



C.M.A(MD)No.1465 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.08.2023

Pronounced On : 24.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1465 of 2011

and

MP(MD)No.1 of 2011

M/s.National Insurance co.Ltd.,
Branch No.II, rep by its
No.175-A Great Cotton Road,
Thoothukudi 628 001.

: Appellant / 2nd Respondent

Vs.

1.G.Kanagaraj

2.Minor.Gnanarooopan

3.Minor.Logesh

: Respondents/Petitioners

4.A.Santhanamari

5.Tamil Nadu State Transport Corporation,
(Madurai Division No.ii) Limited,
through its Tirunelveli Region,
by its Regional Manager having officer at
Palayamkottai, Tirunelveli.

: Respondents/Respondents 1 & 3



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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the fair and decretal order, dated 28.10.2010 made in M.C.O.P.No.238 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Judge/Fast Tract Court No.I) Thoothukudi.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.D.Srinivasa Raghavan, for R1 to R3.

: Mr.M.Prakash, for R5.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the order passed in M.C.O.P.No.238 of 2009, dated 28.10.2010 on the file of the Motor Accident claims Tribunal/Additional District Court (Fast Track Mahila Court No.I, Thoothukudi.

2.The Appellant/Insurer, who was made liable to pay compensation of Rs.4,61,500/- with interest at 7.5% per annum to the respondents 1 to 3 /claimants for the death of Selvalakshmi, consequent to an accident occurred on 03.01.2009, challenged the liability mulcted on it.



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3. For the sake of convenience and brevity, the parties herein-after will be referred as per their status/ranking in the Tribunal.

4. The case of the claimants is that on 03.01.2009, the first claimant was riding his two wheeler TVS Champ bearing Reg.No.TN-69-B-9580, with his deceased wife as pillion rider, on the extreme left side of the road and at about 10.00 hours, when the first claimant was proceeding in the main road near Esakkiamman koil near Bank Colony vilakku, a Indica car bearing Reg.No.TN-69-L-2043 belonging to the fourth respondent was parked on the same road in front of the said Esakkiamman koil and its driver suddenly without any signal opened the door and as a result of which, the car door had hit against the two wheeler; that the first claimant's wife Selvalakshmi fell down and at that time, the third respondent bus driver without noticing the road had driven the vehicle in a rash and negligent manner and dashed against the deceased ; that the deceased sustained grievous injuries all over her body and immediately, she was taken to Thoothukudi Medical College Hospital and that despite treatment, she succumbed to the injuries on that date itself and that therefore, the appellant/second respondent and the respondents 4 and 5 are liable to pay compensation.



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5. It is the further case of the claimants that the deceased Selvalakshmi was aged 30 years at the time of accident and she was hale and healthy; that she was working as the President of self help group and was doing ready-made garments business and that she was earning Rs.6,000/- per month.

6. The defence of the second respondent is that the first respondent's car was parked on the extreme left side of the road in front of Esakkiamman koil and the driver of the car opened the front door for worshipping in the said kovil; that the rider of the two wheeler without noticing the opening of the front door, dashed on the door and fell down on the road, that there is no rash and negligence on the part of the car driver and the rider of the two wheeler alone, dashed against the parked first respondent's vehicle; that the third respondent bus had hit against the deceased and consequently, she died due to grievous injuries sustained by her and that therefore, the third respondent is liable to pay compensation.



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7. The defence of the third respondent is that the accident was occurred only due to the negligence on the part of the first respondent's car driver; that the bus driver had proceeded carefully and cautiously; that FIR has been registered against the driver of the car and that therefore, the third respondent is in noway liable for the claim.

8. During trial, the claimants have examined the first claimant Kanagaraj as P.W.1 and one Senthil Murugan alleged to be the occurrence witness as P.W.2 and exhibited 12 documents as Ex.P.1 to Ex.P.12. The first respondent had remained ex-parte. The second respondent has examined the car driver Mariappan as R.W.1 and their own senior assistant Shanmugaraj as R.W.2 and exhibited the insurance policy as Ex.R.1. The third respondent has examined its Assistant Manager Thiru.Sudalaimani as R.W.3 and adduced no documentary evidence.

9. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned order, dated 28.10.2010, holding that the first respondent's



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car driver was responsible for the accident and consequently, mulcted liability on the second respondent insurer and directed them to pay compensation of Rs.4,61,500/- with interest and costs. Aggrieved by the impugned award, the second respondent/insurer has preferred the present appeal.

10. The learned counsel for the appellant would submit that the accident in question had taken place on account of composite negligence of the vehicles owned by the first respondent and the third respondent and as such, the trial Court ought to have apportioned the liability and negligence between the respondents 1 and 3 proportionately; that the deceased would not have been hit by the bus of the third respondent, if the third respondent bus driver had been careful and slow in driving the vehicle at the time of accident; that the third respondent has not examined their driver, but only examined the official of their Transport Corporation, who was not an eye witness to the accident; that the husband of the deceased has given a different version of the accident to the police immediately, after the accident, that the finding of the Criminal Court is not always binding on the Tribunal and the Tribunals are duty bound to consider the issue of negligence independently and that the



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findings of the Tribunal fixing the entire liability on the appellant/insurer is unreasonable and untenable and as such, the same is liable to be interfered with.

11.The points for consideration are :

(i) Whether the Tribunal erred in mulcting liability on the appellant/insurer by holding that the car driver was responsible for the accident, despite showing that the accident in question had taken place on account of composite negligence on the part of the drivers of the car and bus ?

(ii) Whether the impugned award, dated 28.10.2010, is liable to be interfered with ?

12. It is not in dispute that on the basis of the compliant lodged by the first claimant, FIR/Ex.P.1 came to be registered in Crime No.11 of 2009 on 03.01.2009 under Sections 279, 337 and 304 (A) IPC on the file of the Thoothukudo Police Station against one Santhanamari driver of the indica car and wherein, it has been stated while the defacto complainant was proceeding in his two wheeler along with his wife as pillion rider and at the place in front of Essakiamman temple, the car



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driver Santhanamari had suddenly opened the car door and as result of which, he lost the control of the vehicle and at that time, the bus which was coming on the same direction, dashed against his wife and that she had sustained serious injuries and subsequently, succumbed to the injuries.

13. It is further evident from Ex.P.10 that the jurisdictional Police, after completing the investigation, has laid the final report against the said Santhanamari car driver by alleging that he was only responsible for the accident. The claimants in order to prove the mode of accident have examined the first claimant/P.W.1 and P.W.2 alleged to be occurrence witness.

14. The first claimant/P.W.1 in his chief examination affidavit would reiterate the contentions raised in the claim petition statement with regard to the mode of accident. During cross examination made on behalf of the third respondent, he would say that since the car driver has suddenly opened the car door, the accident had occurred and the relevant portion of evidence is extracted herein :



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“நான் எட்டையபுரம் அருகே உள்ள இசக்கியம்மன் கோவில் பக்கம் சென்ற

போது விபத்து நடந்தது. நான் போய்க்கொண்டு இருந்த போது எனக்கு முன்னால் ஒரு கார் நின்றது. அந்த டிரைவர் கார் கதவை திறர் என்று திறந்ததால் தான் விபத்து நடந்தது. விபத்திற்கு முழு காரணம் கார் ஓட்டுநர். அவர் கவனித்து அவர் கதவினை திறந்து இருந்தால் விபத்து நடந்து இருக்காது என்றால் சரிதான்.”

15. P.W.2 in his chief examination would reiterate the version of P.W.1 with regard to the mode of accident and in cross examination, he would say that “இண்டிகா காரின் கதவு திறந்து அது மனுதாரர் மீது பட்டதால் தான் அவர் கீழே விழுந்துவிட்டார். அவர் கீழே விழாமல் இருந்து இருந்தால் பேருந்தில் அடிபட்டு இருக்கமாட்டார். விபத்திற்கு காரணம் காரின் கதவை திறந்தது தான். கார் கதவை திறக்காமல் இருந்து இருந்தால் விபத்து நடந்து இருக்காது. விபத்திற்கு பேருந்து ஓட்டுநர் காரணம் இல்லை.” During cross examination made on behalf of the insurer, P.W.2 would say that he was taking tea at the time of accident and he was watching the road at that time and that though he was standing and taking tea on the western side, he was able to see what had happened on the eastern side.

