



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.1249, 1262 & 1298 of 2024
and CMP Nos.11691, 11698 & 11699 of 2024

HDFC ERGO General Insurance Company Ltd.,
Old No.559, New No.528, II Floor, Anna Salai,
Teynampet, Chennai 600 018.

..Appellants
in all CMAs

.vs.

1.Vijaya

2.Brinks Arya Private Ltd.,
No.190, MRK Salai, Indra Nagar,
Neyveli, Cuddalore District 607 801.

..Respondents
in CMA No.1249 of 2024

1.Chandran

2.Brinks Arya Private Ltd.,
No.190, MRK Salai, Indra Nagar,
Neyveli, Cuddalore District 607 801.

..Respondents
in CMA No.1262 of 2024

1.Kumudha

2.Brinks Arya Private Ltd.,
No.190, MRK Salai, Indra Nagar,
Neyveli, Cuddalore District 607 801.

..Respondents
in CMA No.1298 of 2024



WEB COPY

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 22.01.2019 made in MCOP Nos.308, 307 & 309 of 2015 on the file of the Motor Accident Claims Tribunal (Sub Court), Rasipuram.

In all CMAs

For Appellant : Mr.K.Vinod

For Respondents : Mr.M.Sivakumar for
Mr.W.Camyles Gandhi for R1

JUDGMENT

These appeals arise out of a common Award passed in three independent claim petitions filed by the injured claimants and hence, they are taken up together, heard and disposed of through this common order.

2.The Insurance Company questioning the fixing of the entire liability on the Insurance Company by the Tribunal has filed the present appeals against the Award passed in MCOP Nos.307, 308 and 309 of 2015 dated 22.01.2019.

3.The case of the claimants is that all the three of them were travelling in a two wheeler on 13.06.2015 at Rasipuram-Attur main road and at about 5 p.m., the



offending vehicle was driven in a rash and negligent manner and it was coming in the opposite direction and it dashed on the two wheeler. As a result of which, all the three claimants sustained serious injuries. It is under these circumstances, the claimants filed individual claim petitions in MCOP Nos.307, 308 and 309 of 2015 seeking for payment of compensation.

4.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the offending vehicle. Having come to such a conclusion, the Tribunal awarded a total compensation of Rs.1,98,935/- in MCOP No.307 of 2015, Rs.1,30,602/- in MCOP No.308 of 2015 and Rs.1,29,419/- in MCOP No.309 of 2015 and the compensation amount was directed to be paid with interest at the rate of 7.5% per annum.

5.The Insurance Company questioning the entire liability fastened against them by the Tribunal has filed these appeals.

6.Heard Mr.K.Vinod, learned counsel appearing on behalf of the appellants, Mr.M.Sivakumar, learned counsel appearing on behalf of the 1st respondent.

7.This Court has carefully considered the submissions made on either side and



also the materials available on record.

WEB COPY

8.The learned counsel for the appellant Insurance Company by brining to the notice of this Court the evidence of PW4, RW1 and Exs.R1 & R2 submitted that this is a clear case where the entire negligence was on the part of the two wheeler where three persons were travelling at the same time and they were coming in the wrong direction and they had hit the offending vehicle, as a result of which, the accident had taken place. The learned counsel submitted that the Tribunal has not taken into consideration the clinching evidence that was available in this case and has erroneously concluded that the accident had taken place only due to the rash and negligent driving on the part of the offending vehicle.

9.The learned counsel also questioned the quantum of compensation fixed under certain heads on the ground that they are on the higher side.

10.The learned counsel for the claimants submitted that the Tribunal has properly appreciated the evidence of PW1 to PW4 and had also taken into consideration the documents filed before the Court and has properly come to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the offending vehicle. It was further submitted that the compensation fixed by the Tribunal under various heads is reasonable and it does not



require the interference on this Court.

WEB COPY

11. In the instant case, PW1 to PW3 were travelling in the two wheeler. PW4 is the eye witness in this case who was examined on the side of the claimants. PW4 during cross-examination has stated that there was hardly any space for the rider of the vehicle to drive the vehicle and he was virtually sitting over the petrol tank. RW1 who is the driver of the offending vehicle has stated in his evidence that the rider of the two wheeler overtook a lorry and on seeing the two wheeler coming right opposite to the offending vehicle, the driver of the offending vehicle had stopped the vehicle and the two wheeler came and dashed on the vehicle as a result which, all the three fell down and sustained injuries. This evidence of RW1 has not been substantially discredited during cross-examination.

12. It is also relevant to take note of the closure report that was filed in this case and which was marked as Ex.R2. Initially, the FIR was registered against the driver of the offending vehicle and it was investigated in Crime No.213 of 2015. Ultimately, on completion of investigation, the Investigation Officer found that the accident had taken place only due to the rider of the two wheeler overtaking the lorry and hitting the offending vehicle head on. This Court also had an opportunity to scrutinize the Rough Sketch which was marked as Ex.R1. The rough sketch shows that the two wheeler had virtually gone to the other side of the road and had hit the



offending vehicle.

WEB COPY

13. On a careful scrutiny of the evidence available on record, this Court holds that the rider of the two wheeler has certainly contributed for this accident. In the first instance, three persons were travelling in the two wheeler and there was hardly any space for the rider of the two wheeler to sit and ride the vehicle and he was almost sitting in the petrol tank. The two wheeler had overtaken another vehicle and as a result of which, the two wheeler had gone to the other side of the road and had hit the offending vehicle which was coming from the opposite direction. Therefore, there is no hesitation for this Court to come to a conclusion that the two wheeler rider has contributed to the accident and accordingly 50% contributory negligence is attributed against the rider of the two wheeler. Only the balance 50% can be fixed against the offending vehicle.

14. Insofar as the quantum of compensation is concerned, this Court finds that the compensation that has been granted under various heads is reasonable and it does not require interference of this Court.

15. In the light of the above discussion, this Court holds that 50% contributory negligence is attributable to the rider of the two wheeler and hence, the Insurance Company is liable to pay 50% out of the total compensation fixed by the Tribunal on behalf of the insurer. To that extent, the award passed by the Tribunal stands



WEB COPY

16.The appellant Insurance Company shall deposit 50% of the compensation amount fixed by the Tribunal in each claim petition with 7.5% interest, less the amount already deposited, within a period of four weeks from the date of receipt of this judgment. On such deposit, the claimants are entitled to withdraw the same.

17.In the result, these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

20.06.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal (Sub Court), Rasipuram.



WEB COPY



N. ANAND VENKATESH., J

SSR

CMA Nos.1249, 1262 & 1298 of 2024
and CMP Nos.11691, 11698 &11699 of 2024

20.06.2024