IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **29.07.2024**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3358, 3367, 3369 & 3383 of 2021
and
C.M.P. Nos.19259, 19421, 19434 & 19523 of 2021

Cholamandalam MS General Insurance Company Limited,
II Floor, Shaw Wallace Building,
154, Thambu Chetty Street,
Parrys Corner, Chennai-1. ... Appellant in all cases

Vs.

1.K.Rafeek @ Rafeek Ahamed Labbai
2.Shafila @ Fathima Sithi Shafila ... Respondents 1 and 2 in C.M.A. No.3358 of 2021

1.M.Y.Jainul Abideen
2.Fathima Sellam ... Respondents 1 and 2 in C.M.A. No.3367 of 2021

1.A.Syed Sulthan Beevi
2.Minor Suhail
3.A.Abubakar @ Mohamed Abubakar
(minor represented by mother, guardian NF 1st respondent) ... Respondents 1 to 3 in C.M.A. No.3369 of 2021

1.A.Omar @ Omar Naina Maraicar
2.Shafila@ Fathima Sithi Shafila ... Respondents 1 and 2 in C.M.A. No.3383 of 2021

D.Rayar Anthuvan Jayakumar

The Divisional Manager,
The New India Assurance Company Limited,
DO, Puducherry, No.30, JN Street,
Puducherry - 605 001.

Z.Mohamed Idris

O.Ahamed Dhadha Fairoze

Mohamed Yusuf Nachiyar

... Respondents 3 to 7 in C.M.A. Nos. 3358, 3367 and 3383 of 2021 and respondents 4 to 8 in C.M.A. No.3369 of 2021

Prayer in all cases: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P. Nos.1451 to 1453 & 1450 of 2017 respectively all dated 07.01.2021 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Cuddalore.

For Appellant in all cases : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For R1, 2, 6 and 7 in C.M.A. Nos. 3358, 3367 & 3383 of 2021 and For R1 to 3, 7 and 8 in C.M.A. No.3369 of 2021 : Ms.Ramya V.Rao

For R3 and 5 in C.M.A. Nos. 3358, 3367 & 3383 of 2021 and For R4 and 6 in C.M.A. No. 3369 of 2021 : Exparte

For R4 in C.M.A. Nos.3358,
3367 & 3383 of 2021 and
R5 in C.M.A. No.3369 of 2021 : Mr.K.Vinod

COMMON JUDGMENT

These appeals have been filed by the Insurance Company (Cholamandalam MS General Insurance Company Limited) *(Hereinafter referred to as appellant / Insurance Company)*, questioning the composite negligence, fixed by the Tribunal, under the impugned award.

2.According to the appellant/Insurance Company, the vehicle which was insured with them was not responsible for the cause of the accident and therefore, the Tribunal has erroneously fixed the composite negligence of the appellant/Insurance Company at 50% in the ratio of 50:50 along with the New India Assurance Company Limited (hereinafter referred to as '*NIAC Ltd*.').

3. Two vehicles were involved in the accident. The appellant/ Insurance Company had insured the car and the *NIAC Ltd.,* had insured the

lorry. The deceased persons were travelling in the car, insured with the appellant/Insurance Company. The claimants are the legal representatives of the deceased persons. They have pleaded in their claim petition that the driver of the lorry was alone responsible for the cause of the accident. The appellant/ Insurance Company was arrayed as a party respondent in the claim petitions only as a formal party. The F.I.R. was registered only against the driver of the lorry, insured with the *NIAC Ltd*. Thereafter, charge sheet was also filed and as per the charge sheet, the driver of the lorry insured with the *NIAC Ltd* was alone responsible for the cause of accident.

4. According to the learned counsel for the appellant / Insurance Company, without any evidence, the Tribunal has fixed the composite negligence on the driver of the car, insured with the appellant / Insurance Company at 50% erroneously.

5. These appeals have been filed by the appellant / Insurance Company seeking to set aside the findings of the Tribunal holding that the appellant / Insurance Company is liable to pay 50% of the compensation amount as determined by the Tribunal. According to the Tribunal, the driver

of the car insured with the appellant / Insurance Company is also equally responsible for the cause of the accident since the accident between the car and the lorry was a head-on collision.

