



C.M.A.Nos.1782 and 3420 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED:06.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1782 and 3420 of 2013

and M.P.No.1 of 2013

CMA No.1782 of 2013

The Divisional Manager,
The Oriental Insurance Co.Ltd.,
Katpadi Road, Vellore 632 004.

..Appellant

versus

1.M.Sivakumar

2.The Managing Director,
M/s.Vijayanand Road Lines Ltd.,
Administrative Office at
Vijay Karnataka Giriraj
AnnexCircuit, House Road,
Hubli, Dharwad District.

3.The Divisional Manager,
The New India Assurance Co.Ltd.,
No.1, Officer's Line
C.S.I.Building,
Vellore 632 001.

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 13.07.2012 in MCOP No.153 of 2006 on the file of the Motor Accidents Claims Tribunal (Sub Court) Ranipet.



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For Appellant : Mrs.R.Sree Vidhya
For Respondents : Mr.M.Krishnamoorthy for R3
Mr.M.Sivakumar for R1
R2- Set *Ex parte* before the Lower Court

CMA No.3420 of 2013

The Divisional Manager,
The New India Assurance Co.Ltd.,
No.1, Officer's Line, C.S.I.Building,
Vellore 632 001

..Appellant

versus

1.M.Sivakumar

2.The Divisional Manager,
The Oriental Insurance Co.Ltd.,
Katpadi Road, Vellore 632 004.

3.The Managing Director,
M/s.Vijayanand Road Lines Ltd.,
Administrative Office at
Vijay Karnataka Giriraj Annex,
Circuit House Road,
Hubli Dharwad District.

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.153 of 2006 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Ranipet dated 13.07.2012.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.M.Sivakumar for R1

Mrs.R.Sreevidhya for R2

R3-NDW (in the cause title)



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COMMON JUDGMENT

These appeals have been filed by the Insurance Company seeking to quash the judgment and decree dated 13.07.2012 in MCOP No.153 of 2006 passed by the learned Motor Accidents Claims Tribunal Judge (Sub Court), Ranipet.

2. It is the case of the first respondent/claimant that on 11.06.2006 at about 04.30 p.m., when he was driving a two wheeler bearing Reg.No.TN 23 AB 4694 along with a pillion rider towards Vellore to Chithoor Road near Pallur turning, a lorry bearing Reg.No.KA.25 A 3097 came in the opposite direction in a rash and negligent manner and hit against the two wheeler. As a result of which, the pillion rider died on the spot and the 1st respondent sustained grievous injuries. Thereafter, the petitioner had taken medical treatment at CMC Hospital, Vellore and the Police have registered a case in Cr.No.15/09 u/s 304(A) and 337 of IPC. The New India Insurance Company and the Oriental Insurance Company are the insurers of the two wheeler and the above said lorry respectively. The 1st respondent is a photographer by profession and earning a sum of Rs.6,000/- per month. Due to the said



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accident, he could not continue his avocation. Hence, he filed a claim petition before the Motor Accidents Claims Tribunal claiming compensation.

3. Before the Tribunal, during trial, in order to prove the case, on the side of the 1st respondent, two witnesses were examined as PW1 and PW2 and 11 documents viz., Exs.P1 to P11 were marked. On the side of the other respondents, two witness were examined as RW1 and RW2 and five documents were marked. The Tribunal, considering the oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.4,15,000/- as total compensation and directed the New India Insurance Company and the Oriental Insurance Company to pay the compensation equally and deposit the award amount of Rs.2,07,500/- each. Aggrieved by the said award, the New India Insurance Company and the Oriental Insurance Company have filed these appeals questioning its liability and quantum.

4. The learned counsel for the Oriental Insurance Company submitted that admittedly the first respondent in C.M.A.No.1782 of 2013 is the owner-cum-driver of the two wheeler and therefore, the appellant is not covered under 3rd party Insurer. He further submitted that the



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Tribunal has not fastened liability on the owner and rider of the two wheeler who is the first respondent and fixed liability on the Insurance Company which is contrary to the Insurance Policy. Without considering the negligence on the part of the driver of the two wheeler/1st respondent, the Tribunal has awarded compensation for the injury of the 1st respondent, which is not sustainable one.

5. The learned counsel for the 1st respondent/claimant would submit that the 1st respondent is a photographer by profession and he sustained grievous injuries and he could not continue his profession due to the said accident. He further submitted that the accident had happened due to the rash and negligent driving of the driver of the lorry. Therefore, liability fixed on the Insurance Companies is in order, which does not warrants interference by this Court.

6. Learned counsel for the New India Assurance Company would submit that the 1st respondent came in a rash and negligent manner and dashed against the moving lorry. Due to which, he sustained grievous injuries. Hence, the 1st respondent/claimant is not entitled for any compensation. Accordingly, he prayed for allowing the appeal.



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7. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record carefully.

8. Admittedly, the first respondent drove the two wheeler from North to South direction. At that time, the driver of the lorry came from the opposite direction from South to North and dashed against the two wheeler and caused accident. As a result of which, the first respondent sustained grievous injury and the pillion rider died on the spot. The law enforcing agency registered a case in Cr.No.15/06 as against the rider of the two wheeler/1st respondent. However, in order to prove the negligence, the 1st respondent examined as PW1 and the disability certificate was marked as Ex.P11. In order to prove the same, the New India Assurance Company examined RW1 and RW2 who are not the eye witnesses to the occurrence and marked five documents as Ex.R1 to R5. After trial, the Tribunal has fixed 50% compensation on the New India Assurance Company and remaining 50% compensation on the Oriental Insurance Company.

9. As far as C.M.A.No.1782 of 2013 filed by the Oriental Insurance Company is concerned, the appeal has been filed only on the



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ground that the Owner -cum-Driver of the two wheeler insured with the appellant is not entitled to claim compensation from his insurer under the law since he was not a third party and cannot seek any relief from him. Moreover, the law enforcing agency registered a FIR against the 1st respondent. To that extent, the insurer of the two wheeler is not entitled to pay any compensation to the claimant. Without taking into consideration the said fact, the Tribunal has erroneously directed the insurance company to pay compensation to the claimant. In view of the settled position of law, the impugned award passed by the Tribunal in respect of liability of the Oriental Insurance Company alone has to be set aside. Accordingly, the impugned award dated 13.07.2012 is set aside in respect of the liability alone. Hence, C.M.A.No.1782 of 2013 filed by the Oriental Insurance Company is allowed.

10. In respect of C.M.A.No.3420 of 2013 filed by the New India Assurance Company is concerned, in order to prove the negligence, PW1 narrated about the accident. However, to disprove the same, driver of the lorry or no independent witness was examined by the Insurance Company. This Court on perusal of the sketch marked before the Trial Court found that the person who prepared the sketch was not examined



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before the Trial Court.. As far as quantum of compensation is concerned, the Tribunal has rightly dealt with the issue and awarded compensation for the injury of the claimant, which is perfectly in order and the same does not warrant any interference by this Court. Accordingly, C.M.A.No.3420 of 2013 filed by the New India Assurance Company is dismissed and the appellant/ New India Assurance Company who is the insurer of the lorry is directed to pay the compensation to the claimant as awarded by the Tribunal, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. No costs. Consequently, the connected miscellaneous petition is closed.

06.11.2024

(1/2)

msv

To

Motor Accidents Claims Tribunal (Sub Court) Ranipet.



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M.DHANDAPANI.,J.

msv

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