



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 10.07.2024	Judgment Pronounced on: 18.07.2024
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CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVELC.M.A.No.2899 of 2022andC.M.P.No.22417 of 2022

The Manager,
The New India Assurance Company Ltd.,
Annamar Complex, 1st Floor,
Opposite to Uppumariamman Koil,
Salem Main Road,
Uthangarai, Krishnagiri District.

... Appellant /
2nd Respondent

Vs.

1.Ellammal

... 1st Respondent /
Petitioner

2.Sivakumar

... 2nd Respondent /
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 20.12.2021 made in M.C.O.P.No.328 of 2019 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) at Krishnagiri.



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CMA NO.2899 of 2022

For Appellant : Mrs.R.Sree Vidhya
For Respondents 1 & 2 : Served – No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award dated December 20, 2021, made in M.C.O.P.No.328 of 2019 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) at Krishnagiri, (henceforth Tribunal).

2.For the sake of convenience, the parties will be referred to as per their array before the Tribunal.

Petitioner's case:

3.The case of the petitioner is that on April 29, 2016, at about 12.50 hours, the petitioner and the 1st respondent (petitioner's husband) were traveling in a motorcycle bearing Registration No.TN 24 AA 7224. The petitioner was traveling as the pillion rider and the 1st respondent was riding the motorcycle when they were traveling near one Gunachandran's land, the petitioner's husband (1st respondent) suddenly applied the brakes. Hence, the



rider of the Yamaha FZ motorcycle bearing Registration No.TN 24 R 8183 collided with the motorcycle driven by the 1st respondent. Due to the accident, the petitioner sustained fracture in her right hand, left shoulder and other parts of her body. Immediately after the accident, the petitioner was rushed to Uthangarai Government Hospital, where first aid was administered and thereafter, the petitioner was admitted in SKS Hospital, Salem. With regard to the accident, an FIR under Sections 279 & 337 of Indian Penal Code (IPC) was registered against the rider of the motorcycle bearing Registration No.TN 24 R 8183. At the time of accident, the age of the petitioner was 30 years. She was running a Rice Mil and earning a sum of Rs.20,000/- per month. After the accident, the petitioner could not perform her day-to-day work. The petitioner suffered permanent disability. Hence, the petitioner seeks compensation against the respondents, who are the owner and insurer of the motorcycle bearing Registration No.TN 24 AA 7224.

4.The 1st respondent did not choose to contest the Original Petition and he was set *ex-parte* by the Tribunal.

**2nd respondent's case:**

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5.The 2nd respondent, who is the insurer of the 1st respondent's motorcycle, filed a counter stating that the FIR was registered only against the rider of the Yamaha Fazor motorcycle bearing Registration No.TN 24 R 8183. The petitioner has not added the rider, the owner and the insurer of the motorcycle bearing Registration No.TN 24 R 8183 as a party in the original petition. The 1st respondent has not committed any negligent act. Hence, the 2nd respondent is not liable to pay any compensation to the petitioner. The petitioner and the 1st respondent were not wearing helmet at the time of accident. The 1st respondent did not give any information about the alleged accident. Accordingly, the 2nd respondent prayed to dismiss the original petition.

Witness and documents:

6.At trial, the petitioner was examined as P.W.1 and Exs-P1 to P8 were marked on the side of the petitioners. On the side of the respondents,



one Dhivya was examined as R.W.1 and Exs-X1 & X2 were marked. The disability certificate issued by the Medical Board was marked as Ex-C1.

Tribunal findings:

7.The Tribunal concluded that the accident occurred due to the rash and negligent riding of the 1st respondent and since the 1st respondent's motorcycle was insured with the 2nd respondent at the time of accident, the 2nd respondent is liable to pay the compensation to the petitioner. Accordingly, the Tribunal has awarded a sum of Rs.3,47,447/- as compensation to the petitioner.

8.Feeing aggrieved with said award, the 2nd respondent- Insurance Company has preferred this Civil Miscellaneous Appeal.

Arguments:

9.The learned counsel for the appellant – Insurance Company has submitted that Ex-P1 - FIR was registered against the rider of the vehicle



bearing Registration No.TN 24 R 8183 (Yamaha FZ) based on the complaint given by the 1st respondent. Further argued that then the petitioner turned around and filed Original Petition against the 1st respondent. The 1st respondent being the husband of the petitioner, both have collusively filed this petition with a view to get the compensation from the 2nd respondent – Insurance Company. Further argued that the petitioner neither examined the 1st respondent nor any other independent witness to prove the alleged negligence of the 1st respondent. In these circumstances, the Tribunal is not right in concluding that the accident occurred only due to the rash and negligent riding of the 1st respondent. Accordingly, the learned counsel prayed to allow this appeal.

10.In response to the above arguments, the learned counsel for the petitioner has submitted that though the FIR has been registered against the rider of the motorcycle bearing Registration No.TN 24 R 8183 (Yamaha FZ), the petitioner has clearly deposed that the accident occurred only due to the rash and negligent riding of the 1st respondent. Further argued that the Insurance Company neither examined the 1st respondent nor any other



persons to disprove the evidence of the petitioner as P.W.1. In these circumstances, the Tribunal is right in concluding that the accident occurred due to the negligent riding of the 1st respondent. Hence, there is no warrant to interfere with the award passed by the Tribunal. Accordingly, he prayed to dismiss this Civil Miscellaneous Appeal.

Points for consideration:

11.This Court has considered the submissions made on either side and perused the materials available on record.

12.The points that arises for consideration in this appeal are as follows:

(i)Whether the accident occurred due to the rash and negligent riding of the 1st respondent?

