



C.M.A. (MD)No.889 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.01.2024

Pronounced on : 12.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.889 of 2019

and

C.M.P.(MD)No.11736 of 2019

Reliance General Insurance Company Limited,
represented through its Branch Manager,
Nagercoil & Village,
Agastheeswaram Taluk,
Kanyakumari District.

...Appellant

Vs.

1. Josekumar
2. Kanakavel
3. Kavitha
4. The Managing Director,
SRM Transports India (P) Limited,
SRM Nagar, Kattankulathur,
Chengalpet Taluk,
Kancheepuram District,
represented by Branch Manager,
DDJ Complex, Vadsery,
Nagercoil.



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5. HDFC ERGO General Insurance Company Ltd.,
represented by its Branch Manager,
Nagercoil Village, Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

...Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 27.02.2019 passed in M.C.O.P.No.74 of 2014 on the file of the Chief Judicial Magistrate cum Motor Accidents Claims Tribunal of Kanyakumari by allowing this appeal.

For Appellant	: Mr.V.Sakthivel
For R1	: Mr.G.Aravindan
For R3	: No appearance
For R5	: Mr.J.S.Murali

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.74 of 2014 dated 27.02.2019 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Nagercoil.

2. When the matter was taken up for final disposal on 30.01.2024, the learned counsel appearing for the appellant has filed a Memo dated



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30.01.2024 stating that since the second respondent-driver of the lorry died and his legal heirs are not necessary parties to the proceedings and that since the fourth respondent's presence is not necessary, notice to the fourth respondent and impleadment of the legal heirs of the second respondent may be dispensed with. The above said Memo is recorded.

3. The appellant/Insurer, who was made liable to pay Rs.51,000/- (Rupees Fifty One Thousand only) being the 25% of the compensation awarded for the disability suffered by the first respondent/claimant, consequent to an accident occurred on 06.07.2014, challenged the liability mulcted on it.

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

5. The case of the claimant is that on 06.07.2014 at about 04.30 a.m. the claimant was driving Nagercoil to Chennai route SRM omni bus bearing Registration No.TN-19B-2253, that while the omni bus was plying on Viluppuram – Thindivanam National Highway of Jakkampettai



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Village near Ayyanar Kovil, the first respondent was driving Leyland Lorry bearing Registration No. TN-28P-7369 in front of the claimant's bus in another lane of Viluppuram – Thindivanam National Highway road, that the first respondent, without showing any indicator, all of a sudden changed the lane in which the claimant's bus was plying, rashly and negligently in which a portion of the back side of the lorry and a portion of the front side of the omni bus dashed against each other and as a result of which, the claimant and some other passengers in the omni bus had sustained multiple injuries and they were taken to Thindivanam Government Hospital, that after giving first aid treatment, the claimant was shifted to SRM Medical College Hospital, Kattankulathur on 07.07.2014 and that the accident was occurred only due to the rash and negligent driving of the first respondent-lorry driver.

6. It is the further case of the claimant that a passenger of their omni bus, by name, Selva Prabhu has lodged a complaint and on that basis, FIR came to be registered in Crime No. 311 of 2014 on the file of Mayilam Police Station for the offences under Sections 279 and 338 IPC against the claimant, that the said complainant Selva Prabhu was sleeping at the time



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of accident and as such, he did not know exactly what had happened at the time of accident, that the claimant was in ICU while the police came to the hospital for enquiry, that the police hastily obtained a statement and registered the FIR blaming the claimant, that since the first respondent-lorry driver alone was at fault, they ought to have registered the FIR against the first respondent-lorry driver, that the claimant has then sent a complaint to the District Superintendent of Police, Viluppuram and copy to Mayilam Police Station seeking re-investigation of the accident and that therefore, the claimant is not at fault.

7. It is not in dispute that the lorry bearing Registration No.TN-28P-7369 driven by the first respondent was owned by the second respondent and the same was insured with the third respondent. It is also not in dispute that the omni bus bearing Registration No.TN-19B-2253 driven by the claimant was owned by the fourth respondent and the same was insured with the fifth respondent.