6. The learned counsel for the appellant / Insurance Company drew the attention of this Court to the impugned common award and would submit that without any discussion and without any evidence, the Tribunal has fixed the composite negligence on the driver of the car insured with the appellant / Insurance Company at 50%. She also drew the attention of this Court to the claim petitions filed by the claimants and would submit that even in the claim petitions, the appellant / Insurance Company was made only as a formal party and no relief was sought for by the claimants against the appellant / Insurance Company and the entire relief was sought for against the *NIAC Ltd*.

7. On the other hand, the learned counsel for the *NIAC Ltd* would submit that being a head-on collision, the Tribunal has rightly held that the appellant / Insurance Company is also equally liable to pay the determined compensation amount to the claimants along with the *NIAC Ltd*. In support

of his contention that, merely because an F.I.R. has been registered against the driver of the lorry insured with the *NIAC Ltd*, the *NIAC Ltd* cannot be made liable to pay the entire compensation amount as determined by the Tribunal, he also drew the attention of this Court to a Judgment of a learned Single Judge of this Court in the case of ***National Insurance Company Limited Vs. P.Murugan and Others reported in 2009 ACJ 2411***. Relying upon the said judgment, the learned counsel for the *NIAC Ltd* would submit that being a head-on collision, the Tribunal has rightly fixed the composite negligence on the driver of the car insured with the appellant / Insurance Company at 50%.

8. The learned counsel for the *NIAC Ltd* also drew the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of ***Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others reported in 2006 ACJ 1058***. Relying upon the said judgment, the learned counsel for the *NIAC Ltd* would submit that being a head-on collision, the Tribunal has rightly fixed the composite negligence on the driver of the car insured with the appellant / Insurance Company at 50%.

9. The learned counsel for the *NIAC Ltd* also drew the attention of this Court to a Division Bench Judgment of the Gujarat High Court in the case of ***Gujarat State Road Transport Corporation Vs. Vijayaben Hirjibhai Monpara and Others reported in 2013 ACJ 60*** and would submit that even though the car insured with the appellant / Insurance Company is a smaller vehicle when compared to the vehicle (Lorry) insured with the *NIAC Ltd*, that cannot be a ground for fixing the entire negligence only on the driver of the lorry insured with the *NIAC Ltd*.

10. Learned counsel for the *NIAC Ltd.* also drew the attention of this Court to a decision of the learned Single Judge of this Court in the case of ***Branch Manager, Tamil Nadu State Transport Corporation Vs. Marimuthu and Others reported in 2022 ACJ 1779*** and would submit that mere registration of F.I.R. is not sufficient to prove that the entire negligence is on the part of the driver against whom the F.I.R. has been registered.

Discussion:

11.**The following are the undisputed facts:**

a) The F.I.R. has been registered only against the driver of the lorry, insured with the *NIAC Ltd.*. The said F.I.R. has been marked as Ex.B1 before the Tribunal.

b) Subsequent to the registration of the F.I.R., charge sheet has also been filed and the said charge sheet has been marked as Ex.B11. The charge sheet also reveals that the driver of the lorry, insured with the *NIAC Ltd.* is alone responsible for the cause of the accident.

c) The claim petitions have been filed by the claimants seeking compensation only from the *NIAC Ltd.*. In the pleadings, no allegation has been levelled with regard to negligence on the driver of the car, insured with the appellant / Insurance Company.

d) The appellant / Insurance Company is only a formal party in the claim petitions filed by the claimants.

e) P.W.5, the eye witness to the accident, has also deposed before the Tribunal that it is only the driver of the lorry, insured with *NIAC Ltd.,* was responsible for the cause of the accident. Eventhough the learned counsel for the *NIAC Ltd.* submitted during the course of his submission that the eye witness examined by the claimants before the Tribunal does not find a place in the charge sheet filed by the Police, the said contention does not have any value in view of the fact that there is no iota of evidence produced by the

NIAC Ltd. to establish that the driver of the car insured with the appellant / Insurance Company is also responsible for the cause of the accident.

f) The driver of the lorry insured with *NIAC Ltd.* has not been examined as a witness before the Tribunal to support the contentions of *NIAC Ltd.*.

