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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.04.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.222 of 2014

The Branch Manager,
Oriental Insurance Company Limited,
Nagercoil, Agasteeswaram Taluk,
Kanyakumari District. ... Appellant

Vs.

1.Ezhil Xavier
2.Gopakumar
3.Jebaraj

4.The Branch Manager,
United India Insurance Company Limited,
No.3/33-B, P.P.K.Building,
Main Road, Marthandam,
Vilavancode Taluk, Kanyakumari District.

5.Ramesh
6.Sakthikumar ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award made in MCOP No.19 of 2010, dated 27.09.2012, on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Padmanabapuram.

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For Appellant : Mr.K.Balasubramanian
For R1 : Mr.K.P.Narayanakumar
For R2, 3, 5 and 6 : No appearance
For R4 : Mr.A.Shajahan

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JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal.

2.It is a case of injury. The contention of the appellant Insurance Company is that a Tempo Traveller also involved in the accident, hence, negligence ought to be fixed on the Tempo also. According to the claimants, the accident happened when he parked his vehicle and was purchasing groceries in the nearby shop. Next to the said vehicle, a Hero Honda Motor Cycle was stationed, while removing the Hero Honda Motor Cycle, it had hit the Tempo Traveller and the accident occurred, thus, the claimant suffered serious injuries. The Tribunal has considered the same and fixed the liability on the Hero Honda Motor Cycle. Consequently, the Oriental Insurance Company was made liable to pay the compensation.

3. The contention of the Oriental Insurance Company is that when the

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Tempo has hit the Hero Honda Motor Cycle, the contributory negligence ought to be fixed on the Tempo Traveller as well. It is an admitted fact when the driver of the Hero Honda Motor Cycle was removing the vehicle, he did not see a Tempo Traveller coming from behind. Even the Tempo Traveller ought to have been driven the vehicle cautiously. When he saw the Hero Honda Motor Cycle being removed from the stationed place, he ought to have stopped the vehicle. Therefore, contributory negligence ought to be fixed on the Tempo Traveller also.

4. Therefore, this Court is of the considered opinion that the Tribunal failed to fix the contributory negligence on the owner of the Tempo. The claimant has filed the petition by impleading the United India Insurance Company, since according to the claimant, the Tempo was insured with United India Insurance Company. However, the learned Counsel for the United India Insurance Company submitted that the Tempo was not insured with United India Insurance Company. Of course, it was insured but it was lapsed, therefore, the learned Counsel for the United India Insurance Company submitted that they are not liable to pay the compensation. Since this Court rendering a finding that the Tempo is also liable to pay the compensation, when the Tempo is not having any live insurance, the owner of the Tempo is liable to pay the compensation.

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5. Therefore, this Court is fixing 70% liability on the Hero Honda Motor Cycle and consequently, the Oriental Insurance Company is liable to pay 70% of the compensation. This Court is fixing 30% liability on the Tempo. Since the Tempo is not insured, United India Insurance Company shall pay the 30% compensation to the claimant and recover the same from the owner of the Tempo.

6. The total compensation awarded is Rs.4,46,222/- with 7.5% interest per annum. The appellant Insurance Company is liable to pay 70% (i.e., Rs. 312,355/-) with interest at the rate of 7.5% per annum. The 4th respondent Insurance Company is liable to pay 30% (i.e., Rs.1,33,867/-) with interest at the rate of 7.5% per annum and recover the same from the owner of the Tempo.

7.The appellant and the 4th respondent herein are directed to deposit Rs. 312,355/- and Rs.1,33,867/- respectively, with proportionate interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same with accrued interests and costs, less the amount already withdrawn by him, if any, by filing appropriate application before

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the Tribunal. The 4th respondent Insurance Company is entitled to recover the amount deposited by them from the owner of the Tempo / 2nd respondent herein, by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in ***2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)***. The appellant Insurance Company shall withdraw the excess amount, if any.

8. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

15.04.2024

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

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To

1. Motor Accident Claims Tribunal cum
Subordinate Judge, Padmanabapuram.

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

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S.SRIMATHY, J.

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