



C.M.A.(MD) No.1218 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1218 of 2014

and

M.P.(MD)No.4 of 2014

The Branch Manager,
National Insurance Company Limited,
Kamarajar Bazaar,
Bodinayakanur Post,
Theni.

... Appellant

Vs.

1.R.Ganesan,
2.N.Nagalakshmi,
3.A.K.S.Ramdoss,
4.The Oriental Insurance Co. Ltd,
Theni.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 15.03.2012 passed in M.C.O.P.No.14 of 2009, on the file of the Motor Accidents Claims Tribunal, Sub Court, Periyakulam.



WEB COPY



C.M.A.(MD) No.1218 of 2014

For Appellant : Mr.D.Sivaraman

For Respondents

for R1 : Mr.J.Barathan
for R2 : No appearance
for R3 : Died
for R4 : Mr.C.Jawahar Ravindran

J U D G M E N T

The appeal has been preferred by the insurance company challenging the finding on negligence.

2. The first respondent filed a claim petition stating that while he was travelling as one of the pillion riders in the two wheeler, a lorry insured with the appellant, without any indication, suddenly reversed the vehicle; and that despite the best efforts taken by the rider of the two wheeler to stop the vehicle, the lorry dashed against the two wheeler, as a result of which the riders died and the first respondent suffered serious injuries.

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



C.M.A.(MD) No.1218 of 2014

WEB COPY

4. The appellant filed a counter stating that the accident took place only due to the negligence of the rider of the two wheeler; that the driver of the insured vehicle did not have a valid licence; and that in any case, the compensation claimed was excessive.

5. The owner and the insurer of the two wheeler were also made parties in the claim petition.

6. Before the Tribunal, the first respondent examined two witnesses as P.W.1 and P.W.2 and marked Exs.P1 to P13. The appellant neither examined any witnesses nor marked any documents. The fourth respondent herein filed a copy of the award in M.C.O.P.No.17 of 2010 as Ex.R1 and the decree as Ex.R2.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the negligence of the lorry driver and directed the appellant to pay the compensation of Rs.4,05,000/-.



C.M.A.(MD) No.1218 of 2014

8(a). The learned counsel for the appellant submitted that though the Tribunal held that the rider of the two wheeler was also guilty of negligence, it had fixed the entire liability on the appellant, which is erroneous.

8(b). The learned counsel for the fourth respondent further fairly submitted that in two other claim petitions filed by the dependents of the other riders of the two wheeler in M.C.O.P.No.17 of 2010 and in M.C.O.P.No.253 of 2009, on the file of the Motor Accidents Claims Tribunal/Principal District Court, Theni, was also allowed and the entire negligence was fixed on the lorry driver; and that the appellant has not preferred any appeal against those awards.

9. The learned counsel for the first respondent, per contra, submitted that the evidence discloses that the driver of the insured vehicle was guilty of rash and negligent driving and therefore, the award of the Tribunal is just and reasonable and no interference is called for.

10. The only point for consideration in the instant appeal is ‘whether the finding on negligence by the Tribunal is justified?’



C.M.A.(MD) No.1218 of 2014

WEB COPY

11. The quantum of compensation awarded by the Tribunal is not under challenge. Though the Tribunal had held that the rider of the two wheeler also contributed the accident, this Court finds that the appellant has not let in any contra evidence to the evidence let in by the claimants to prove the manner of the accident. The evidence of P.W.2, which corroborated by the contents of FIR, would show that the lorry driver was guilty of rash and negligent driving.

12. That apart, the award of the Motor Accidents Claims Tribunal/Principal District Judge, Theni, in M.C.O.P.No.17 of 2010 and in M.C.O.P.No.253 of 2009, in the claim petition filed by the legal representatives of the deceased riders, the entire negligence was fixed on the lorry driver, which has not been challenged by the appellant. Therefore, the appellant is estopped for challenging the finding on negligence in this case. For the above reasons, this Court finds that the appeal deserves to be dismissed and hence dismissed.

13. The appellant is liable to pay Rs.4,05,000/- (Rupees Four Lakhs and Five Thousand only) together with interest @ 7.5% p.a., from the date



C.M.A.(MD) No.1218 of 2014

of the claim petition till the date of realization and costs.

WEB COPY

14. It is reported by the learned counsel for the appellant that the appellant has deposited the entire award amount with interest and costs and the first respondent/claimant has withdrawn 50% of the same. Hence, the first respondent/claimant is permitted to withdraw the remaining amount by filing suitable application before the Tribunal.

15. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.10.2024

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

To:

1. The Motor Accidents Claims Tribunal, Sub Court, Periyakulam.

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



WEB COPY



C.M.A.(MD) No.1218 of 2014

SUNDER MOHAN, J.

apd

C.M.A.(MD) No.1218 of 2014

16.10.2024