



CMA.No.3002 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

CMA.No.3002 of 2021
and CMP.No.17133 of 2021

The New India Assurance Company Limited
Micro Office, working at 41, Raju Towers,
Cauvery Nagar, Pudukkottai Road,
Nanjukkottai Post, Thanjavur 613 005.
Thanjavur District.

... Appellant

Vs.

1. M. Anand @ Anandkumar
2. S. Soundarrajan
3. M/s.Kulavi Tobacco Industry
Working at Plot No.2, Abiramapuram
Medical College Road,
Thanjavur 613 007,
Thanjavur.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act to set aside the decreed and judgment dated 09.04.2021 made in MCOP.No.398 of 2016 on the file of IIIrd Additional District and Sessions Judge, Tiruppur at Dharapuram.



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For Appellant : Mr.K.Vinod
For Respondents : M/s.Ma.P.Thangavel for R1
No appearance for R2
M/s.K.Govi Ganesan for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company to set aside the decree and judgment dated 09.04.2021 made in M.C.O.P.No.398 of 2016 on the file of the IIIrd Additional District and Sessions Judge, Tiruppur at Dharapuram.

2. The appellant is the 3rd respondent in M.C.O.P.No.398 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Tiruppur at Dharapuram. The 1st respondent filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.03.2016.

3. According to 1st respondent, on 20.03.2016 at about 05:30 P.M., he was traveling in a two wheeler as a pillion rider along with his son namely Ramachandran who was riding the Motor Cycle bearing Regn.No.TN-57-AV-



8941 near Veeranampalayam Pirivu on the Kangeyam to Karur road, at that time the respondent No.2 who drove the Van bearing Regn.No.TN-49-AE-6096 in a rash and negligent manner with high speed from opposite direction dashed on the Motor Cycle. Due to impact both were thrown away, Anand @ Anandkumar sustained grievous injuries and Ramachandran succumbed to the injuries on the way to the Hospital. The respondent No.1 Anand @ Anandkumar was taken to Government Hospital Kangeyam where he was given first aid treatment and then admitted at Ganga Hospital Coimbatore for further treatment, where he took treatment for 60 days as in patient. Thereafter, the 1st respondent filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him against the appellant-Insurance Company and respondents 2 & 3, being the driver and owner of the Van bearing Registration No.TN-49-AE-6096 respectively.

4. The respondent No.2 driver and respondent No.3 owner of the VAN remained exparte before the Tribunal.

5. The Appellant-Insurance Company filed counter, denied the manner of accident as alleged by the 1st respondent. According to the appellant, the



accident occurred only due to rash and negligent on the part of the 1st respondent and deceased Ramachandran and the 1st respondent has to seek out his remedy against the insurer and insured of the said motor cycle bearing Regn.No.TN 57 AV 8941. Therefore, the appellant is not liable to pay any compensation. The appellant denied the age, avocation, income, nature of injuries and treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, one Bagavathi examined as P.W.1, and the 1st respondent examined himself as PW2 and 30 documents were marked as Exs.P1 to P30. On behalf of the respondents, one Jamuna and D.Rajanbabu were examined as R.W.1 & R.W.2 and two document were marked as Ex.R1 and Ex.R.2

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Van owned by the 3rd respondent and directed the appellant-Insurance Company to pay a sum of Rs.9,29,333/- as compensation



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to the 1st respondent.

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8. Aggrieved over the award of the Tribunal the appellant has come out with the present appeal. Neither the claimants/Respondent No.1 or other respondent have challenged the award.

9. The learned counsel appearing for the appellant/Insurance Company contended that the accident has occurred only due to the negligence on the part of the rider of the motor cycle bearing Regn.No.TN 57 AV 8941, therefore negligence has to be fixed on the part of the rider of the motor cycle. He further submitted that total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award of the Tribunal.

10. Heard both side and perused the entire materials on record.

11. The claim of the 1st respondent is that his son Ramachandran was riding the motorcycle bearing Regn.No.TN 57 AV 8941 in which he was travelling as a pillion rider. He stated in his evidence that his son was riding the Motor Cycle towards Eastern side, in a moderate speed near



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Veeranampalayam Pirivu, at the time the 2nd respondent drove the Van bearing Regn.No.TN 49 AE 6096 in a rash and negligent manner dashed on the Motor Cycle and caused the accident. The contention of the appellant-Insurance Company that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle bearing Registration No. TN 57 AV 8941 and the driver of the Van bearing Regn.No.TN 49 AE 6096. To substantiate this contention, the appellant-Insurance Company relied on Ex.P1/F.I.R., and also admission of P.W.2 in his cross examination. The Tribunal considering the pleadings, evidence of P.W.2, Ex.R3/rough sketch and other documents placed before it, held that the accident has occurred due to rash and negligent riding by rider of the motorcycle and the driver of the Van bearing and fixed negligence in the ratio 25:75. This appeal filed challenging the above finding passed in MCOP.No.398 of 2016 filed by the 1st respondent herein. Admittedly common award is passed by the Tribunal after conducting joint enquiry of MCOP.No.398 of 2016 along with MCOP.No.576 of 2018. But the Insurance Company has not challenged the award passed in MCOP.No.576 of 2018 and hence same is binding on the appellant herien. Haivng failed to challenge the award passed in MCOP.No.576 of 2018 the appellant is not entitled to challenge the common



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award in MCOP.No.398 of 2016 alone. Further, the Tribunal based on evidence of PW2 eyewitness and injured claimant has accepted the case of the claimants with regard to negligent act alleged by them. The Tribunal has fixed contributory negligence to the extent of 25% on the rider of the two wheeler and claimants have not challenged the same. This Court finds no infirmity in the order passed by the Tribunal.

12. As far as quantum of compensation is concerned, the Tribunal after considering the nature of injuries, Ex.P30/disability certificate, period of treatment taken and percentage of disability, awarded compensation under different heads, which are not excessive and the same are hereby confirmed.

13. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.9,29,333/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.398 of 2016 on the file of the IIIrd Additional District



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and Sessions Court, Tiruppur at Dharapuram. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

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dpq
Index : Yes/No
Speaking Order : Yes/No

K. RAJASEKAR, J.

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