



CMA(MD).No.343 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 08.04.2024

PRONOUNCED ON : 18.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.343 of 2018
and CMP(MD).No.4592 of 2018

Bharti Axa General Insurance Company Ltd.,
Madurai, through its Branch Manager
Office at -Sriram Centre
No.180, Ground Floor, P.P.Chavadi
Theni Main Road
Madurai District

.....Appellant/2nd Respondent

Vs.

1.Sethuraman

...1st Respondent/1st Petitioner

2.Jayalakshmi

...2nd Respondent/2nd Petitioner

3.Susee Automobiles Private Limited
Represented through its Manager
Office at -H.4, SIDCO Industrial Estate
Madurai-Virudhunagar Highways
Kappalur, Madurai

...3rd Respondent/1st Respondent

4.M.Deepan Chakravarthy

....4th Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the decree and judgement of Motor Accident Claims Tribunal – The IV Additional District Judge, Madurai dated 30.11.2016 in MCOP.No.1166 of 2012 and allow the appeal.



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CMA(MD).No.343 of 2018

For Appellant : Mr.V.Muthukamatchi

For R1 & R2 : Mr.T.Selvakumaran

For R3 & R4 : No Appearance

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award passed in MCOP.No.1166 of 2012 on the Motor Accident Claims Tribunal Cum IV Additional District Court, Madurai challenging the negligence, liability and quantum of the award.

2.The deceased Muthamilselvan was a pillion rider in a two-wheeler which was owned by the third respondent. While the third respondent was riding the two wheeler, the deceased was the pillion rider and the vehicle was moving from West to East. A Mahendra Bolero Pickup Van owned by the first respondent and insured with the second respondent was coming from the opposite direction in a rash and negligent manner and the front right tyre got burst and the vehicle lost its control and dashed against the two-wheeler. In the said accident, the pillion rider had passed away. The parents of the pillion rider have filed the above claim petition seeking a compensation of Rs.15.00 lakhs. According to the claimants, the deceased was a second year B.B.A Student.



CMA(MD).No.343 of 2018

3.The first respondent had filed a counter contending that only the rider of the two-wheeler had driven the vehicle in a rash and negligent manner and lost control of the vehicle and hit against the right front tyre of the Van in which the tyre got damaged. The rider of the two-wheeler and the pillion rider had fallen down and they were dragged on the ground. Therefore, the accident has taken place only due to the negligence on the part of the rider of the two-wheeler. He had further contended that his vehicle is insured with the second respondent and hence, the Insurance Company alone is liable to pay compensation.

4.The Insurance Company had filed a counter supporting the stand of the owner of the vehicle. They have further contended that the rider of the two wheeler had attempted to overtake a bus and in the unsuccessful attempt, they had dashed against the front right tyre of the Van and they had fallen down and sustained injuries. Therefore, neither the owner of the Van nor the Insurance Company is liable to pay compensation. The Insurance Company had further questioned the quantum of compensation as claimed by the claimants.

5.On the side of the claimants, the father of the claimant was examined as PW1. One Karthikeyan who is an eye witness was examined as PW2. One



CMA(MD).No.343 of 2018

P.Jeyakumar who is also an eye witness was examined as PW3. The Motor Vehicle Inspector who had inspected both the vehicles was examined as PW4.

6.On the side of the respondents, the Van driver was examined as RW1. The Sub Inspector of Police was examined as RW2. The legal manager of the Insurance Company was examined as RW3. The Tribunal after considering the oral and documentary evidence, had arrived at a finding that the case of the respondents that the brake-pedal of the two-wheeler had dashed against the right front tyre of the Van which resulted in bursting of tyre is not believable. The Tribunal had relied upon Motor Vehicle's Report which indicates that no damage was caused to the brake-pedal of a two-wheeler. Hence, the Tribunal arrived at a finding that the Van was driven in a rash and negligent manner and the tyre got burst and the driver lost control of the vehicle and thereafter, he had dashed against the two-wheeler. Therefore, the entire negligence is only on the part of the driver of the Van.

7.The Tribunal further found that the insurance was subsisting on the date of the accident and there is no allegation of breach of policy conditions. Being a second year B.B.A., student, the Tribunal had fixed the notional monthly income of the deceased person at Rs.6000/- and added 50% towards future prospects. After deducting 50% towards personal expenses, the



CMA(MD).No.343 of 2018

contribution of the deceased was fixed at Rs.4500/- per month. After applying multiplier of 18, the compensation towards loss of income was fixed at Rs. 9,72,000/-. Rs.1,50,000/- was awarded towards love and affection. Rs. 25,000/- was awarded towards funeral expenses. In total, a sum of Rs. 11,47,000/- has been awarded. Challenging the said award, the appeal has been filed by the Insurance Company.

8. According to the learned counsel appearing for the Insurance Company, the witnesses examined on the side of the respondents would clearly establish the fact that the rider of the two-wheeler was attempting to overtake a lorry unsuccessfully and therefore, he hit against the Van coming from the opposite direction. The brake-pedal of the two-wheeler had dashed against the front right wheel of the Van in which the tyre got burst. The rider and the pillion rider of the two wheeler were dragged on the ground and thereafter, they had sustained injuries. When the entire negligence is on the part of the rider of the two-wheeler, without imposing any liability upon the rider of the two-wheeler, the Tribunal was not right in mulcting the entire liability upon the owner of the Van and the insurer of the said Van. He had further contended that the Tribunal was not right in fixing Rs.6000/- as the notional monthly income for the second year B.B.A. student who was not an earning member. The award under other heads are also on the higher side.



