

**HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**M.A.C.M.A.No. 553 of 2023**

**J U D G M E N T:**

The United India Insurance Company Limited which is the insurer of the Tipper lorry bearing No. TN 49 C 4666 preferred this Appeal mainly questioning the liability fastened to them *vide* Award dated 12.09.2008 in M.V.O.P.No. 195 of 2005.

2. The claimant filed the O.P. claiming compensation of Rs.2,25,000/- for the death of her mother J. Kamala in a motor vehicle accident. It is her case that she along with her family members started for Rameswaram by hiring a TATA Sumo bearing No. TN 20 D 4518, when the vehicle reached Okkur Village, Sivaganga District, on 25.05.2002, another vehicle i.e. Tipper bearing No. TN 49C 4666 came in a rash and negligent manner in opposite direction and dashed the TATA Sumo. In the said accident, the claimant lost her parents, both sisters, their children and brother-in-law. The claimant also sustained grievous injuries.

3. Respondents 5 and 6 – Insurer of TATA Sumo vehicle filed their counter-affidavit stating that the accident occurred due to the negligence of the driver of the tipper, hence, they are not liable to pay the compensation. It is stated that since a case was registered against the driver of the tipper, it should be inferred that the accident occurred due to the rash and negligent driving of the driver of the tipper. It is further stated that the

liability, if any has to be restricted as per the terms and conditions of the policy. Since the claimant is an earning member she is not entitled for compensation.

4. As there was head-on-collision between the vehicles, it has to be assumed that there was negligence on the part of both the drivers. Then the burden lies on the Insurance Company to prove that the accident did not occur due to the negligence of the driver of the vehicle insured with them. As there was no evidence, the Tribunal held that both the Insurance Companies ie. insurer of Sumo and Tipper are jointly and severally liable to pay the compensation.

5. Learned counsel for the appellant - Insurance Company of the Tipper bearing No. TN 49 C 4666 submits that the accident had happened because of the rash and negligent driving of the driver of TATA Sumo and the Tribunal without considering the said issue in its proper perspective held that the appellant Insurance Company is also liable.

6. Learned counsel for the respondent Oriental Insurance Company – insurer of Sumo bearing No. TN 20D 4518 submits that in fact, the accident has happened because of the negligent and rash driving of the Tipper and without any evidence, the Tribunal has fastened the liability as well on the driver of the

Sumo. It is submitted that without there being any evidence and without any basis, the Tribunal has come to the said conclusion.

7. In this case, there was head-on-collision. If it is the case of the insurer that there is no negligence on the part of the driver of the vehicle, they ought to have adduced necessary evidence. There is no such evidence on behalf of the Insurance Company of either of the vehicles. In the considered opinion of this Court, the Tribunal has rightly come to the conclusion that in the case of head-on-collision, the Insurance Company of both the vehicles is liable to pay the compensation. In view of the same, this Court does not find any ground to interfere with the Award passed by the Tribunal.

8. The Appeal is accordingly dismissed. No order as to costs.

9. Pending miscellaneous petitions, if any, shall stand closed.

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**LALITHA KANNEGANTI,J**

26<sup>th</sup> April 2023

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