



C.M.A.(MD).No.164 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.164 of 2018

and

C.M.P(MD) No.2395 of 2018

M/s. United India Insurance Company Limited,
Through its Divisional Manager,
91, Kamarajar Salai,
Madurai,
Madurai District.

... Appellant/2nd Respondent

-vs-

1. C.Mallika

2. C.Atheeswaran

3. Minor. C.Jhansi Rani
D/o. Chellamuthu
Represented by
her mother 1st Respondent

4. A.Lalitha

... Respondents 1 to 4/
Claimants

5. S.Thamee Ansari

... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order dated 30.06.2017, made in M.C.O.P.No.749 of 2013, on the file of the Motor Accident Claims Tribunal (IV Additional District Court) Madurai.



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For Appellant : Mr.B.Rajesh Saravanan

For R1 : Mr.B.Senthilkumar
For Caveator

For R2, R4 & R5 : No appearance

For R3 : Minor

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award passed in M.C.O.P.No. 749 of 2013, on the file of the Motor Accident Claims Tribunal (IV Additional District Court) Madurai, primarily, on the ground of non consideration of contributory negligence.

2. The deceased was a pillion rider in a two wheeler, which was owned by the first respondent and driven by one Sengairaja. The said vehicle was insured with the second respondent. According to the FIR lodged by the rider of the two wheeler, when he made an attempt to overtake the lorry going ahead of him, another lorry came in the opposite direction. When he made an attempt to apply brake, the lorry coming in the opposite direction dashed against the two wheeler and left the spot. Due to the said impact, the pillion rider, namely, A.Chellamuthu, had sustained grievous injuries and passed



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away. According to the claimants, the entire negligence is on the part of the rider of the two wheeler.

3. The Insurance Company has filed a counter contending that the entire negligence is on the part of the unknown vehicle 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 negligence was on the part of the rider of the two wheeler, who was examined as P.W.2. The Tribunal has proceeded to fix the compensation at Rs.15,90,000/- (Rupees Fifteen Lakhs and Ninety Thousand only). Challenging the said award, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant/ Insurance Company, when the rider of the two wheeler made an attempt to overtake the lorry, he should have been more careful enough in the said action and he should have noticed the up coming vehicle. According to the learned counsel appearing for the appellant, 25% of contributory negligence should be fixed upon the rider of the two wheeler and rest of the negligence should



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be fixed upon the unknown lorry which came from the opposite direction. He further contended that the version of rider of the two wheeler is different in Ex.P.1-FIR and the deposition of P.W.2. Therefore, he prayed for allowing this appeal and to reduce the contributory negligence on the part of the rider of the two wheeler.

6. The learned counsel appearing for the appellant had further contended that the claimants have filed Ex.P.6 – driving license of the rider of the two wheeler. However, on the side of the Insurance Company another driving license has been marked as Ex.R1 for the rider of the two wheeler. There is a discrepancy between the date of birth in the two driving licenses and therefore, it is clear that Ex.P6 is a fake one. Hence, he prayed for awarding pay and recovery with regard to the percentage of contributory negligence to be fixed upon the rider of the two wheeler.

7. Per contra, the learned counsel appearing for the first respondent/ claimant contended that it is an admitted fact that the rider of the two wheeler made an attempt to overtake a lorry ahead upon him and therefore, the entire negligence has to be fixed upon the rider of the two wheeler. The Tribunal was right in mulcting the entire liability upon the rider of the two wheeler.



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8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. The stand of the rider of the two wheeler, in Ex.P1 – FIR is that he had attempted to overtake another lorry and on seeing a lorry from the opposite direction he had applied sudden brake. However, the opposite coming lorry had dashed against the two wheeler and left the spot. Therefore, it is clear that the lorry coming from the opposite direction has not been identified.

10. The claimants in the claim petition have specifically contended that the entire negligence is on the part of the rider of the two wheeler. However, this Court is of the considered opinion that when the person once decided to overtake the vehicle he should also have exercised caution to find out whether any other vehicle is coming from the opposite direction. Therefore, 50% of negligence should be fixed upon the rider of the two wheeler for carelessly overtaking the lorry without seeing another upcoming lorry in the opposite direction.



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11. The learned counsel appearing for the appellant had contended that Ex.P6, is a forged document, in view of the fact that the date of birth of the rider of the two wheeler is different, from another driving license of the same person has been marked as Ex.R1. A perusal of these two documents reveals that the rider of the two wheeler had taken a two wheeler driving license as Ex.P6 and four wheeler driving license as Ex.R1. In case, if the Insurance Company feels that the two wheeler driving license is a fake one they could have very well examined the concerned RTO official to establish the same. When the said exercise has not been undertaken, such contention cannot be raised in the present appeal.

12. In view of the above said deliberations, the Insurance Company is liable to satisfy only 50% of the award amount the balance 50% of the award amount has to be fixed upon the unknown vehicle.

13. The award of the Tribunal is modified as follows:

(i) The second respondent in the claim petition namely, appellant/ Insurance Company is directed to deposit 50% of Rs. 15,90,000/- along with interest at the rate of 7.5 % per annum. In case, any excess amount has been deposited by the appellant/Insurance Company the same shall be refunded to



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them along with accrued interest. On such deposit being made, the claimants are entitled to withdraw the same as per the proportion laid down by the Tribunal. In respect of the minor claimant/3rd respondent, the amount shall be deposited in a Nationalized Bank till she attains majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months.

14. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

15.07.2024

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

1. The Motor Accident Claims Tribunal
(IV Additional District Court),
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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