BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED**: 30.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.313 of 2023

Saroja :Appellant/Petitioner

.vs.

1.D.Durairaj

2.M/s.New India Insurance Co. Ltd.,
Rep. by its Divisional Manager,
Kamuthi,
Ramnad District.

3.M.Balakrishnan

4.M/s.The Oriental Insurance Co., Ltd.,
Rep. by its Branch Manager,
Madurai. :Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order passed in M.C.O.P.No.1067 of 2008, on the file of the IV Additional Sub Court, Madurai dated 26.08.2016 and to allow this C.M.A., by directing the second and fourth respondents before the Tribunal to compensate the petitioner.

For Appellant :Mr.B.A.Muruganantham
For R1 & R3 :No appearance
For R2 :Mr.R.Ramadurai
For R4 :Mr.C.Karthik

JUDGMENT
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Challenging the award passed by the Tribunal directing the third respondent to pay the amount, the present appeal came to be filed by the petitioner.

2. The appellant is the wife of the third respondent. It is the case of the claimant that while her husband was driving the TATA India car bearing Registration No.TN-22-K-2399 near the Ashok Bavan hotel, at that time, the lorry bearing Registration No.TN-65-E-3839 going infront of the TATA Indica Car at the high speed and suddenly stopped in a negligent manner without adhering to the rules and regulations of traffic and caused the petitioner's vehicle to hit on the back side of the lorry. In the accident, the petitioner sufferred injury. Therefore, the claim petition has been preferred by the petitioner.

3. Before the Tribunal, it is the case of the Insurance Company of the lorry that the accident was occurred solely due to rash driving of the third respondent, who is the owner of the car. Further, stated that the insured had taken Act policy only and

hence, it would not cover the passengers travelled in the private vehicle and no extra premium was paid for the passengers.

4. Before the Tribunal, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P1 to P14 were marked. On the side of the respondents, R.W.1 was examined and Ex.R1 was marked. Exs.X1 & X 2 were marked on the side of the official witnesses.

5. After analysing the oral and documentary evidence adduced by the parties, the Tribunal, came to the conclusion that only the third respondent was driving the car and dashed against the lorry from the behind and also considering the fact that the insurance policy is only an act policy only and no extra premium was paid for the passengers travelling in the car, has directed the third respondent to pay a sum of Rs.1,90,538/- to the climant for the injuries sustained by her in the accident. Aggrieved over the same, the claimant has filed the present civil miscellaneous appeal.

6. The main contention of the counsel appearing for the appellant is that due to rash and negligent driving of the driver of the lorry and also he suddenly applied the break, the accident had occurred. Therefore, the tribunal ought to have fixed the liability on the insurer of the lorry and not on the third respondent.

7. Heard Mr.B.A.Murganantham, learned counsel appearing for the appellant, Mr.R.Ramadurai, learned counsel appearing for the second respondent and Mr.C.Karthik, learned counsel appearing for the fourth respondent and perused the materials plaed before this Court.

8. Admittedly, the accident took place in the busy area near Periyar Bus Stand and the car driven by the third respondent was dashed against the lorry from the behind. This itself clearly shows that the third respondent has not driving the car in a cautious manner. This clearly indicates the rash and negligent driving of the third respondent.

9. The tribunal after analysing all the evidence, FIR, which was registered against the third respondent and he pleaded guilty before the concerned Court admitting the rash and negligent driving has come to the conclusion that the third respondent is liable to pay the compensation.

10. In such view of the matter, when there is no other contra evidence available against the lorry driver that he was applied the

break suddenly and hit against the car, this Court is of the view that mere contention of the petitioner cannot be countenanced. The petitioner has also not established the ground that the car has valid policy covering all the passengers. The learned counsel appearing for the Insurance Company/fourth respondent has submitted that the car is having act only policy and no extra premium was paid to the passengers. The tribunal has rightly fixed the liability on the third respondent as the owner of the car is having act only policy and no extra premium was paid to the passengers and also he was driving the vehicle in a rash and negligent manner. This Court do not find any merits in this appeal and hence, this Civil Miscellaneous Appeal is dismissed and the judgment and decree passed by the tribunal is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

30.03.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
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To

1.The Divisional Manager,
M/s.New India Insurance Co. Ltd.,
Kamuthi,
Ramnad District.

2.The Branch Manager,
M/s.The Oriental Insurance Co., Ltd.,
Madurai.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR.,J.

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JUDGMENT MADE IN

C.M.A(MD)No.313 of 2023

30.03.2023