims Tribunal (V Judge, Court of Small Causes) at Chennai.



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For Appellants : Ms.R.Sree Vidhya

For Respondents : Not Ready in Notice [R1, R2 & R4]
Ms.Rathna Thara [R3]

JUDGMENT

Questioning the 50% liability fixed as against the insured vehicle of the appellant, the appellant/insurance company has preferred the present appeal.

2. As per the claim petition, on 12.08.2009 at about 16.30 hrs, the claimant was travelling in the Ambassador Tourist Car bearing Regn.No.TN-09AX-6143 belonging to the first respondent, insured with the second respondent, on his return trip from Mysore to Chennai after finishing his work at Mysore. When the car was going near Lakshmipuram, on National Highway towards Chennai, the driver of the car drove the same in a rash and negligent manner and hit against the back of the tanker lorry bearing Regn.No.TN-23-J-0486, which was owned by the third respondent and insured with the fourth respondent, which was watering the saplings planted on the centre median. Due to the



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accident, the petitioner suffered grievous injuries. Therefore, the claimant had filed a claim petition before the Tribunal claiming a compensation of Rs.7,00,000/-, which was restricted to Rs.5,00,000/- for the injuries sustained by him in the road accident.

3. Before the Tribunal, the claimant examined himself as P.W.1 and examined the doctor as P.W.2 and marked 11 documents viz., Ex.P.1 to Ex.P.11. On the side of the respondents, they have examined one witness as R.W.1 and marked 1 document viz., Ex.R.1. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.3,63,200/- holding that the respondents 1 and 3 being the owners and the respondents 2 and 4 being the insurance companies for the car and the tanker lorry, are jointly and severally liable to pay the compensation to the claimant. Aggrieved by the same, the insurance company of the tanker lorry has preferred the present appeal.

4. The learned counsel appearing for the appellant submitted that, after investigation of the accident, the law enforcing agency had charge-sheeted the driver of the car, which is evident from Ex.R.1/final report,



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however, the Tribunal has fastened the liability of 50% on the tanker lorry insured with the appellant, which is wholly unsustainable. Further, she submitted that, though the third respondent/insurer of the car had claimed that the contributory negligence should be fastened on the tanker lorry, however, no evidence has been placed before the Tribunal to prove the same. In such circumstance, instead of fastening the entire liability as against the third respondent/insurer of the car, fastening 50% liability as against the owner and insurer of the car and 50% liability as against the owner and insurer of the lorry is not sustainable. The Tribunal ought to have fastened the entire liability as against the third respondent/insurer of the car. Accordingly, he prays for allowing the appeal.

5. Per contra, the learned counsel appearing for the third respondent/insurer of the car submitted that, without any barricade, the tanker lorry was watering the samplings planted in the centre median and the driver of the car was not able to identify whether the tanker lorry was stopped or moving on the road, thereby, the accident had happened. In view of the same, the Tribunal has rightly fastened 50% negligence on the part of the car, which does not require any interference. Accordingly,



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he prays for dismissal of this appeal.

6. Heard the learned counsel appearing for the appellant as well as the third respondent and also perused the materials available on record.

7. The factum and manner of the accident is not in dispute. The compensation awarded by the Tribunal under various heads were not assailed by the appellant/insurer of the tanker lorry. Therefore, this Court confirms the compensation awarded by the Tribunal under various heads.

8. The appellant had challenged the liability fastened against them. Admittedly, the third respondent issued a package policy in favour of the second respondent and as per the package policy, the owner of the car is entitled to claim compensation for his own damages. In the present case, FIR was registered as against the driver of the car and the said fact was also admitted by the claimant in his claim petition. P.W.1/claimant in the claim petition stated that the driver of the car by driving the vehicle in a rash and negligent manner and without noticing that the tanker lorry, which was watering the samplings planted in the centre median, was moving in front of the car, had dashed against the said tanker lorry and



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the said accident was happened in a broad day light. For disproving the negligence on the part of the driver of the car, they have not taken any effective steps to adduce evidence before the Tribunal. No eye-witness was examined before the Tribunal. From the above, it is evident that the accident had happened due to the negligence of the driver of the car, however, the Tribunal has erroneously fastened 50% liability on the appellant, which is wholly unsustainable and the same is liable to be set aside. Therefore, the 50% liability fixed on the part of the fourth respondent and the appellant herein is set aside and the respondents 2 and 3 are jointly and severally liable to compensate the claimant.

9. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned Award of the Tribunal is modified, setting aside the 50% liability fixed on the fourth respondent and appellant herein. The respondents 2 and 3 are jointly and severally directed to deposit the entire award amount as awarded by the Tribunal to the credit of M.C.O.P.No.35 of 2011 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited,



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within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the first respondent/claimant through RTGS within a period of two (2) weeks thereafter. If any amount deposited by the appellant before the Tribunal, the appellant is permitted to withdraw the same by making appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accident Claims Tribunal (V Judge, Court of Small Causes)
at Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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