CMA(MD).No.343 of 2018

Hence, he prayed for allowing the appeal.

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9.Per contra, the learned counsel appearing for the respondents had contended that after a detailed discussion, the Tribunal disbelieved the version of the owner of the Van and has arrived at a specific finding that only due to the rash and negligent driving of the Van driver, the said accident has taken place. The Motor Vehicle Inspector's report of the two-wheeler indicate that there is no damage to the brake-pedal of the two-wheeler, but only the head-light and crash-guard have been damaged. He had further contended that the Tribunal had fixed the monthly income on the lower side and hence, it requires enhancement.

10.I have carefully considered the submissions made on either side and perused the material records.

11.The contention of the claimants is that when the two-wheeler was moving in the West to East direction, the Bolero Van was coming from the opposite direction in a rash and negligent manner, the tyre of the said Bolero Van had got burst and the Van driver lost his control and it hit against the two-wheeler. Though the owner of the Van and the Insurance Company admit the direction of movement of the vehicle, they contended that the rider of the



CMA(MD).No.343 of 2018

two-wheeler attempted to overtake a lorry unsuccessfully and therefore, he dashed against the front right tyre of the Van and fell down and they were dragged on the ground in which they sustained grievous injuries.

12.Exhibit P4 is the Motor Vehicle report for the Van which indicates that there is a damage to the Mudguard, body and front right side wheel. Exhibit P5, Motor Vehicle's report for the two-wheeler indicates that the headlight, front right side indicator are damaged and front crash-guard right side was bent. Exhibit R5 is the rough sketch filed in the criminal case.

13.PW2 who is the eye witness has stated that only due to the bursting of the front tyre of the Van, the Van lost its control. On the said aspect, no cross examination has been done. PW3 is another eye witness who had stated that only due to bursting of tyre, the Van driver lost control and the van crossed the middle of the road and dashed against the two-wheeler. Though a suggestion has been put to him that only due to the impact of the brake-pedal of the two-wheeler, the tyre got burst, he had denied the said suggestion.

14.The driver of the Van has been examined as RW1. During the chief examination, he has stated that the rider of the two-wheeler attempted to overtake a lorry unsuccessfully and dashed against the tyre of the Van and in



CMA(MD).No.343 of 2018

the said impact, the tyre got burst. Exhibit P1 is the F.I.R lodged by the said Van driver. In the said F.I.R, the driver has stated that due to the dashing of the two-wheeler, the tyre got burst and immediately the vehicle came to a halt. The driver of the Van had further stated in his deposition that the rider of the two-wheeler and the pillion rider were thrown away. He had further admitted that when the motor vehicle inspector inspected the vehicle, he had not shown about the bursting of the tyre. If the brake-pedal of the two-wheeler dashed against the tyre of the Van, the driver of the Van would have certainly indicated the same to the Motor Vehicle Inspector. That part, the brake-pedal of the two wheeler should have been damaged and it would have been noticed by the Motor Vehicle Inspector. These facts will clearly indicate that the contention of the Van driver and the Insurance Company are not believable.

15.The Tribunal after an elaborate discussion has arrived at a finding that the right front tyre of the Van had got burst and the driver of the Van has lost control and dashed against the two-wheeler. Therefore, this Court is of the opinion that the finding rendered by the Tribunal fixing the negligence on the part of the driver of the Van does not require any reconsideration.



CMA(MD).No.343 of 2018

16.The respondents have solely relied upon Exhibit R5 rough sketch to contend that the accident has taken place on the wrong side of the road and therefore, the negligence should be attributed only to the rider of the two-wheeler. As rightly pointed out by the learned counsel appearing for the respondents, a learned Single Judge of this Court in a judgment reported *in 2016 ACJ 2127 (Branch Manager, ICICI Lombard General Insurance Co., Ltd., Vs. A.Athinarayanan and others)* has held that the rough sketch would only show the location but will not speak about the manner of accident and the negligence or contributory negligence have to be decided only on the basis of the manner of accident. In the present case as discussed supra, the claimants have established the negligence on the part of the driver of the Van based on the Motor Vehicle Inspector's report and the oral evidence. Therefore, not much credence could be given to the rough sketch relied upon by the Insurance Company.

17.The Tribunal had fixed the notional monthly income of the second year B.B.A., student at Rs.6000/- per month for an accident that has taken place in the year 2012 and at a total compensation of Rs.11,47,000/- to be paid with interest at the rate of 7.5% p.a. The notional income for the second year College student is reasonable and therefore, this Court does not find any reason to interfere in the quantum of award or in the rate of interest.



CMA(MD).No.343 of 2018

WEB COPY

18. In view of the above said deliberations, there are no merits in the appeal and this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2024

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

To

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



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CMA(MD).No.343 of 2018

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.343 of 2018
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18.04.2024