



C.M.A.(MD).No.346 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.346 of 2018

and

C.M.P(MD) No.4600 of 2018

United India Insurance Company Ltd.,
No.4, Promenade Road, Cantonment,
Trichy-620 001.

... Appellant/2nd Respondent

-vs-

Amudha (died)
1.Mahalakshmi
2.Mohanlal
3.Preethi
4.Marayee (died)
5.Kalaiselvan
6.Manoharan

7.Universal Sampo General Insurance Company Ltd.,
Capital Towers, 5th Floor,
554 & 555, Annasalai,
Teynampet, Chennai-600 018.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order passed by the Motor Accidents Claims Tribunal/Special District Court, Tiruchirappalli in M.C.O.P.No.5349 of 2013 dated 19.07.2017 as against the appellant.

For Appellant	: Mr.N.Dilip Kumar
For R7	: Mr.N.Shyllappa Kalyan
For R6	: No Appearance



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The instant Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award passed in M.C.O.P.No.5349 of 2013, on the file of the Motor Accident Claims Tribunal – cum – Special District Court, Tiruchirappalli, on the ground of contributory negligence.

2. According to the claimants, the victim was working as a Sales person in Avanthiga Agency, who are the dealers in Ice cream. On 27.04.2013, while he was travelling in Tata Ace Mini Lorry, owned by the sixth respondent and insured with the seventh respondent carrying ice cream from Trichy to Karattampatty to supply ice cream package to Jayaram College of Engineering, the lorry insured with the appellant came in the opposite direction in a rash and negligent manner and dashed against the Tata Ace Mini Lorry. In the said accident, the victim had sustained serious injuries and latter passed away. According to the claimants, the deceased was a salesman and he was earning a sum of Rs.15,000/- per month and he was aged about 40 years and claimed compensation of Rs.30 lakhs.

3.The insurer of the lorry, namely United India Insurance Company Ltd., had filed counter contending that the mini lorry was coming from north



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to south direction, therefore it was sticking on the eastern lane of the road.

However, the mini lorry had moved from south to north direction. Therefore, they have stucked on to the western lane of the road. However, as per Ex.X1, the rough sketch, the accident had taken place only on the western lane of the road. Therefore, it is clear that the mini lorry had moved on to the wrong lane of the road and has resulted in the accident. Therefore, the appellant is not liable to pay any compensation.

4.The insurer of the Tata Ace Mini Lorry had not filed any counter and they have remained *ex-parte*.

5.The Tribunal after considering the oral and documentary evidence has arrived at a finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the lorry, primarily relying upon the evidence of P.W.3, who is alleged to be an ocular witness. The Tribunal has proceeded to award compensation of Rs.15,20,060/-. This award is under challenge in the present appeal by the insurer of the Lorry.

6.According to the learned counsel for the appellant, the rough sketch would clearly indicate that the accident had taken place to the eastern side of



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the road, which is the right lane for the lorry and the mini lorry had moved on to the wrong side of the road, which resulted in the accident. He further relied on Ex.X2 and Ex.X3, which are the MV Inspector report for the vehicles involved in the accident. He contended that Ex.X3, which relates to the Inspection report of the mini lorry, clearly shows that the frontage of the mini lorry has been completely damaged. Then, it is clear that it is head on collision. On the other hand, only right side of the lorry has been damaged. He further contended that P.W.3 is the person, who is residing far away from the place of accident and therefore, his evidence could not have been taken into consideration by the trial Court for arriving at a conclusion. Hence, he prayed for allowing this appeal.

7.Per contra, the learned counsel for the claimants has contended that immediately after the accident, both the vehicles have been moved to the right side of the road, namely eastern side. Therefore, the rough sketch was prepared, where the vehicles were found after the accident which is the eastern side of the road. However, the accident took place only on the western lane. He contended that the entire negligence is on the part of the driver of the lorry. Therefore, the Tribunal was right in mulcting the entire liability upon the owner of the lorry and the appellant insurance company.



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8.The learned counsel appearing for the insurer of the TATA mini lorry, namely, Universal Sampo General Insurance Company Ltd., had contended that the deceased had travelled as an unauthorized passenger in the goods vehicle and therefore, they are not liable to pay any compensation.

9.I have carefully considered the submissions made on either side and perused the materials on records.

10.The claimants have specifically contended that the deceased has travelled in the TATA mini lorry as an authorized representative of the owner of the Ice cream, which was meant to be supplied to Jayaram College of Engineering. The insurer of the mini lorry namely, Universal Sampo General Insurance Company Ltd., has not filed any counter disputing the said fact before the trial Court. Therefore, this Court is constrained to arrive at a finding that the deceased had travelled as an authorized representative of the owner of the goods that were carried in the mini lorry and therefore, the insurance policy of the mini lorry covers the deceased person also.

11.The claimants have further contended that the accident had taken place only on the left side of the road, namely on the western lane. However, a perusal of Ex.X1, rough sketch clearly indicates that both the vehicles were



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found on the eastern lane, which is the right lane for the lorry. P.W.3, who is said to be an ocular witness has admitted that the frontage of both the vehicles were found to be damaged. P.W.3, in his chief examination had contended that due to impact, both the vehicles were pushed to the eastern side of the road. A heavy vehicle like lorry dashed against the mini lorry, which is said to be sticking on to the western lane, after the impact cannot be pushed to the eastern lane. Therefore, the deposition of P.W.3 is not believable. The tribunal solely relied upon the evidence of P.W.3, to arrive at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the lorry. Therefore, I am of the considered opinion that the driver of both the vehicles have equally contributed for the accident.

12.In view of the above deliberations, the award of the Tribunal mulcting the entire liability upon the appellant insurance company is hereby set aside. The appellant is mulcted with the liability of 50% and the balance 50% of liability is mulcted upon the fourth respondent, namely Universal Sampo General Insurance Company. As far as the quantum is concerned, this Court finds that the award is reasonable and there is no scope for any interference.



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13.In view of the above said fact, the award of the tribunal is partly set aside and the appeal is partly allowed to the extent stated above. The compensation arrived at by the Tribunal shall be deposited equally by the appellant and the seventh respondent insurance companies, with interest at the rate of 7.5% from the date of petition till the date of realization to the credit of M.C.O.P.No.5349 of 2013, on the file of the Motor Accident Claims Tribunal /Special District Court, Tiruchirappalli within a period of six weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants are permitted to withdraw the said amount as apportioned by the Tribunal, less the amount, if any, already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

24.07.2024

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

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To

1. The Motor Accident Claims Tribunal – cum –
Special District Court, Tiruchirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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