BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.573 of 2019

The Oriental Insurance Company Limited,
2nd Floor, S.K.S.Plaza,
Near Police Station,
R.S.Road, Perunthurai,
Erode District. ... Appellant/2nd Respondent

Vs.

1.M.Chinnammal ... Respondent/Petitioner

2.P.Sankar ... Respondent/1st Respondent

3.M/s.Namakkal Transport Carrier (Pvt) Ltd.,
No.97, Lingi Chetty Street,
Chennai ... Respondent/3rd Respondent

4.Bajaj Alliance General Insurance Company Limited,
2nd Floor, Plot No.1989,
H-Block, 12th Main Road,
Anna Nagar, Chennai. ... Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the judgment and decree passed in M.C.O.P.No. 318 of 2019, dated 22.01.2019 on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Kuzhithalai.

For Appellant : Mr.C.Jawahar Ravindran

For R1 - R3 : No Appearance

For R4 : M/s.K.R.Shivashankari

JUDGMENT

The present appeal has been filed by the Oriental Insurance Company challenging the award passed in M.C.O.P.No.318 of 2013 on the file of the Motor Accident Claims Tribunal cum Sub Court, Kuzhithalai primarily on the apportionment of liability with the 4th respondent insurance company.

2. According to the claimant, her son was travelling as a Cleaner in the lorry owned by the 1st respondent and insured with the 2nd respondent on 31.12.2012. While they were moving in Kaariyapatti to Sevalpatti Byepass road in the north-south direction, a lorry owned by the 3rd respondent and insured with the 4th respondent in the claim petition was parked in the middle of the road without any parking lights or any signal due to break down of the vehicle. According to the claimant, both the owners of the vehicle and the insurance companies are equally responsible for the accident. The driver of the 1st respondent had dashed against the rear side of the parked lorry and in the said accident, the son

of the claimant had sustained injuries and later passed away. Hence, she has prayed for a compensation of Rs.10,00,000/-.

3. The 2nd respondent in the claim petition who is the insurer of the lorry, in which the deceased had travelled had filed a counter contending the entire negligence is on the part of the parked lorry and therefore, they are not liable to pay any compensation. The 4th respondent insurance company which is the insurer of the parked lorry had filed a counter contending that the lorry was parked after adhering to the traffic rules and therefore, only due to the negligence of the driver of the 1st respondent lorry, the accident has taken place and therefore, they are not liable to pay any compensation.

4. The tribunal after considering the oral and documentary evidence, has arrived at a finding that the driver of both the vehicles are responsible for the accident. Thereafter, at the time of apportioning the liability between the driver of both the vehicles, the tribunal has fixed 80% liability upon the lorry in which the deceased was travelling and 20% upon the driver of the parked vehicle, which is insured with the 4th respondent in the claim petition. A sum of Rs.9,37,200/- has been awarded as compensation. Challenging the said award, the appellant

namely Oriental Insurance Company has filed the present appeal contending that they are the insurer of the vehicle in which the deceased person had travelled and when the tribunal had arrived at a finding that the driver of both the vehicles are equally responsible for the accident, apportionment should have been 50:50. On the other hand, the tribunal has fixed 80% of liability upon the appellant insurance company. Challenging the said portion of the award, the present appeal has been filed.

5. Per contra, the learned counsel appearing for the 4th respondent herein had contended that the lorry was parked in the Byepass road due to mechanical defect. Having left so much of space for other vehicles to move, it was well lit area and therefore, the driver of the 1st respondent lorry was having the last opportunity to avoid the accident. In such circumstances, the tribunal was right in mulcting 20% of the liability upon the Bajaj Alliance General Insurance Company which is the insurer of the parked lorry. Hence, she had prayed for sustaining the apportionment of the award by the tribunal.

6. I have carefully considered the submissions made on either side and perused the material records.

7. As per the claim petition, the driver of both the vehicles have contributed to the accident. One of the occupant of the lorry in which the deceased was travelling was examined as P.W.2. He has specifically deposed that the lorry was parked without any parking lights or any signal. To the said aspect, no cross-examination was conducted by the Bajaj Alliance General Insurance Company. Therefore, it is clear that the lorry was parked without adhering to the traffic rules. Now, considering the issue relating to apportionment, the deceased person was an occupant of the moving lorry. Therefore, the driver of the moving lorry should have been more cautious enough and he had the last opportunity to avoid the accident. It is equally the responsibility of the driver of the parked lorry to have parked the vehicle on the extreme left side of the road with parking lights or with signals.

8. This Court is of the considered opinion that the liability upon the insurance company is to be fixed at 60% instead of 80% and the balance liability could be fixed upon the 4th respondent in the appeal, namely Bajaj Alliance General Insurance Company who are the insurer of the parked lorry. In view of the above said deliberation, the following order is passed:

(i) The quantum of award passed by the tribunal is hereby confirmed.

(ii) The order in favour of the appellant insurance company granting pay and recovery also stands confirmed.

(iii) The order of the tribunal in mulcting the liability upon the appellant insurance company 80% is hereby set aside and it is fixed at 60%.

(iv) The balance liability of 40% shall be fixed upon the 4th respondent in the claim petition.

(v) The claimant will be entitled to recover the award amount from any one of the insurance companies in view of the judgment of the Hon'ble Supreme Court reported in ***2015 (9) SCC 273 (Khenyei Vs. New India Assurance Company Limited & Others)***.

9. With the above said observations, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs.

27.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accidents Claims Tribunal
cum Subordinate Judge,
Kuzhithalai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Order made in
C.M.A(MD)No.573 of 2019

27.06.2024