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CMA No. 1614 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-04-2025

CORAM

THE HONOURABLE MR JUSTICE S. SOUNTHAR

**CMA No. 1614 of 2021
and CMP.No.8505 of 2021**

1. The Branch Manager
United India Insurance Co.Ltd., 52,
Katchery Road, Akt Complex,
Kallakurichi 606003.

Appellant(s)

Vs

1. B.Selvam
S/o.Boopalan Thenkodipakkam Village,
Vanur Taluk,

2.C.Chakkaravarthy
Sirupakkam Village, Anganur Post,
Ulundurpet Taluk.

3.D.Ramakrishnan
M/s.Tanwal, No.1, New Bus Stand
Road, Erode 638 003.

4.The Branch Manager
National Insurance Company Ltd.,
No.78, Thivenkatasamy Chetty Street,
Erode.

Respondent(s)



PRAYER

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 28.11.2017 made in MCOP.No.281/2013 on the file of the Motor Accident Claims Tribunal(II Additional District Court) at Tindivanam.

For Petitioner (s): M/s.I.Malar

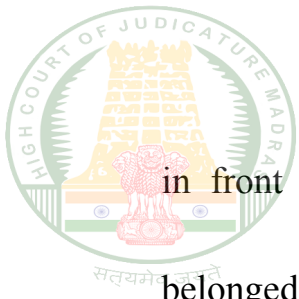
For Respondent(s): M/s.C.Johnson for R4

ORDER

Aggrieved by the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.281/2013 dated 28.11.2017, the insurance company/second respondent in the Original Petition has come before this court by way of this appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. According to the claimants, he was travelling in a lorry bearing Reg.No.TN 33 AK 8089 as Cleaner on 11.01.2012. The lorry was proceeding from Salem to Cuddalore. It was further stated in the claim petition that a lorry belonged to the first respondent bearing Reg.No.TN 45 X 7245 was proceeding



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in front of the lorry in which the claimant was travelling. The said lorry belonged to the first respondent is insured with the second respondent. It is further stated that the driver of the lorry bearing Reg. No.TN 45 X 7245 suddenly applied brake and stopped the vehicle. Eventhough the driver of the lorry bearing Reg.No.TN 33 AK 8089 in which the claimant was traveling also applied brake and stopped his vehicle, inspite of his best efforts, the vehicle dashed against the first respondent's lorry. As a result of the accident, claimants suffered grievous injuries and had taken treatment in the hospital. Therefore, claim petition was filed against the owner and insurer of the lorry bearing Reg. No.TN 45 X 7245. The owner and insurer of the lorry in which the claimant was traveling was also arrayed as respondents 3 and 4. Therefore, the claim petition was filed seeking compensation for a sum of Rs. 10,00,000/-.

4. Before the Tribunal, the owner of the offending lorry/first respondent remained exparte. The claim was contested by the insurer of the said lorry namely the appellant. The owner and the insurer of lorry in which the claimant was traveling also filed counter. However in their counter, they specifically



stated that the accident had occurred only due to the rash and negligent driving of the lorry belonged to first respondent.

5. The appellant/insurer of the lorry belonged to the first respondent in its counter had stated that the accident had occurred only due to the rash and negligent driving of the lorry in which the claimant was travelling. Hence they sought for dismissal of the claim petition.

6. Before the Tribunal, the claimant was examined as P.W.1 and two Doctors were examined as P.W.2 and P.W.3, seventeen documents were marked on behalf of the claimant as Exs.P1 to P17. On behalf of the second respondent insurance company, a Police official was examined as RW1 and a Junior Assistant attached to the office of the second respondent was examined as R.W2. Five documents were marked on the side of the second respondent as Exs.R1 to R5.

7. The Tribunal based on the evidence available on record came to the



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conclusion that the accident had occurred only due to the negligence of the driver of the lorry belonged to the first respondent and hence fastened the liability on the first and second respondents. The amount payable to the claimant was quantified as Rs.2,54,620/-. Aggrieved by the fastening of entire liability on the second respondent, the insurer of the lorry bearing Reg.No.TN 45 X 7245, has come up before this Court by way of this Appeal.

8. The learned counsel appearing for the appellant submitted his arguments only on the question of negligence and he has not questioned the quantum of compensation arrived at by the Tribunal. The learned counsel would further submit that F.I.R was filed against the driver of the lorry in which the claimant was travelling and therefore, the Tribunal committed a grave error in fixing entire negligence on the part of the lorry belonged to the first respondent.

9. The learned counsel appearing for the fourth respondent/ insurer of the lorry in which the claimant was travelling would submit that the second respondent failed to examine the driver of the lorry belonged to the first



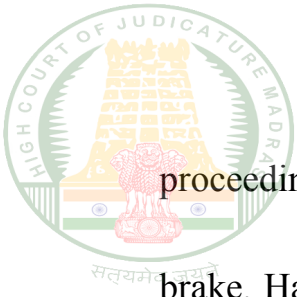
respondent and hence based on the evidence of P.W.1, the Tribunal was justified

in fixing the entire negligence on the part of the driver of the first respondent's

lorry.

10. In order to prove the negligence aspect, the claimant examined himself and deposed that the accident had occurred due to the application of sudden brake by the driver of the lorry belonged to the first respondent and insured with the appellant insurance company.

11. The claimant has not examined any independent eye witness to prove the negligence aspect. It is also seen from Ex.P1, FIR was filed against the driver of the lorry in which the claimant was travelling, on the basis of the complaint given by the driver of the lorry belonged to the first respondent. However, the driver of the lorry belonged to the first respondent was not examined before the Tribunal to prove any negligence on the part of the driver of the lorry in which the claimant was travelling. Even as per the evidence of P.W.1, the accident had occurred when the driver of the first respondent lorry



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proceeding in front of the lorry belonged to the third respondent, applied sudden brake. Had the Driver of the lorry belonged to the third respondent maintained proper distance as per the Motor Vehicle Rules, probably he would have got an opportunity to avert the accident. In the case on hand, in spite of application of brake by the driver of the lorry in which the claimant was travelling, it dashed against the lorry of the first respondent from back side. Therefore, it is clear that the driver of the lorry in which the claimant was travelling was also negligent in not maintaining minimum distance. Therefore, while concurring the finding of the Tribunal that primary negligence was on the part of the lorry belonged to the first respondent, this Court is inclined to fix 20% of the negligence on the part of the driver of the lorry in which the claimant was travelling for his failure to maintain minimum distance. Therefore, the finding of the Tribunal in fixing the entire negligence on the part of the driver of the lorry belonged to the first respondent vehicle is modified and his negligence is reduced to 80% and the remaining 20% negligence is fixed on the driver of the lorry belonged to the third respondent in which the claimant was travelling.



12. In view of the finding reached by this Court on the contributory negligence, the respondents 1 and 2 are liable to pay a sum of Rs.2,03,696/- to the claimant after deducting 20% of the amount towards contributory negligence and the remaining amount of Rs.50,924/- shall be paid by the third and fourth respondents.

13. Accordingly, the award passed by the Tribunal is modified by directing the first and second respondents in M.C.O.P.No.281/2013 to pay a sum of Rs.2,03,696/- and the remaining amount of Rs.50,924/- shall be paid by the third and fourth respondents in M.C.O.P.No.281/2013.

14. With the above modifications, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02-04-2025

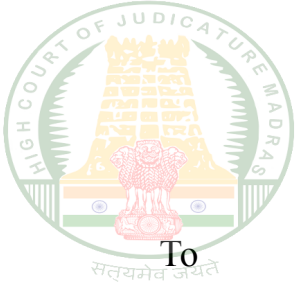
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

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