



C.M.A.(MD) No.682 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.682 of 2020

and

C.M.P.(MD)No.6861 of 2020

The Divisional Manager,
having its office at:
The Oriental Insurance Co. Ltd.,
SKG Samy Complex, 1st Floor,
No.82, North Car Street, Tenkasi,
Tirunelveli.

... Appellant

Vs.

1.Libitta
2.Parvathy

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.03.2020 passed in M.C.O.P.No.1497 of 2015 on the file of the Motor Accidents Claims Tribunal cum Special Sub Court, Tirunelveli.

For Appellant : Mr.E.Chandrasekaran

For Respondents : No appearance



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JUDGMENT

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The instant appeal has been filed challenging the finding on negligence.

2. The first respondent filed a claim petition stating that while she was travelling as a pillion rider in a two-wheeler belonging to the second respondent, a TATA 407 mini lorry came and dashed the two-wheeler from behind, as a result of which, she sustained grievous injuries.

3. The second respondent herein/the owner of the two-wheeler remained *ex parte* before the Tribunal.

4. The appellant, insurer of the two wheeler, in which, the claimant travelled as a pillion rider, filed a counter stating that even as per the claim petition, an unknown TATA 407 mini lorry was involved in the occurrence and the rider of the two-wheeler was not guilty of negligence and hence, the appellant is not liable to pay the compensation.

5. The claimant examined herself as P.W.1 and Doctors, who



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examined her, as P.W.2 and P.W.3 and marked Exs.P1 to P14. The appellant examined one Perumal as R.W.1 and marked the xerox copy of the Final Report as Ex.R1.

6. The Tribunal, after taking into consideration oral and documentary evidence, held that the accident took place only due to the negligence of the rider of the two wheeler, in which, the claimant travelled and hence, the appellant is liable to pay the compensation of Rs.1,04,706/-

7. The learned counsel for the appellant/Insurance Company submitted that the claimant had lodged an FIR-Ex.P1, in which, she had stated that an unknown TATA 407 mini lorry had dashed against the two-wheeler from behind, which caused the accident and that even in the claim petition, she stated that the accident took place because of an unknown vehicle; and that the other evidence on record suggests that the version of P.W.1 in her deposition that the accident took place due to the negligence of the rider of the two wheeler, is afterthought and hence, submitted that the award has to be set aside.

8. Since notice sent to the respondent 2 was returned with an



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endorsement “Refused”, this Court deemed it a service of notice and printed the name in the cause list. Notice to the first respondent was returned with an endorsement “Left”, “No residence”. Since notice to the first respondent was served through her counsel, this Court, *vide* order dated 04.06.2024, directed to print her name in the cause list. However, none has entered appearance.

9. The point for consideration in the instant appeal is ‘*whether the finding on negligence by the Tribunal is just and reasonable?*’

10. It is the case of the first respondent in the claim petition that there was a TATA 407 mini lorry that came and dashed the two wheeler and caused the accident. The claimant had also given the same version in her complaint to the Police, which is marked as Ex.P1. The appellant had examined R.W.1-the Sub Inspector of Police, who investigated the crime No.85 of 2015, which was lodged by the claimant/first respondent. Even during the investigation, the first respondent stated before the Police that the accident was caused by an unknown mini lorry. That apart, the claimant had admitted in her cross-examination that since the Police had referred the case as a mistake of fact as they were unable to identify the



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vehicle, she filed this claim against the owner of the two wheeler.

Therefore, in the light of the above evidence the version of P.W.1 that the rider was guilty of negligence is afterthought in order to claim the compensation.

11. This Court is of the view that the appellant cannot be made liable as the rider of the two-wheeler was not guilty of negligence. Hence, the award passed by the Tribunal is set aside.

12. The appellant/Insurance Company shall be entitled to claim refund of the amount, if any, deposited by them, by filing an suitable application before the Tribunal.

13. In view of the above, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd



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WEB COPY To:

- 1.The Motor Accidents Claims Tribunal cum Special Sub Court,
Tirunelveli.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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