16. As rightly contended by the learned counsel for the claimants and the counsel for the fifth respondent, though P.W.1 and P.W.2 were subjected to cross examination by the insurer as well as by the Transport



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Corporation, their evidence that the car driver alone was responsible for the accident, was not at all shaken during their cross examination.

17. No doubt, as already pointed out, the second respondent insurer has examined the driver of the indica car as R.W.1 and he would say that he parked his car in front of the Esakkiamman temple, that when he was making an attempt to put the sandal bindi (சந்தனம் பொட்டு) to the car door, two wheeler rider dashed against the opened door and as a result of which, the pillion rider fell down and sustained injuries. During cross examination, he would admit that the criminal case was registered against him; that FIR was registered against him as if, the accident was occurred while he was opening the door; that the criminal case registered against him is pending; that the width of the occurrence road is high and that he would deny the suggestion that since he alone had opened the door, the accident was occurred.

18. Admittedly, R.W.2 official of second respondent is not an occurrence witness. But he would say that FIR was registered against the car driver and final report was also filed against him and that the criminal case is pending against him. As already pointed out, the third respondent



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has not chosen to examine the driver of the bus, who had driven the bus at the time of accident. But on the other hand, they have examined their Assistant Manager, who would say that he went to the occurrence spot within one hour of the accident and that since their driver and conductor were taking treatment; they could not come to the Court. He would deny the suggestion that the accident was occurred due to the negligence on the part of both the drivers.

19. The claimants have produced the copies of M.V.I report of all the vehicles involved in the accident under Ex.P.3; Ex.P.4 and Ex.P.6 respectively. They have also produced the copies of observation mahazar and rough sketch prepared by the jurisdictional police during investigation under Ex.P.11 and Ex.P.12 respectively.

20. As rightly contended by the learned counsel for the third respondent, it is not the case of the second respondent that the bus was coming at some distance from the occurrence place that too in a rash and negligent manner. As rightly observed by the Tribunal, since because the deceased fell down due to the dashing of car door against the two wheeler, in which she was travelling, the bus had dashed against her and



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that if the first incident of dashing the indica car door against the two wheeler was not occurred, then the question of the third respondent dashing against the deceased does not arise at all.

21. Though the second respondent has alleged that both drivers were responsible for the accident and they are guilty of composite negligence, they have neither produced any material or evidence nor assigned any reason or ground to infer that the accident was occurred only due to the composite negligence on the part of both the drivers.

22. Considering the entire evidence available on record, the finding of the trial Court that the accident was occurred only due to the negligence of the first respondent's car driver cannot be found fault with and this Court is in entire agreement with the finding recorded by the Tribunal. It is not in dispute that the indica car involved in the accident was owned by the first respondent and the same was insured with the second respondent and that the insurance policy was in force on the date of accident. Considering the above, the Tribunal has rightly mulcted liability on the second respondent and there is nothing on records to take a different view from that of the Tribunal.



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23. The appellant/insurer has not disputed the quantum of compensation awarded at by the Tribunal. The appellant has not canvassed any other reason or ground to impugn the award. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

24. In the result, this Civil Miscellaneous Appeal is dismissed and order impugned award dated 28.10.2010 made in M.C.O.P.No.238 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Judge/Fast Tract Court No.I) Thoothukudi, is confirmed. The appellant/second respondent is directed to deposit the award amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the first claimant is permitted to withdraw the award amount, less amount already withdrawn, if any, by filing a necessary application before the Tribunal. The Tribunal is directed to deposit the said amount of the minor claimants in any one of the Nationalized Bank in a fixed deposit scheme, till they attain majority. The father and guardian of the minor claimants is permitted to withdraw the accrued



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interest once in three months directly from the Bank only for the welfare of the minors. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

24.11.20213

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
das

To

- 1.The Motor Accident Claims Tribunal
(Additional District Judge/Fast Tract Court No.I)
Thoothukudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.1465 of 2011
and
MP(MD)No.1 of 2011

24.11.2023