

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.1943 of 2016
C.M.P.No.14134 of 2016

Royal Sundaram Alliance Insurance Company Ltd.,
Salem.

Appellant

versus

1. V.Sasikala
2. Minor V.Mirudhini
3. Minor V.Mithin
(Minors are represented by their mother, 1st respondent)
4. J.Premakumari
5. S.Jayaraman ... Respondents 1 to 5/ Petitioner
6. P.Easwaran
7. The Managing Director,
State Express Transport Corporation Ltd.,
Chennai. ... Respondents 6 & 7/ Repondents 1 & 3

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment, dated 03.03.2016, made in M.C.O.P.No.145 of 2010, on the file of the Motor Accident Claims Tribunal (Sub Court), Attur.

For Appellant

: Mr.S.Manohar

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J.)

Civil Miscellaneous Appeal is directed against the order of the Motor Accident Claims Tribunal (Sub Court), Attur, dated 03.03.2016 made in M.C.O.P.No.145 of 2010, by which, the Tribunal, fixing negligence on the driver of the lorry, bearing Registration No.KA 01 D 1086, insured with the appellant-Insurance Company, awarded compensation of Rs.13,06,500/- with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

2. Though several grounds have been raised, Mr.S.Manohar, learned counsel appearing for the appellant restricted his argument, only to the finding, fixing negligence on the owner-cum-driver of the lorry, bearing Registration No.KA 01 D 1086, insured with the appellant-Insurance Company. He has not disputed the quantum of compensation awarded by the Tribunal. His submission is placed on record.

3. Short facts leading to the appeal are as follows:

On 04.02.2016, about 3.40 P.M., when the husband of the 1st respondent, was riding his Hero Honda Splendor Plus motorcycle, bearing Registration No.TN 54 Z 8347, from East to West, on Kallakurichi to Attur Main Road and in front of Pudupet Modern Weigh bridge, on the southern side of the road, a lorry, bearing Registration No.KA 01 D 1086, insured with the appellant-Insurance Company, coming from Pudupet Modern Weigh bridge, while taking reverse by its owner-cum-driver, from North-South direction, in a rash and negligent manner, dashed against the left side portion of the bus, bearing Registration No.TN 01 N 7872, owned by the State Express Transport Corporation, 7th respondent herein, coming from west to east on the northern side and due to the impact, the bus sewered from north to south and hit the motorcycle, coming from the southern side, and in the result, he sustained grievous injuries. Despite intensive treatment in different hospitals, he succumbed to the injuries. In this regard, a case in Cr.No.986 of 2010, has been registered against the driver of the lorry, insured with the appellant-Insurance Company for the offences, under Sections 279, 337 r/w. 304(A) IPC., on the file of Attur Police Station. Hence, the claim.

4. Per contra, denying the manner of accident and negligence alleged against the owner-cum-driver of the lorry, bearing Registration No.KA 01 D 1086, insured with them, the appellant-Insurance Company has contended that the accident occurred on the southern side of the mud road, due to the rash and negligent driving, by the driver of the State Express Transport Corporation, 7th respondent herein, and hence, they are not liable to pay any compensation.

5. Before the Tribunal, the 7th respondent-Transport Corporation submitted that on the date of accident, the bus, involved in the accident, was on a trip from Salem to Chennai and about 3.40 P.M., near Attur Modern Weigh bridge, the lorry, insured with the appellant-Insurance Company, driven by its owner-cum-driver, in the reverse direction, from North to South, in a rash and negligent manner, dashed against the bus and due to the impact, the bus hit the motorcyclist and hence, contended that the accident occurred due to the negligent act of the driver of the lorry, insured with the appellant-Insurance Company.

6. The 1st respondent-wife examined herself as PW.1 and PW.2, is the eye-witness to the accident. To prove the manner of accident, on behalf of the respondents/claimants, Ex.P1 - FIR, Ex.P2 - Post-mortem Certificate, Ex.P3 - Sketch, Exs.P4 to P6 - Motor Vehicles Inspector Reports, in respect of all the three vehicles and Ex.P7 - Charge Sheet, dated 06.07.2010, have been marked. Both the drivers of the lorry and bus, examined themselves as RWs.1 and 2 and no documents have been filed by both the appellant-Insurance Company and the State Express Transport Corporation Ltd., Chennai.

7. On evaluation of both oral and documentary evidence, the Claims Tribunal, finding that the 6th respondent, owner-cum-driver of the lorry, bearing Registration No.KA 01 D 1086, insured with the appellant-Insurance Company, was negligent, in causing the accident, directed both the 6th respondent, insured and the appellant-Insurance Company, insurer, to pay compensation to the victims, jointly and severally.