12. During the course of his submissions, the learned counsel for the *NIAC Ltd.* had primarily relied upon the fact that being a head on collision, the Tribunal has rightly fixed composite negligence on the driver of the car insured with the appellant / Insurance Company at 50%.

13. The learned counsel for *NIAC Ltd.* had also relied upon the authorities referred to supra in support of his contentions. With regard to the applicability of the same, the forthcoming paragraphs gives the reasons as to why the same is not applicable to the facts of the instant case:

a) The first judgment relied upon by the learned counsel for the *NIAC Ltd.* viz., ***National Insurance Company Limited Vs. P.Murugan and Others reported in 2009 ACJ 2411*** was a case where charge sheet was not filed by the Police subsequent to the registration of the F.I.R. In the case on hand, eventhough it is settled law that mere registration of F.I.R. would not suffice for the purpose of proving negligence, this Court has taken note of the fact that in the instant case, apart from registration of F.I.R., charge sheet has also been filed, which has been marked as Ex.B11 before the Tribunal, which will also reveal that it is only the driver of the lorry insured with the *NIAC Ltd.* is alone responsible for the cause of the accident. The driver of the lorry insured with the *NIAC Ltd.* has also not been examined as a witness before the Tribunal. There is no iota of evidence to show that the driver of the car insured with the appellant / Insurance Company was also responsible for the cause of the accident. Infact, the driver of the car insured with the appellant / Insurance Company had also died as a result of the accident. Eventhough mere paying of fine by the offender will not make the offender responsible for the cause of the accident, the same is not applicable to the facts of the instant case in view of the fact that in the instant case, the driver of the lorry insured with the *NIAC Ltd.* has not pleaded guilty and has not paid fine. But, despite the same, only based on the investigation, the Police have filed charge sheet as against the driver of the lorry insured with the *NIAC Ltd.*. Therefore, paying of fine in the decision rendered by the Honourable Supreme Court has no relevancy to the facts of the instant case;

b) In the second Judgment relied upon by the learned counsel for the *NIAC Ltd.* viz., ***Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others reported in 2006 ACJ 1058,*** the facts of the case in the said decision is different from the facts in the instant case. In the decision of the Honourable Supreme Court, PW2, who was travelling in maruti car along with the deceased Raj Kumar Dugar on the day of the accident, had deposed that he had already seen the offending bus in a long distance coming from the opposite direction and only due to the said fact, the Honourable Supreme Court, after taking into consideration that being a head on collision, both the vehicles are equally responsible for the cause of the accident. In the case on hand, there is no iota of evidence produced by the *NIAC Ltd.* to prove that the driver of the car insured with the appellant / Insurance Company or the persons travelling in the very same car were aware that from a long distance, the lorry insured with the *NIAC Ltd.* was seen. Admittedly, in the instant case, the driver and the other persons travelling in the car insured with the appellant / Insurance Company also died as a result of the accident. The driver of the lorry insured with the *NIAC Ltd.* was also not examined as a witness by the *NIAC Ltd.* though he is very much alive;

c) The third judgment relied upon by the learned counsel for the *NIAC Ltd.* viz., ***Gujarat State Road Transport Corporation Vs. Vijayaben Hirjibhai Monpara and Others reported in 2013 ACJ 60*** pertains to the size of two vehicles and whether the size of the vehicle is relevant for the purpose of fixing the composite negligence of the two vehicles. Infact, in paragraph No.12 it has been clarified that there is no law in this Country that if in an accident, two vehicles were involved, the one bigger in size would be held responsible even if it appears from the evidence available on record that the driver of the smaller vehicle was really negligent in driving his vehicle whereas the driver of the bigger vehicle had no fault in the accident. In the case on hand, absolutely, there is no evidence available on record to prove that the driver of the car insured with the appellant / Insurance Company was also responsible for the cause of the accident. Excepting for the fact that it was a head on collision, there is no material / evidence available on record to prove that the driver of the car insured with the appellant / Insurance Company was also responsible for the cause of the accident. The sketch pertaining to the accident has also not been filed by the *NIAC Ltd.* to prove that the driver of the car insured with the appellant / Insurance Company was also responsible for the cause of the accident.

