THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.814 of 2023
and
C.M.P.No.7503 of 2023

The Oriental Insurance Co. Ltd.,
Oriental House, III Party Hub,
216 / 115, Prakasam Salai,
Broadway, Chennai - 600 104. ...Appellant

Vs.

1.T.Nalini
2.Minor T.Shanthosh Sivan
3.Minor T.Darsha
(Minors 2 and 3 represented by their
Mother and Next friend T.Nalini)
4.G.Karpagam
5.M/s.SRS Engineering Works,
No.26, Natesan Nagar, Ponneri,
Thiruvallur District,
Pincode : 601 204.

6.New India Assurance Co. Ltd.,
III Party Cell, IInd Line Beach,
Moore Street, Chennai - 600 001.

7.M.K.Kalidoss ...Respondents
(Respondents 5 and 7 set exparte in the Lower
Court. Hence notice to them is dispense with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 05.12.2022 passed in MCOP.No.2836 of 2018 on the file of the Motor Accident Claims Tribunal, (Special Sub-Court No.1, Motor Accidents Claims Petitions), Small Causes Court, Chennai.

For Appellant	:	Mr.RSivakumar
For Respondents	:	Mr.G.Derrick Sam for R1 to R4
		R5 & R7 - Exparte
		Mr.T.Jayaraman for Mr.K.Elango for R6

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company, which suffered an award for payment of 50% of the compensation determined in MCOP.No.2836 of 2018 is on appeal. The grievance of the Insurance Company is that the Tribunal erred in apportioning the negligence at 50% on both the lorries involved in the accident.

2.The brief facts are as follows:-

The claimants sought for compensation of Rs.1,50,00,000/- for the death of one G.Thiyagarajan in a motor accident that occurred on 02.02.2018. According to the claimants, while Thiyagarajan was riding his motor cycle bearing registration No.TN-13-D-0658 at Ambattur Industrial Estate, 3rd main road, a lorry bearing Registration No.TN-18-H-4434, which was going ahead of him suddenly stopped and the driver of the lorry opened the right door, which led to Thiyagarajan hitting against the right door of the lorry and falling to his right and the another lorry bearing Registration No.TN-21-Q-0343 which was following these two vehicles ran over Thiyagarajan resulting in his death.

3.Terming negligence on the part of both lorry drivers as a cause for the accident, the claimants sought for compensation as above. The quantum was sought to be justified by contending that the deceased Thiyagarajan aged about 39 years was employed as Manager in Sales and Marketing at Golden Green Technologies Pvt. Ltd. and was earning a sum of Rs.58,334/- per month. In proof of the said income, the claimants sought to rely upon the income tax returns as well as Form-16 filed on behalf of the said Thiyagarajan.

4.Both the Insurance Companies resisted the claim contending that the other vehicle is responsible for the accident and there was no negligence on the part of the driver of the vehicle insured with them. The salary particulars and age of Thiyagarajan were also denied. Before the Tribunal, the copy of the First Information Report, rough sketch and charge sheet were marked as Exs.P1 to P3. Form-16 and salary certificate were marked as Exs.P11 and P12 respectively. The subsistence of insurance cover for both the lorries was not in dispute. The charge sheet was also filed against the driver of both the lorries. The Tribunal, on a consideration of evidence on record concluded that both the lorries were equally responsible for the accident and apportioned the liability at 50% each. Aggrieved, the Insurer of the lorry which had followed the two wheeler and the other lorry namely, the lorry bearing Registraton No.TN-21-Q-0343 is on appeal.

5.Heard Mr.R.Sivakumar, learned counsel for the appellant / Insurance Company, Mr.G.Derrick Sam, learned counsel for the respondents 1 to 4 and Mr.T.Jayaraman, learned counsel for the 6th respondent/ Insurance Company.

6.Mr.R.Sivakumar, learned counsel for the appellant / Insurance Company would vehemently contend that from the evidence available, it is clear that the accident occurred due to the negligence on the part of the driver of the lorry bearing Registration No.TN-18-H-4434 in opening the door which resulted in the deceased hitting against the door and falling towards his right. If the version of the claimants and the version of the Police as found in the charge sheet as above is accepted, the Tribunal ought to have apportioned more negligence to the lorry bearing Registration No.TN-18-H-4434 as the driver of the lorry bearing Registration No.TN-21-Q-0343 would not have had time to take preventive or evasive action to avoid the accident.