(ii)Whether the original petition is bad for non-joinder of necessary parties viz., the rider and the



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owner of the motorcycle bearing Registration No.TN
24 R 8183?

(iii)Whether the Tribunal is right in awarding
compensation to the petitioner?

Point Nos.(i) & (ii):

13.The petitioner is the wife of the 1st respondent. On April, 29, 2016 at about 12.50 hours, when the 1st respondent was riding the motorcycle bearing Registration No.TN 24 AA 7224 with the petitioner as a pillion rider, the rider of the motorcycle bearing Registration No.TN 24 R 8183 collided with their motorcycle bearing Registration No.TN 24 AA 7224 from behind and thereby, the petitioner got injured. According to the 1st respondent, the accident occurred due to the rash and negligent riding of the rider of the Yamaha FZ motorcycle bearing Registration No.TN 24 R 8183. Ex-P1 - FIR was registered against the rider of the motorcycle bearing Registration No.TN 24 R 8183. But the petitioner has deposed that the accident happened due to



the negligent riding of the 1st respondent. It is to be noted that the petitioner has neither given any complaint against the 1st respondent nor against the rider of the motorcycle bearing Registration No.TN 24 R 8183. Further, the petitioner has not examined any other witness to prove the negligence of the 1st respondent. However, the petitioner in her petition as well as in her evidence has deposed that the 1st respondent was responsible for the accident.

14.The learned counsel appearing for the 2nd respondent - Insurance Company vehemently contended that the 1st respondent is the husband of the petitioner and hence, naturally even if the Insurance Company had examined the 1st respondent, the 1st respondent would not have given evidence in favour of the Insurance Company. In such circumstances, the Insurance Company was not in a position to examine the 1st respondent.

15.This Court is not inclined to accept the above said argument advanced by the Insurance Company. The 2nd respondent - Insurance Company never made an attempt to unearth the truth by filing an application to examine the 1st respondent as Court witness. Even if the 1st respondent



would not depose in favour of the Insurance Company, the Insurance Company would have very well cross examined him to unearth the truth. But, the Insurance Company miserably failed to do so.

16.Since Ex.P1 – FIR was registered against the rider of the motorcycle bearing Registration No.TN 24 R 8183, the petitioner ought to have added the rider, the owner and the insurer if any of the motorcycle bearing Registration No.TN 24 R 8183 as parties to the Original Petition. Admittedly, the Motor Vehicle Inspector report (Ex-X.2) would show that the rider of the Yamaha FZ Motorcycle did not produce driving license at the time of inspection of the motorcycle bearing Registration No.TN 24 R 8183. In such circumstances, this Court is of the view that the petitioner wantonly and purposively did not add the rider and owner of the Yamaha FZ motorcycle bearing Registration No.TN 24 R 8183.

17.The fact is that the accident happened on April 29, 2016, at about 12.50 hours when the petitioner and the 1st respondent were traveling in the motorcycle bearing Registration No.TN 24 AA 7224 and the rider of the



motorcycle bearing Registration No.TN 24 R 8183 collided with the petitioner's motorcycle. Criminal case was registered against the rider of the Yamaha FZ motorcycle bearing Registration No.TN 24 R 8183 and the said rider admitted the guilt and paid the fine amount before Judicial Magistrate Court, Uthankarai. The Police, after investigation filed charge sheet against the rider of the Yamaha motorcycle. In view of the FIR registered against the rider of the Yamaha FZ motorcycle bearing Registration No.TN 24 R 8183, this Court is not inclined to accept the evidence of P.W.1 that the 1st respondent alone is responsible for the accident. The conduct of the petitioner i.e., non-impleading the rider and owner of the Yamaha FZ motorcycle bearing Registration No.TN 24 R 8183 and non-examination of any independent witness would establish the fact that the 1st respondent alone is not responsible to the accident. Hence, this Court is of the considered view that the 1st respondent and the rider of the motorcycle bearing Registration No.TN 24 R 8183 are equally responsible in the ratio of 50:50 for the accident. Hence, 2nd respondent being the insurer of the motorcycle belonging to 1st respondent is liable to pay 50% of the compensation.



18.Point Nos.(i) & (ii) are answered accordingly.

Point No.(iii):

19.As concluded above, the 2nd respondent – Insurance Company is liable to pay only 50% of the compensation to the petitioner. As far as quantum of compensation is concerned, considering the year of accident, age, avocation and nature of injuries sustained by the petitioner, the Tribunal has awarded a sum of Rs.3,47,447/- as total compensation to the petitioner. In the considered opinion of this Court, the quantum of compensation arrived by the Tribunal is just and reasonable and it does not need the interference of this Court. Hence, the 2nd respondent – Insurance Company is liable to pay 50% of the amount i.e., Rs.1,73,724/- (Rupees One Lakh Seventy Three Thousand Seven Hundred and Twenty Four Only).

Conclusion:

20.In the result, this Civil Miscellaneous Appeal is partly allowed. The award passed by the Tribunal is modified. The 2nd respondent –



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Insurance Company shall pay a sum of Rs.1,73,724/- (Rupees One Lakh Seventy Three Thousand Seven Hundred and Twenty Four Only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.328 of 2019 on the file of the Motor Accident Claims Tribunal Special Sub Court, Krishnagiri, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit, the petitioner / 1st respondent namely Tmt.Ellammal is permitted to withdraw the compensation amount by filing necessary application before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

18.07.2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
krk/tk



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R.SAKTHIVEL, J.

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To

- 1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

Pre-Delivery Judgment made in
C.M.A.No.2899 of 2022

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