



C.M.A(MD).No.1082 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 03.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1082 of 2018

M/s.The Oriental Insurance Company Limited
No.6A, North Cotton Road
Thoothukudi

... Appellant

vs.

1.P.Kala

2.Minor P.Muthuselvi

3.Minor P.Mari

....Respondents

(Minor respondents 2 & 3
represented through their
mother the 1st respondent)

4.V.Vimula Naga

5.T.Karuppasamy

....Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1998, to set aside the order of the Motor Accident Claims Tribunal Cum II Additional District Court, Tuticorin made in MCOP.No.136 of 2012 dated 21.11.2017 and allow the appeal with costs.



C.M.A(MD).No.1082 of 2018

For Appellant : Mr.C.Jawahar Ravindran

For R1 to R3 : Mr.S.Sivathilakar

For R4 : No appearance

R5 : Given up

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal Cum II Additional District Court, Tuticorin in MCOP.No.136 of 2012.

2.According to the learned counsel for the claimants the deceased was travelling as pillion rider in a two-wheeler owned by the second respondent and insured with the third respondent. When he was travelling in a two-wheeler, a Van belonging to the first respondent (not insured) came from the opposite direction in a rash and negligent manner and dashed against the two-wheeler. In the claim petition in paragraph No.4, it is specifically averred that both the rider of the two-wheeler as well as the driver of the Van were equally responsible for the said accident. The claimant had prayed for a sum of Rs.20.00 lakhs as



C.M.A(MD).No.1082 of 2018

compensation.

3.The owner of the Van as well as the owner of the two-wheeler have remained exparte.

4.The Insurance Company has filed a counter contending that the driver of the Van alone is responsible for the accident. One Murugan was examined as PW2 on the side of the claimants. During his chief examination, he has categorically stated that both the driver of the Van as well as the rider of the two-wheeler were equally responsible for the accident. There was no proper cross examination on the side of the Insurance Company with regard to the said statement in the chief examination.

5.The Tribunal found that though the driver of the Van was charge sheeted, he was acquitted and therefore, the rider of the two wheeler was solely responsible for the accident, thereafter has proceeded to pass an award of Rs.9,52,120/-. Since the rider of the two-wheeler who is also the owner of the two-wheeler was the tort-feasor, the Tribunal had directed the Insurance Company to first satisfy the award and thereafter, recover the same from the owner of the two wheeler. Challenging the



C.M.A(MD).No.1082 of 2018

same, the present appeal has been filed by the Insurance Company.

6. According to the learned counsel for the Insurance Company, the entire allegation in the claim petition is against the driver of the Van. No allegation has been made as against the rider of the two-wheeler. Just because of the driver of the Van is acquitted in the criminal case, it cannot be presumed that the rider of the two-wheeler is responsible for the accident. Hence, he prayed for fixing the entire amount upon the owner of the Van.

7. Per contra, the learned counsel for the claimants had contended that there are specific averments in the claim petition that both the driver of the Van as well as the rider of the two-wheeler were responsible for the accident. Though proper evidence has been let in, there was no cross examination on the part of the Insurance Company. Therefore, the Tribunal was right in mulcting the entire liability upon the rider of the two-wheeler and in turn the appellant herein. Hence, he prayed for sustaining the award passed by the Tribunal.

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



C.M.A(MD).No.1082 of 2018

WEB COPY

9. In paragraph No.4 of the claim petition, there was a specific allegation that both the driver of the Van as well as the rider of the two-wheeler are responsible for the accident. PW2 who is one of the eye witness had categorically stated that both of them are responsible for the accident. In fact, there is no cross examination on the side of the Insurance Company with regard to composite negligence pleaded on the part of the rider of the two-wheeler and the driver of the Van. Therefore, it is clear that both of them are responsible for the said accident. In fact, negligence on the part of the both drivers is responsible for the said accident. The Tribunal has mulcted the entire liability upon the rider of the two-wheeler and in turn directed the Insurance Company to satisfy the entire award and thereafter recover the same from the owner of the two-wheeler.

10. Considering the fact that the entire pleadings and evidence on the side of the claimant is with regard to the composite negligence on the part of the driver of the Van and the two-wheeler, the Tribunal ought not to have mulcted the entire liability upon the rider of the two-wheeler and in turn the appellant Insurance Company.



C.M.A(MD).No.1082 of 2018

WEB COPY

11.In view of the composite negligence, the liability can be apportioned between the owner of the Van and the owner of the two-wheeler in the proposition of 40:60. In other words, the owner of the two-wheeler shall be mulcted with the liability of 60% and the owner of the Van shall be mulcted with liability of 40%. The Tribunal was not right in completely exonerating the owner of the Van.

12.The quantum of award passed by the Tribunal is reasonable one and therefore, there is no reason for interference by this Court.

13.In view of the above said discussion, this Court passes the following orders:

(i)The award exonerating the first respondent in the claim petition is hereby set aside and the first respondent is mulcted with the liability of 40%.

(ii)The respondents 2 and 3 in the claim petition are jointly and severally liable to pay compensation to the extent of 60%.

(iii)In other respects, the award of the Tribunal stands confirmed.
If any amount is deposited in excess of their 60% liability by



C.M.A(MD).No.1082 of 2018

WEB COPY

the Insurance Company, the same shall be refunded along with accrued interest.

14. With the above said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

03.04.2024

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

To

1. The Motor Accident Claims Tribunal
/II Additional District Court,
Tuticorin

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

7/8



WEB COPY



C.M.A(MD).No.1082 of 2018

R.VIJAYAKUMAR,J.

msa

C.M.A(MD)No.1082 of 2018

03.04.2024