8. It is evident from the records that the claim petition as against the first respondent-lorry driver was ordered to be dismissed and that the respondents 2 and 4-owners of the vehicles had remained *ex parte*.



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9. The defence of the third respondent/insurer of the lorry is that the lorry was not at all insured with the third respondent at the time of the alleged accident, that the first respondent-lorry driver was not having valid driving license at the time of accident, that the claimant, who drove the omni bus, had driven the omni bus rashly and negligently, that since the claimant was at fault, criminal case came to be registered against him and that therefore, the third respondent is not liable for the claim.

10. The defence of the fifth respondent/insurer of the omni bus is that the fifth respondent has been impleaded only as a formal party for fair adjudication of the case, that the claimant is the tortfeasor and for his own negligence, he cannot claim compensation against the fifth respondent, that the contention that the claimant is guilty of contributory negligence cannot be accepted and that since the claimant alone is at fault, the fifth respondent is not liable for any claim.

11. During trial, the claimant has examined himself as P.W.1 and another driver of the omni bus Willet Henred as P.W.2 and exhibited 12 documents as Ex.P.1 to Ex.P.12. The third respondent has examined their



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Manager Thiru.Sankara Raman as R.W.1 and exhibited 5 documents as Ex.R.1 to Ex.R.5.

12. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 27.02.2019 holding that both the driver of omni bus and lorry are responsible for the accident and fixed their liability at 75% and 25% respectively and directed the third respondent to pay compensation of Rs.51,000/- being 25% of the award amount of Rs.2,04,000/-. Aggrieved by the impugned award, the third respondent has preferred the present appeal.

13. The learned counsel appearing for the third respondent/insurer would submit that the claimant alone was driving the omni bus in a rash and negligent manner and as such, he is responsible for the accident, that the Tribunal has failed to notice that there is no necessity for the lorry to come to the left side of the road without any reasons, that the Tribunal has also failed to notice that the claimant was not driving his omni bus in a safe distance, namely, 30 feet from the lorry and due to non-maintaining of



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the safe distance for the accident and that the Tribunal erred in fixing the liability at 25% on the first respondent-lorry driver and thereby mulcted liability on the third respondent.

14. Admittedly, on the basis of the complaint lodged by the passenger of omni bus, which was driven by the claimant, FIR came to be registered in Crime No.311 of 2014 on the file of Mayilam Police Station for the offences under Sections 279 and 338 IPC and as already pointed out, criminal case was registered against the claimant. It is also not in dispute that the jurisdictional police, after completing the investigation, has filed a final report against the claimant.

15. As rightly pointed out by the learned counsel appearing for the third respondent/insurer, in the FIR, it has been specifically stated that when the lorry was proceeding in front of the bus, the claimant had driven the omni bus in a rash and negligent manner and while attempting to overtake the lorry had dashed against the back side of the lorry and that action has to be taken against the claimant, who had driven the omni bus rashly and negligently and caused the accident. Even in the final report-



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Ex.R.5, the investigating officer has charge sheeted the claimant stating that he alone had driven the omni bus rashly and negligently and dashed against the back side of the lorry, which was proceeding in front of the omni bus.

16. As rightly observed by the learned trial Judge, as expected, the claimant-P.W.1 has given evidence that he was not at fault and that since the first respondent-lorry driver, who had driven the lorry rashly and negligently, suddenly changed the lane, the accident had occurred. P.W.2- another driver, who was allegedly travelling with the claimant at the time of accident, would say that since the first respondent-lorry driver had turned the vehicle towards his left side, the claimant had also turned the omni bus towards left side and that since the back side of the lorry dashed against the front side of the omni bus, both the vehicles got attached and as a result of which, got slipped on the left side pit. P.W.2 would further say that he has not suffered any injuries in the accident. Considering the nature of the accident, the Tribunal has rightly raised doubt about P.W.2 not suffering any type of injury. As per the private investigation report under Ex.R.1, the omni bus apart from the claimant was having substitute



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driver, by name, Kanishkar at that time and that there was no reference to the availability of P.W.2 in the omni bus at that time.

