

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2013

Coram:

The Hon'ble Mr. Justice S.PALANIVELU

C.M.A.No.1463 of 2002

New India Assurance Co. Ltd.,
2, Paramathy Road,
Namakkal.

.. Appellant

vs

1.T.Manimozhi
2.M.Balasubramani
(2nd respondent set exparte in lower court)
3.Tamil Nadu State Transport Corporation,
by its Managing Director,
(Coimbatore Division II),
Sennimalai Road, Erode 638 002.
4.C.Srinivasan
5.V.Rajagopal
(Respondents 4 & 5 exparte in lower court)

.. Respondents

Civil Miscellaneous Appeal against the judgment and decree in
MCOP No.246/2001 dated 09.04.2002 on the file of the Motor
Accidents Claims Tribunal, Principal Subordinate Court,
Gobichettipalayam.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.A.K.Kumaraswamy for R1
Mrs.S.Geetha for R3

J U D G M E N T

The appeal is directed against the judgment and decree in MCOP No.246/2001 dated 09.04.2002 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Gobichettipalayam.

2. On 22.04.2001, at about 6.30 p.m. the respondent/claimant was travelling in the bus bearing Regn.No.TN33 N 1327 as a passenger from Coimbatore to Erode. Near Gowtham Punjabi Hotel, from west to east, on the Coimbatore – Erode Road, when the 1st respondent attempted to overtake another bus, the 3rd respondent being the driver of the lorry bearing Regn.No.TAN 5335 drove the same in a rash and negligent manner from East to West and the bus dashed against the lorry and the 1st respondent could not control the bus, turned the same to the left side and dashed against a tree. Due to the accident, the respondent/claimant sustained severe injuries in his right hand and shoulder joint.

3. The respondent/claimant and other injured passengers were taken to Erode Govt. Hospital and admitted as inpatient. Due to major croon injury on right shoulder with auxiliary artery injury, the right hand was amputated below shoulder joint level. The claimant

was aged about 45 years at the time of accident and working as Section Supervisor in BSNL by earning a sum of Rs.9,729/- per month and that artificial hand would cost Rs.3 to 4 lakhs and hence claimed a sum of Rs.30,00,000/- as compensation.

4. In the counter filed by the appellant/insurance company, it is stated that the alleged accident had taken place only due to the rash and negligent act of the bus driver and it is definitely not due to the act of the driver of the lorry and that it is also clearly mentioned in the FIR, that the scene of occurrence is on the southern side of the road which clearly indicate that the alleged accident had taken place only due to the rash and negligent act of the bus driver, that the amount claimed is excessive and hence the petition has to be dismissed.

5. After hearing both the parties and going through the exhibits and oral evidence on record, the tribunal has fixed the 50% liability upon transport corporation and the balance 50% on the insurance company for payment of compensation and awarded Rs.9,54,642/- as compensation payable to the respondents/claimants by both the transport corporation and the insurance company. Aggrieved against the said award, the appellant/insurance company is before this court

by way of this appeal.

6. In this appeal, both the learned counsel would argue as regards the negligence of the driver on whom the tribunal has fixed liability of 50% on each of the drivers. In the rough sketch prepared by the police during the course of investigation, the entire picture aftermath the accident could be visualised. The accident took place along Perundurai – Erode Main Road. The bus was going from Perundurai to Erode. The lorry was coming from Erode to Perundurai. Hence, both the vehicles were coming opposite to each other. The scene of crime mentions about the stone which is situated on the right side. That means, the bus driver was coming left from the left side of the road and when he went to the right side of the road, the accident took place.

7. It is stated that the bus when attempted to overtake the vehicle which was going in front of it, dashed against the lorry which was coming on the left side of the road. The plan further shows that the lorry has come to halt after dashing to the gravel road on the left. But the bus, after dashing proceeded on the left side of the road entered into the gravel road and kept halt. The distance between the

lorry and the scene of crime is 25 feet wherein that the distance between the scene of crime and the bus is 20 feet.

8. The position of the two vehicles after the occurrence would candidly show that who the tortfeasor is. Further, the bus driver had every chance to see the lorry coming on the opposite direction and he know very well that if he drove the vehicle in that place there could be every chance for a worst accident. To say it in other words, he very well knew the consequence of the offence when he proposed to overtake other vehicle. Hence, the bus driver has played major role than the driver of the lorry at the time of accident. Hence, this Court is of the firm view that the liability of 75% for causing the accident upon the bus driver and 25% on the lorry driver. In such view of this matter, the award passed by the tribunal deserves to be confirmed and it is accordingly confirmed.

9. In fine, the Civil Miscellaneous Appeal is dismissed confirming the judgment and decree passed in MCOP No.246 of 2001 dated 09.04.2002 on the file of the Motor Accident Claims Tribunal (Prl.Subordinate Judge), Gobichettipalayam except fixing the liability of 75% on the driver of the bus for causing the accident and the balance 25% on the driver of the lorry. The appellant and the second

respondent transport corporation shall pay 75% and 25% respectively of the compensation awarded by the tribunal to the 1st respondent/claimant alongwith interest. No costs.

20.12.2013

Internet : Yes/No
Index : Yes/No
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Note: Registry is directed to issue fresh order copy to the parties concerned.

To

The Principal Subordinate Court,
Motor Accident Claims Tribunal,
Gobichettipalayam.

S.PALANIVELU, J.

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