Despite the fact that the driver of the lorry insured with the *NIAC Ltd.* was very much alive at the time of oral evidence, they chose not to examine him as a witness for the reasons best known to them. Only on the ground that the said accident was a head on collision, the Tribunal has erroneously held that the driver of the car insured with the appellant / Insurance Company ws equally responsible for the cause of the accident despite the fact that the entire plea as well as the evidence available on record would clearly prove that the driver of the lorry insured with the *NIAC Ltd.* is alone responsible for the cause of the accident;

d) With regard to the fourth judgment relied upon by the learned counsel for the *NIAC Ltd.*, viz., the one rendered by the Madras High Court in the case of ***Branch Manager, Tamil Nadu State Transport Corporation Vs. Marimuthu and Others reported in 2022 ACJ 1779*** is concerned, it deals with general principles pertaining to accidents involving big and small vehicles and it does not deal with the facts involving the present case. The said decision has only highlighted the fact that mere registration of F.I.Rs. against big vehicles cannot lead to the conclusion that the driver of the big vehicle is alone responsible for the cause of the accident. As observed earlier, in the instant case, apart from the registration of F.I.R. against the driver of the lorry insured with the *NIAC Ltd.*, the Police after investigation have also filed charge sheet, which was also marked as Ex.B11 before the Tribunal, and the said charge sheet also reveals that it is only the driver of the lorry insured with the *NIAC Ltd.* is responsible for the cause of the accident.

14. Any compensation claim before the Motor Accident Claims Tribunal is decided on preponderance of probabilities. In the case on hand, there is absolutely no evidence placed on record to prove that the appellant / Insurance Company is liable to pay any compensation to the claimants. Based on the evidence available on record, preponderance of probability is that *NIAC Ltd.* is alone liable to pay compensation, since the driver of the lorry insured with them alone was responsible for the cause of the accident.

15. For the foregoing reasons, this Court is of the considered view that the Tribunal has erroneously, without any iota of evidence, held that the appellant / Insurance Company is liable to pay the determined compensation amount to the claimants on the only ground that it was a head on collision. Due to the perverse findings rendered by the Tribunal against the appellant /

Insurance Company, the impugned awards passed against the appellant / Insurance Company has to be set aside and these appeals will have to be allowed. Accordingly, the impugned awards directing the appellant / Insurance Company to pay the determined compensation amount to the claimants are hereby set aside and the appeals are allowed.

16. Accordingly, the composite negligence fixed on the appellant / Insurance Company by the Tribunal in the impugned award is hereby set aside and the *NIAC Ltd.* is directed to pay determined compensation amount as awarded by the Tribunal together with interest at the rate of **7.5%** per annum from the date of the claim petition till the date of deposit and cost to the credit of **M.C.O.P. Nos.1451 to 1453 & 1450 of 2017 respectively** on the file of the **Motor Accidents Claims Tribunal, Special Subordinate Court, Cuddalore**, within a period of **four weeks** from the date of receipt of a copy of this judgment.

17. The appellant / Insurance Company is permitted to withdraw the amount deposited by *NIAC Ltd.* before the Tribunal, pursuant to the impugned awards, by filing appropriate applications.

18. The claimants are permitted to withdraw the said amount, once it is deposited by *NIAC Ltd.*, by filing an appropriate application before the Tribunal. On such application being made, the Tribunal shall transfer the amount lying to the credit of **M.C.O.P. Nos.1451 to 1453 & 1450 of 2017 respectively** to the bank account of the claimants directly through RTGS as apportioned by the Tribunal within a period of **one week** thereafter. No costs. Consequently, the connected miscellaneous petitions are closed.

29.07.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accidents Claims Tribunal, Special Subordinate Court, Cuddalore.

2. The Section officer, Record Section, High Court of Madras.

ABDUL QUDDHOSE. J.,

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C.M.A.Nos.3358, 3367, 3369 & 3383 of 2021
and
C.M.P. Nos.19259, 19421, 19434 & 19523 of 2021

29.07.2024