

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2015

CORAM :

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. No. 3725 of 2008

and

M.P. No.1 of 2008

The New India Assurance Co. Ltd.,
I Floor, State Bank of Mysore Building
44-47, Oppanakkara Veedhi
Coimbatore -641 001.

... Appellant/2nd Respondent

vs.

1. Palanisamy
2. Kannammal
3. Manickam
4. A. Jagannathan
(Respondents 3 and 4 exparte
in lower court)

.... Respondents/Petitioners 1 & 2/Respondents 1&3

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 28.03.2008 made in M.C.O.P No.150 of 2006 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Coimbatore.

For Appellant : Mr. N. Vijayaraghavan
For Respondents 1&2 : Mr. V. Thillaisamy

JUDGMENT

This Civil Miscellaneous Petition is filed by the Insurer of one of the vehicles involved in the accident, in which the claimants lost their son by name Mahalingam. For the sake of convenience the parties are referred to as per their rank before the Tribunal.

2. In the accident occurred on 09.10.2004, two motor cycles were involved. One of the motor cycles bearing registration No. TN 37 B 4269, owned by the first respondent Manickam before the Tribunal is insured with the second respondent, who is the appellant herein.

The other vehicle bearing registration No. TN 40 Y 2119, at the time of accident, is owned by one Jeganathan, who is the third respondent before the Tribunal and was driven by the deceased Mahalingam. The Tribunal, on the basis of the oral and documentary evidence, arrived at a conclusion that the accident occurred due to the act of negligence by the riders of both the vehicles and accordingly apportioned the compensation of Rs.4,35,000/- between the respondents 1 and 2 on one side and the third respondent on the other side, in the ratio 50:50.

3. The second respondent Insurer of one of the motor cycles, is now before this Court, questioning the correctness of the award, solely on the ground that the rider of the other vehicle since deceased was an unauthorised person and is not covered under the terms of policy. Learned counsel for the appellant Insurance company would strenuously argue before this Court that the policy covers only the owner or the paid driver and the rider of this vehicle, who was neither the owner nor the paid employee of the owner, was not authorised to ride the vehicle and hence no liability could be fastened on the insurance company for the accident occurred due to the negligence on the part of such unauthorised rider.

4. Such plea was not at all raised before the Tribunal and is for the first time raised only before this Court, and the same is liable to be negatived as under Ex.A13 (Ex.B10) Policy, any person with the permission of the insured was entitled to drive the vehicle. Further as the claimants are covered under the definition "third party" and what is required to be covered is the liability incurred by the first respondent/ owner in respect of third party caused by the use of the vehicle in public place and as the appellant herein is the insurer of one of the offending vehicles, the appellant/ insurer is liable to indemnify the first respondent insured who is vicariously liable for the negligent driving of his driver.

5. Regarding the liability, the second respondent on behalf of the first respondent and the third respondent are liable to pay the compensation amount to the claimants equally. The larger bench consisting of three judgments of the Hon'ble Apex Court in the latest judgment reported in (2015) 4 MLJ 364 (SC) - Khenyei vs. New India Assurance Company Limited & Others, has laid down the following principles in the case of composite negligence.

- i. In the case of composite negligence, plaintiff/ claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.
- ii. In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/ claimant is not permissible. He can

recover at his option whole damages from any of them.

iii. In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/ tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/ claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/ tribunal, in main case one joint tort feason can recover the amount from the other in the execution proceedings.

iv. It would not be appropriate for the court/ tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feason. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award."

Applying the same view, the respondents 1 and 2 on one hand and the third respondent on the other hand are jointly and severally liable to pay the compensation to the claimants and the claimants are entitled to recover the entire award amount either from both the respondents 1 and 2 and from the third respondent in equal proportion or the whole compensation either from the second respondent on behalf of the first respondent or from the third respondent at their option. In that event, the respondents from whom the entire amount is recovered is entitled to recover the amount from the other to the extent it has satisfied the liability of the other.

5. With such modification of the impugned order, the Civil Miscellaneous Appeal is disposed of. Consequently, the connected M.P is closed. No costs.

avr

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal
Coimbatore.

Copy to:

The Section Officer,
V.R.Section, High Court, Madras.

+ 1 cc to Mr.N.Vijayaraghavan, Advocate SR 40731

+ 1 cc to Mr.V.Thillaisamy, Advocate SR 40017

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