



C.M.A(MD)Nos.599 & 600 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **01.08.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.599 & 600 of 2020

Bajaj Allianz General Insurance
Company Limited,
184/25, KPS Shopping Arcade,
Byepass Road,
Madurai-625 010.

... Appellant/2nd Respondent
(In Both Cases)

Vs.

1.D.Abraham

... 1st Respondent/Claimant
in C.M.A(MD)No.599 of 2020

1.Anthony Dass

... 1st Respondent/Claimant
in C.M.A(MD)No.600 of 2020

2.B.Manikandan

... 2nd Respondent/1st Respondent
(In Both Cases)

PRAYER in C.M.A(MD)No.599 of 2020: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 18.12.2019 passed in M.C.O.P.No.1 of 2015 on the file of the Motor Accident Claims Tribunal [Chief Judicial Magistrate], Tiruchirappalli by allowing this appeal.

PRAYER in C.M.A(MD)No.600 of 2020: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside



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the judgment and decree, dated 18.12.2019 passed in M.C.O.P.No.2 of 2015 on the file of the Motor Accident Claims Tribunal [Chief Judicial Magistrate], Tiruchirappalli by allowing this appeal.

In Both Cases:

For Appellant : Mr.V.Sakthivel

For R-1 : Mr.N.Sudhagar Nagaraj

For R-2 : No appearance

COMMON JUDGMENT

The Insurance Company has filed C.M.A(MD)Nos.599 and 600 of 2020 challenging the common award passed in M.C.O.P.Nos.1 and 2 of 2015 on the file of the Motor Accident Claims Tribunal [Chief Judicial Magistrate], Tiruchirappalli.

2. According to the case of the claimants, one Abraham was riding a two-wheeler, in which another claimant, namely, Anthony Dass was a pillion rider. The said Anthony Dass was also the owner of the said two-wheeler. On 16.09.2014, at about 02.00 p.m., when the two-wheeler was moving in a four way from the west to east direction, the JCB owned by the first respondent and insured with the second respondent attempted to take a 'U' turn in a gap found in the four way and it dashed against the



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two-wheeler. Due to the said impact, both the rider as well as the pillion rider were seriously injured. The rider of the two-wheeler had filed M.C.O.P.No.1 of 2015, claiming a compensation of Rs.10,00,000/-. The pillion rider / owner of the two-wheeler had filed M.C.O.P.No.2 of 2015, claiming a compensation of Rs.3,00,000/-.

3. The insurer of the JCB has filed a counter contending that the JCB was waiting in the midway gap to take a 'U' turn. However, only due to the rash and negligent driving on the part of the rider of the two-wheeler, the accident has taken place. 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 accident has taken place only due to the rash and negligent driving on the part of the driver of JCB and has mulcted the liability upon the appellant Insurance Company. The Tribunal has awarded a sum of Rs.4,53,895/- in M.C.O.P.No.1 of 2015 and a sum of Rs.25,000/- in M.C.O.P.No.2 of 2015. Challenging these two awards, the present appeals have been filed by the Insurance Company.



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5. According to the learned Counsel appearing for the Insurance Company, the rider of the two-wheeler as well as the pillion rider of the two-wheeler have been examined as P.W.1 and P.W.2. During their cross-examination, they have specifically admitted that the JCB was waiting in the mid gap to take a 'U' turn and the two-wheeler had dashed against the JCB. Therefore, there is no negligence on the part of the driver of the JCB. The Tribunal had erroneously fixed the liability upon the insurer of JCB.

6. Per contra, the learned Counsel appearing for the respondent herein, relying upon the deposition of P.W.1 and P.W.2 had contended that though the JCB was waiting in the mid gap for taking a 'U' turn, the driver had turned the arm of the JCB, in a rash and negligent manner and the said arm had dashed against the two-wheeler, which has resulted in the accident. In such circumstances, the Tribunal was right in mulcting the entire liability upon the owner of the JCB. Hence, he prayed for sustaining the award passed by the Tribunal.

7. I have carefully considered the submissions made on either side and perused the materials available on record.



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8. The issue now that arises for consideration is whether the accident has taken place solely due to the negligence on the part of the driver of the JCB or there was any contributory negligence on the part of the rider of the two-wheeler also.

9. A perusal of the deposition of P.W.1 and P.W.2 makes it clear that, JCB was waiting in the midway gap of the four way lane in order to take a 'U' turn and the driver seems to have turned the arm of the vehicle. So that, it had dashed against the two-wheeler. The JCB was stationed in the midway, however the rider of the two-wheeler had come in a rash and negligent manner, so close to the JCB which had resulted in dashing against the arm of the JCB. Therefore, it is clear that the rider of the two-wheeler has also contributed to the accident. This Court is of the considered opinion that 30% of negligence could be attributed to the rider of the two-wheeler and 70% of the negligence could be attributed to the driver of the JCB.

10. A perusal of the award passed in both the claim petitions reveals that they are very reasonable and there is no scope to interfere in the quantum of award or in the rate of interest.



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11. In view of the above said facts, this Court is inclined to pass the following order:

"1) In M.C.O.P.No.1 of 2015, the claimant, namely, Abraham shall be entitled to receive 70% of the award amount from the appellant Insurance Company. Since he is a tort-feasor, he will not be entitled to receive the balance 30% of the award amount from anyone of the respondents.

2) The claimant in M.C.O.P.No.2 of 2015 shall be entitled to receive 70% of the award amount from the appellant Insurance Company and being a owner of an un-insured vehicle he will not be entitled to any further compensation.

3) Any excess amount deposited by the Insurance Company shall be refunded along with accrued interest. The claimants are entitled to withdraw the award amount as per the orders of this Court."

12. Both the Civil Miscellaneous Appeals stand partly allowed to the extent as stated above. There shall be no order as to costs.

01.08.2024



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Motor Accident Claims Tribunal
[Chief Judicial Magistrate],
Tiruchirappalli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)Nos.599 & 600 of 2020

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