17. Though the third respondent/insurer has examined their private investigator, has not chosen to examine the first respondent-lorry driver. As rightly contended by the learned counsel appearing for the third respondent/insurer, the claimant, except examining the alleged substitute driver, has not chosen to examine the complainant, who lodged the complaint with the police or any other injured to depose about the mode of accident.

18. As rightly observed by the learned trial Judge, the lorry was proceeding on the right side of the two lanes in Viluppuram National Highway and the claimant had attempted to take over the lorry and at that time, the first respondent-lorry driver, without showing any signal, had turned his vehicle to his left side and as a result of which, the front portion of the omni bus had dashed against the back side of the lorry. It is evident from Ex.P.2-Motor Vehicle Inspection Reports of the two vehicles that there were damages on the back side of the lorry, whereas, damages were



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caused on the right front side of the omni bus and the same are extracted hereunder for better appreciation;

“In respect of lorry : Rear body, door dented, Rear Rt Side Spring assembly damaged, Rear axle bent, Rear Lt Side tandem axle inner, outer, wheel tyre damaged, Rear Lt Side outer tyre damaged, Rear Lt Side body scratches, Trailer body dislocated, front Lt Side driver cabin door, body damages, Front Lt Side H/L, indicator assembly damages, front Lt Side T.Glass damaged.

In respect of bus : Lt Side side body window glasses 5 nos broken, Lt Side side body dented & scratches, front Lt Side Entrance, door damaged, Rt Side window glass 2nos damaged, Front W/S glass damaged, Steering column bent&damages, front body, dashboard, Engine bonnet, Radiator, front both H/L indicator assembly damaged, seat damaged, Clutch pedal, brake pedal damaged, Front cross bar, front vehicle top damaged, Diesel filter damaged.”

19. Considering the damages caused to the both vehicles and the other evidence available on record, this Court is of the clear view that though the claimant is mainly responsible for the accident, the first respondent-lorry driver has also contributed to some extent, as he without showing any indicator had turned the vehicle towards left side.



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Considering the above, the finding of the Tribunal that both the drivers are at fault and fixing 75% liability on the claimant-bus driver and 25% liability on the first respondent-lorry driver cannot be found fault with and this Court is in entire agreement with the findings recorded by the Tribunal.

20. The third respondent/insurer, in the memorandum of appeal grounds, has taken a stand that the Tribunal has wrongly awarded higher compensation as against the evidence adduced before it and the Tribunal has failed to consider the principles of law laid down by the Hon'ble Supreme Court, but at the time of arguments, the learned counsel appearing for the third respondent/insurer has not canvassed any arguments with regard to the quantum of compensation.

21. Considering the medical evidence available, the Tribunal has rightly accepted the disability fixed at 40% by the medical board and awarded Rs.80,000/- as disability compensation by applying the percentage method. The Tribunal, considering the nature of the injuries and the consequent disability sustained, period of treatment and other



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attending circumstances, has rightly awarded Rs.25,000/- for pain and suffering, Rs.5,000/- for extra nourishment, Rs.15,000/- for attender charges and Rs.45,000/- for loss of income. Hence, this Court is not inclined to interfere with the impugned award. Consequently, this Court concludes that the appeal is devoid of merit and the same is liable to be dismissed.

22. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs.

23. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/third respondent is directed to deposit 25% of the compensation amount as awarded by the Tribunal with interest and costs from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.74 of 2014 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Nagercoil, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on



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due application before the Tribunal. Consequently, connected miscellaneous petition is closed. Parties are directed to bear their own costs.

12.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

1. The Motor Accident Claims Tribunal /
Chief Judicial Magistrate, Nagercoil.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
C.M.A.(MD)No.889 of 2019
and
C.M.P.(MD)No.11736 of 2019

Dated : 12.04.2024