



C.M.A.(MD).Nos.1136 & 1137 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.1136 & 1137 of 2017

and

C.M.P(MD) Nos.11494 & 11495 of 2017

C.M.A(MD)No.1136 of 2017

The Branch Manager,

M/s.United India Insurance Company Ltd.,

No.78, Kamarajar Salai,

Kulithalai.

... Appellant/ 2nd Respondent

Vs.

1.Dasan @ Malaizarasan

... 1st Respondent/ Petitioner

2.K.Mohan

... 2nd Respondent/ 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, to set aside the Award dated 08.12.2016 passed

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in M.C.O.P.No.1337 of 2012 on the file of the Motor Accidents Claims Tribunal/III Additional Subordinate Court, Trichy, by allowing the Civil Miscellaneous Appeal.

C.M.A(MD)No.1137 of 2017

The Branch Manager,

M/s.United India Insurance Company Ltd.,

No.78, Kamarajar Salai,

Kulithalai.

... Appellant/ 2nd Respondent

Vs.

1.Chinnadurai

... 1st Respondent/ Petitioner

2.K.Mohan

... 2nd Respondent/ 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, to set aside the Award dated 08.12.2016 passed in M.C.O.P.No.1338 of 2012 on the file of the Motor Accidents Claims Tribunal/III Additional Subordinate Court, Trichy, by allowing the Civil Miscellaneous Appeal.



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In both appeals

For Appellant : Mr.I.Robert Chandrakumar

For Respondents : No appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeal have been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/ III Additional Subordinate Court, Trichy, in M.C.O.P.Nos.1337 & 1338 of 2012 on the ground of liability.

2. Both the Civil Miscellaneous Appeals arise out of two awards in MCOP.Nos.1337 and 1338 of 2012, on the file of III Additional Subordinate Court, Trichirappalli. The Claimant in MCOP No.1337 of 2012 was a pillion rider and the claimant in MCOP.No.1338 of 2012 was riding the two wheeler, at the time of the accident. According to the claimants, while they were driving the vehicle on the extreme left side of the road, a two wheeler belonging to the first



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respondent came from the opposite direction in a rash and negligent manner and dashed against their vehicle. Due to the impact, both the petitioners had sustained multiple grievous injuries all over the body. They were admitted in the Government Hospital, Mussiri and thereafter, referred to Government Headquarters Hospital, Trichy. According to the claimants, the entire negligence is on the part of the two wheeler belonging to the first respondent and insured with the second respondent.

3. The first respondent, who is the owner of the alleged offending vehicle had remained *ex-parte* and the second respondent namely, the insurer had filed a counter, contending that both the claimants were under the influence of alcohol, at the time of accident. The insurance company had further contended that the one of the claimants, namely, Chinnadurai, who was riding the vehicle at the relevant point of time, was not having driving license. Hence, he had prayed for dismissal of both the claim petitions.



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4. The Tribunal, after considering the oral and documentary evidence, rejected the contention of the insurance company that the claimants were under the influence of alcohol on the ground that they were not subjected to medical examination.

5. The Tribunal, further found that the vehicle coming from the opposite direction, which is owned by the first respondent and insured with the second respondent was negligent and the same has resulted in causing the accident. The Tribunal had proceeded to award a compensation of Rs.5,58,841/- (Rupees Five Lakhs Fifty Eight Thousand Eight Hundred and Forty One only) to one of the claimants namely, Chinnadurai and another sum of Rs.4,08,013/- (Rupees Four Lakhs Eight Thousand and Thirteen only) to another claimant namely, Dasan @ Malaiarasan. The Tribunal has further deducted 10% from the compensation on the ground that the petitioners were under the influence of alcohol, at the time of accident. Challenging the said awards, the present Civil Miscellaneous Appeals have been filed.



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6. According to the learned counsel for the appellant, when the claimants were under the influence of alcohol, the entire negligence cannot be attributed on the offending vehicle. In fact, 50% of contributory negligence should have been attributed on the rider of the vehicle, in which the claimants have travelled. The Tribunal has erroneously deducted only 10% towards such contributory negligence. Hence, he prayed for allowing the Civil Miscellaneous Appeals.

7. Though the claimants have been served, they have neither chosen to appear even in person nor through their counsel.

8. The primary contention of the appellant is that when the rider of the two wheeler, who had sustained injuries was found to be under the influence of alcohol, the Tribunal ought not to have simply deducted only 10% towards contributory negligence. A perusal of Ex.X.6 and Ex.X.7 which are the accident registers for both the claimants would clearly reveal that the concerned duty Doctor of



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Government Hospital, Mussiri has categorically recorded that the claimants were under the influence of alcohol, when they were admitted in the hospital.

9. The Hon'ble Supreme Court in a judgment in *Iffco Tokio General Insurance Company Limited vs. Pearl Beverages Limited* reported in **2021 (7) SCC 704** has categorically held that it is not necessary to subject the person to breath analyzer test or blood test to prove that they were under the influence of alcohol, at the time of accident. In fact, it would not be possible for the Insurance company to subject themselves to medical examination, because the accident comes to the knowledge of the insurance company only after filing of the claim petitions. The Hon'ble Supreme Court has further held that the insurance company can be permitted to prove the alcohol abuse by any other mode of evidence. In the present case, the accident registers recorded by the concerned duty doctor of the Government Hospital, has clearly endorsed the case of the insurance company that the claimants were under the



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influence of alcohol, at the time of accident. Therefore, the Tribunal was not right in holding that the claimants have not been subjected to any medical test for proving that they were under the influence of alcohol. However, the Tribunal has proceeded to deduct 10% towards contributory negligence, in view of the fact that they were under the influence of alcohol.

10. Considering the fact that the claimants have sustained grievous injuries in the accident and 90% negligence has been fixed upon the offending vehicle coming from the opposite direction, this Court is of the considered opinion that the award of the Tribunal reducing 10% of the compensation amount towards contributory negligence on account of drunken driving need not be disturbed.

11. In view of the above said discussion, I find there are no merits in both the Civil Miscellaneous Appeals. Accordingly, both the



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Civil Miscellaneous Appeals stand dismissed confirming the award of the Tribunal. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

01.04.2024

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

RM

To

1.The III Additional Subordinate Judge /
Motor Accidents Claims Tribunal,
Trichy

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



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R.VIJAYAKUMAR,J.

RM

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