



C.M.A.(MD)No.646 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.06.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD)No.646 of 2018

and

C.M.P.(MD)No.7509 of 2018

The Branch Manager,
M/s. United India Insurance Co. Ltd.,
9, Shanmugam Road,
West Tambaram,
Chennai & District.

... Appellant / 4th Respondent

Vs.

1.Ramaraj

2.Chitra

3.Rajeswari

... Respondents 1 to 3 / Claimants

4.Satheesh

... 4th Respondent / 1st Respondent

5.Karthik

... 5th Respondent / 2nd Respondent

6.Senthil Kumar

... 6th Respondent / 3rd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the Fair and Decretal order dated

1/8



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28.02.2018 made in M.C.O.P.No.731 of 2013 on the file of the Motor Accident Claims Tribunal (Principal District Court), Dindigul.

For Appellant : Mr.B.Rajesh Saravanan

For R-1 to R-3 : Mr.D.Sarvagan Prabhu

For R-4 : Mr.Mr.K.Arunraj

For R-5 & R-6 : No appearance

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the Appellant / Insurance Company, challenging the award passed in M.C.O.P.No.731 of 2013 on the file of the Motor Accident Claims Tribunal (Principal District Court), Dindigul, primarily on the apportionment of the liability between two vehicles.

2. As per the contentions of the claim petition, the deceased was a pillion rider in a Hero Honda bike. The claimants have further contended that the said vehicle was driven by one Kalimuthu in a rash and negligent manner and when he attempted to take a right turn, a Bajaj Bike owned



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by the 1st respondent and driven by the 2nd respondent came in a rash and negligent manner from the rear side and dashed against the Hero Honda Bike. Due to the said impact the pillion rider namely Karpagam had passed away. In the claim petition, it is specifically contended that the rider of both the vehicles are equally responsible for the said accident. The claimants have prayed for a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only).

3. The insurer of the Hero Honda Bike in which the deceased was a pillion rider, had filed a counter contending that the entire accident has taken place only due to the rash and negligent driving on the part of the Bajaj two wheeler and hence, they are not liable to pay any compensation.

4. The Tribunal after considering the oral evidence of P.W-2 had arrived at a specific finding that the riders of the Hero Honda Bike as well as the Bajaj two wheeler are equally responsible for the said accident. Thereafter, the Tribunal has fixed the total compensation at



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Rs.10,50,000/- (Rupees Ten Lakhs and Fifty Thousand only). However, in the operative portion of the order, it has been held that the respondents 1 to 4 are jointly and severally liable to pay the aforesaid award amount, the liberty is also granted to the claimants to recover the said amount from any one of the respondents as their liability is joint and several.

5. Challenging the said award, the present Appeal has been filed by the Insurance Company of the Hero Honda Bike.

6. According to the learned counsel appearing for the Appellant Insurance Company, when the Tribunal has arrived at finding that the rider of both the two wheelers are equally responsible for the accident, the liability should have been apportioned between the owner of the Bajaj two wheeler and the owner of the Hero Honda Bike. Without apportioning the liability, the Tribunal ought not to have granted liberty to the claimants to recover the said amount from any one of the respondents by fixing the joint and several liability.



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7. Per contra, the learned counsel appearing for the respondents had contended that the drivers of both the vehicles are equally responsible, they are joint tortfeasors. In such circumstances, the Tribunal has granted liberty to the claimants to collect the award amount from any one of the joint tortfeasor.

8. Heard the learned counsel appearing for the Appellant Insurance Company, the learned counsels appearing for the respondents and carefully perused the materials available on record.

9. The Tribunal has arrived at a specific finding for the point No.1 that both the two wheeler riders' are equally responsible for the accident. However, while fixing the liability, the Tribunal has not chosen to apportion the liability between the Bajaj two wheeler and the Hero Honda Bike. Therefore, I am of the considered view that the Tribunal ought to have apportioned 50 : 50 liability between both the vehicles, in view of the riders of both the vehicles are equally responsible for the said accident. In such circumstances, the award of the Tribunal is modified to



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the effect that the liability of the Appellant Insurance Company is restricted to 50% of the award amount and the balance 50% of the award amount shall be recovered by the claimants from the respondents 1 and 2 in the claim petition. However, this Court is not inclined to interfere with the quantum of the award. In case if the excess amount has been deposited by the Appellant Insurance Company, the same shall be refunded along with accrued interest.

10. Accordingly, this Civil Miscellaneous Appeal stands partly allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

25.06.2024

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



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To

WEB COPY

- 1.The Motor Accident Claims Tribunal,
(Principal District Court),
Dindigul.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

Sml

Judgment made in
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