7.Relying upon the evidence of the eye-witness, First Information Report and the charge sheet, the learned counsel for the appellant / Insurance Company would submit that the Tribunal was not right in concluding that the lorry insured with the appellant / Insurance Company contributed to the accident equally. The learned counsel would submit that the Tribunal failed to visualize the accident. From the manner in which accident had took place and it should have necessarily concluded that the driver of the lorry bearing Registration No.TN-18-H-4434 insured with the 6th respondent / Insurance Company was more negligent than the driver of the lorry bearing Registration No.TN-21-Q-0343.

8.Contending contra, Mr.T.Jayaraman, learned counsel for the 6th respondent / Insurance Company would submit that the contributing factor was not just the opening of the door. If only the driver of the lorry insured with the appellant / Insurance Company had been watchful, he would have avoided the accident. The quantum of compensation is not under dispute. In fact, the 6th respondent has accepted the award and paid 50% of the compensation. The learned counsel for the claimants would submit that since the quantum of compensation is not under serious dispute, he has no serious objections for apportioning of the negligence. We have considered the rival submissions.

9.From the documents and the oral evidence that is placed, the manner of the accident is almost undisputed. It is very clearly stated that the lorry bearing Registration No.TN-18-H-4434 was going ahead, its driver opened the door without looking for traffic. As a consequence, the two wheeler rider following the lorry dashed against the door and fell on the road resulting in the other lorry, which was following very closely running over him. So, the core cause for the accident was the action of the driver of the lorry bearing Registration No. TN-18-H-4434 in opening the door. May be that the driver of the lorry bearing Registration No.TN-21-Q-0343 would have avoided the accident but, the possibility of him avoiding the accident when it takes place in such manner is almost nil.

10.The Tribunal has merely gone by the fact that both the drivers have been charged by the police. The criminality or otherwise on the part of the driver cannot measure the quantum of negligence on their part. We find that the learned counsel for the appellant is justified in his statement. The action of the driver of the lorry in opening the door without looking for traffic was the major cause for the accident. We are therefore, unable to sustain the apportionment made by the Tribunal.

11.We find that the negligence on the part of the lorry bearing Registration No.TN-18-H-4434 is, in fact, higher than the negligence on the part of the lorry bearing Registration No.TN-21-Q-0343. We apportion the negligence at 75% on the lorry bearing Registration No.TN-18-H-4434 and 25% on the lorry bearing Registration No.TN-21-Q-0343. We confirm the quantum of compensation, since there is no serious dispute about the quantum awarded.

12.In fine, this Civil Miscellaneous Appeal is **partly allowed**. The appellant / Insurance Company's liability is reduced to 25% of the compensation and the 6th respondent / Insurance Company will pay 75% of the compensation. It is stated that the 6th respondent has accepted the award and paid 50% of the compensation. The remaining 25% now apportioned to it shall be paid within a period of twelve weeks. We are informed that the appellant / Insurance Company has deposited 50% of the compensation as apportioned to it namely, 25% of the total compensation. The claimants are permitted the withdraw the same. The remaining 25% of the compensation with appropriate interest shall be deposited by the 6th respondent / Insurance Company within a period of eight weeks from the date of receipt of a copy of this order.

13.The major claimants are permitted to withdraw their share of the compensation and the share of the minor claimants as apportioned by the Tribunal shall be kept in deposit in a Nationalized Bank in a cumulative interest accruing fixed deposit till they attain majority. Excess amount, if any, shall be refunded to the appellant / Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) **(R.S.V., J.)**
23.02.2024

kkn

Internet:Yes
Index:No
Speaking
Nuetral Citation :No

To:-

The Motor Accident Claims Tribunal,
(Special Sub-Court No.1, Motor Accidents Claims Petitions),
Small Causes Court, Chennai.

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

KKN

C.M.A.No.814 of 2023
and
C.M.P.No.7503 of 2023

23.02.2024