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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.04.2023

PRONOUNCED ON : 11.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1102 of 2018
and CMP(MD).No.11267 of 2018

Branch Manager
Iffco-Tokio General Insurance Company Ltd.,
82, Preetham Plaza
Chandragandhi Nagar
Bye Pass Road, Ponmeni
Madurai – 10

....Appellant

..Vs..

1.Vijayalaksmi

2.Minor Karuppiyah

3.Velliayammal

4.Omprakash

....Respondents

(Minor 2nd respondent is represented
through his mother, guardian and
next friend the first respondent herein)



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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree on 13.08.2018 passed in MCOP.No.575 of 2016 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge of Dindigul by allowing this appeal.

For Appellants : Mr.V.Sakthivel

For R1 & R 2 : Mr.R.Santhanam

For R3 & R 4 : No appearance

JUDGMENT

The Insurance Company has filed the above appeal challenging the award of the Motor Accident Claims Tribunal, Dindigul in MCOP.No. 575 of 2016 primarily on the ground of negligence.

2. According to the claimants, the deceased was traveling in a TVS Super-XL Motor Cycle in Seththumadai road from north to south direction slowly on the left hand side at 11.15 a.m on 10.04.2016. At that time, the Maruthi Omni Car coming from the opposite direction had dashed against the motor cycle in a rash and negligent manner and the deceased had sustained grievous injuries and died on the spot. An F.I.R



was registered in Crime No.192 of 2016 as against the driver of the Maruthi Car. The claimants have prayed for a compensation of Rs.20 lakhs.

3.The owner of the Maruthi Car had remained exparte and the Insurance Company had filed a counter contending that the accident has taken place on the extreme right side of the road and it is a wrong side of the road for the vehicle traveling in north-south direction. Therefore, the entire negligence is only the deceased and hence, they are not liable to pay any compensation. The Insurance Company has also disputed the quantum of compensation as prayed for by the claimants.

4.The Tribunal after considering the oral and documentary evidence had arrived at a finding that the driver cum owner of the Maruthi Car has been examined as RW2 and he had not specifically stated that the accident has taken place on the western side of the road which would be a wrong side for the vehicle traveling in north-south direction. The Tribunal had further found that the eye witness to the accident has been examined as PW2 who had specifically deposed that the accident has taken place on the eastern side of the road. The said deposition of PW2 has not been shaken in the cross examination by the



Insurance Company. Based upon the said findings, the Tribunal concluded that the accident has taken place only due to the negligence on the part of the driver of the Maruthi Omni Car and proceeded to fix the liability upon the owner of the Maruthi Car and the insurance company jointly and severally for a sum of Rs.10,78,000/-. The said award is under challenge in the present appeal by the Insurance Company.

5.The learned counsel appearing for the Insurance Company had mainly relied upon Exhibit R2-rough sketch and contended that the said rough sketch prepared by the police officials will clearly indicate that the accident had taken place on the extreme west of the road while the two-wheeler was coming on the eastern lane in the north-south direction, He had further contended that the F.I.R has been lodged by one of the relatives of the deceased person and the same is based upon hearsay information and it cannot be relied upon. He had further contended that they have examined the driver cum owner of the offending vehicle who had categorically deposed that the accident has taken place only on the extreme western side of the road and therefore, the insurance company had established the fact that the accident has taken place only due to the negligence on the part of the deceased and therefore, the owner of the



maruthi car or their insurance company is not liable to pay any compensation.

6.The learned counsel for the appellant had further contended that one Muthu has been examined as an eye witness on the side of the claimants as PW2 and he had deposed that he is not aware of the number of the offending vehicle and it has been suggested to him that the accident has happened due to the negligence on the part of the deceased person. According to the learned counsel for the appellant, he had contended that though initially the F.I.R was registered as against the driver cum owner of the maruthi car, after investigation, the police authorities have filed a charge sheet as against the deceased and have closed the further proceedings. Therefore, it is clear that the accident had taken place only due to the negligence on the part of the deceased person. He had further contended that the Tribunal had solely relied upon Exhibit P1- F.I.R in order to fix the liability upon the insurance company. Hence, he prayed for allowing the appeal and exonerate the insurance company.

7.Per contra, the learned counsel appearing for the respondents/claimants had contended that the rough sketch would clearly indicate that the road is having a width of 40 feet and the accident had



not taken place on the extreme west but within the eastern lane which is the right lane for the vehicle traveling from north to south. He had further contended that the claimants were not put on notice relating to the filing of charge sheet or closing further proceedings.

8.The learned counsel for the respondents had further contended that the eye witness of the accident has been examined as PW2 and he has categorically pointed out that the accident has taken place only on the eastern side of the road and the said deposition has not been contradicted or shaken in the cross examination conducted on behalf of the Insurance Company. He had further contended that when there is a contradiction between the criminal Court proceedings and the evidence let in before the Tribunal, the Tribunal has to rely upon the only evidence that is let in before the Tribunal. Hence, he prayed for sustaining the award passed by the Tribunal.

9.I have considered the submissions made on either side and perused the materials available on record.

10.The only ground on which the present appeal has been filed by the insurance company is by challenging the negligence found against the Omni Car which is insured with the appellant company.



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11.Immediately after the accident, an F.I.R has been lodged as against the owner cum driver of the maruthi car. However, after investigation, a charge sheet has been laid as against the deceased person and further proceedings have been dropped. A perusal of the rough sketch which is marked as Exhibit R2 indicates that half of the road has been shown as a full road and it shown that the accident has taken place on the western extremity of the road. As rightly contended by the learned counsel appearing for the respondents, the road is 40 feet in width and the accident has taken place within the eastern lane of the road. Therefore, the sketch prepared by the police officials cannot be relied upon.

12.The eye witness of the said accident has been examined as PW2 and he has categorically deposed that the accident has taken place only on the eastern side of the road. No suggestions have been put by the insurance company to the effect that accident has taken place on the western side. The chief examination of PW2 has not been shaken or contradicted during the cross examination. Therefore, it is clear that there



is contradiction between the rough sketch prepared by the police officials in the criminal proceedings and the evidence that was let in by the claimants before the Tribunal.

13. The Hon'ble Supreme Court in a judgment reported *in 2021 SCC Online Page 849 (National Insurance Company Ltd., Vs. Chamundeswari and others)* in Paragraph No.8 has held as follows:

“8....If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report.....”

14. In view of the judgment of the Hon'ble Supreme Court, the evidence that has been let in before the Tribunal by way of examining on eye witness as PW2 which has not been shaken or contradicted by the insurance company is more reliable than the sketch or charge sheet prepared by the police officials in the criminal proceedings.

15. The learned counsel for the appellant had placed much reliance upon the deposition of RW2 who is the owner cum driver of offending vehicle. A perusal of the deposition clearly indicates that he had not stated that the accident has taken place on the extreme west of the road. That apart, the said owner cum driver who was examined as PW2 has



been arrayed as the first respondent in the claim petition. He has not chosen to file a counter and he has been set exparte. Therefore, the deposition of RW2 is without the backing of any pleadings on his side. A party to a proceedings having not filed a counter, controverting the manner of accident, cannot depose disputing the manner of accident. Therefore, the deposition of RW2 cannot be relied upon by the insurance company to contend that they have proved negligence on the part of the deceased person through the said deposition.

16.The quantum of deposition has not been challenged by the insurance company and therefore, this Court is not inclined to consider the said issue.

17.In view of the above said deliberations, the findings arrived at by the Tribunal fixing the negligence on the part of the driver of the Omni Car does not call for any interference. The appeal lacks merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2023

Index : Yes/No
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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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