8. Assailing the finding of negligence, Mr.S.Manohar, learned counsel for the appellant-Insurance Company submitted that while the lorry, bearing Registration No.KA 01 D 1086, was taking reverse from Modern Weigh Bridge, at a very slow speed, the SETC bus driven rashly and negligently, hit at the rear side of the lorry and went on to hit the motorcycle, which came in the opposite direction and thus, the accident occurred, only due to the rash and negligent driving of RW.2, driver of the 7th respondent-Transport Corporation bus.

9. Learned counsel for the appellant further submitted that the driver of the bus, owned by the 7th respondent-Corporation also contributed to the accident and hence, the Tribunal ought to have fixed contributory negligence, atleast to the extent of 75%. It is the submission of the learned counsel that the Tribunal, while rejecting the oral testimony of RW.2, driver of the lorry, erred in fixing the entire negligence on him and the same requires interference.

Heard the learned counsel appearing for the parties and perused the materials available on record.

10. The 1st respondent/claimant examined herself as PW.1 and reiterated the manner of accident, stated in the claim petition. However, she has witnessed the accident. To support the manner of accident, she has examined one Velmurugan, as PW.2, who had witnessed the accident and on his chief examination, he has deposed that on the date of accident, about 03.40 P.M., while he was riding his motorcycle, from VOC Nagar to Bazaar, on East-West direction, near Modern Weigh Bridge,

along with his relative, Koothiyan, on the left side of the road, a lorry, bearing Registration No.TK 01 D 1086, which came from Modern Weigh Bridge, driven reversely from North to South, in a rash and negligent manner, dashed against the bus, bearing Registration No.TN 01 N 7872 and due to the impact, the bus sewered from North to South and hit the motorcycle, going on the mud road, he was thrown away and sustained injuries. He has categorically stated that the back side of the lorry hit the Transport Corporation bus. During cross-examination, he has also deposed that he witnessed the accident at a distance of 10 feet.

11. RW.1, driver of the 7th respondent-Transport Corporation bus, in his chief examination, has deposed that on the date of accident, about 01.40 pm., he took the bus, involved in the accident, to a trip from Salem bus stand to Chennai and about 3.40 P.M., near Modern Weigh Bridge, Attur, the lorry, insured with the appellant-Insurance Company, which came from Weigh Bridge, without any signal, driven by the 6th respondent, in a rash and negligent manner, in the reverse direction, dashed against the bus, which hit the motorcycle, coming from the southern side and the motorcyclist sustained grievous injuries. In his cross examination, RW.1 has deposed that there was no cleaner in the lorry, while taking reverse.

12. Though RW.2, driver of the lorry, has stated that on the date of accident, he parked the vehicle near Modern Weigh Bridge, on East-West direction and upon hearing the sound, he turned around and saw the back side door of the lorry, at a distance of 10 feet and thereafter, came to know that after coming into contact with the lorry, the bus hit the motorcycle. Upon perusal of the documents, such as, Ex.P1 - FIR, Ex.P2 - Post-mortem Certificate, Ex.P3 - Sketch, Exs.P4 to P6 - Motor Vehicles Inspector Reports, in respect of all the three vehicles and Ex.P7 - Charge Sheet, dated 06.07.2010 and assessing the oral testimony, the Claims Tribunal found that the driver of the lorry alone, was negligent in causing the accident.

13. Though the learned counsel for the appellant-Insurance Company contended that the driver of the bus, owned by the 7th respondent-Transport Corporation, was negligent in causing the accident, this Court is not inclined to accept the same for the simple reason that if he was not negligent, RW.1, driver of the lorry, he could have very well lodged a counter complaint, stating that the driver of the bus was negligent in causing the accident. Though the claimants and the transport corporation have unanimously contended that the lorry, while taking reverse, hit the bus, quite contrary, RW.1, lorry driver has deposed that his vehicle was stationed and the bus hit from behind. As rightly observed, evidence of RW.1, lacks credence. At this juncture, it is also to be noted that RW.2, the bus driver, has stated that at the time of accident, there was no cleaner for the lorry.

14. Oral testimony let in on behalf of the respondents/claimants is supported by PW.2, eye-witness and corroborated by Ex.P1, First Information Report and Ex.P6 - Charge Sheet. Though the driver of the lorry, insured with the appellant-Insurance Company, has let in evidence, disputing the manner of accident, there is no supporting evidence. We are unable to accept the contention of the learned counsel for the appellant, as to the damage on the backside of the lorry and left side of the bus, and that therefore, it was the bus driver, who had caused the accident. It is the well settled law that as the proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence. The finding regarding negligence is confirmed.

15. As stated supra, there is no serious dispute over the quantum of compensation awarded by the Tribunal. In the light of our discussion, we are of the view that no valid grounds are made out to interfere with the finding. Accordingly, the award is confirmed and in the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, if not already deposited, with proportionate accrued interest and costs less the amount already deposited to the credit of M.C.O.P.No.145 of 2010, on the file of the Motor Accident Claims Tribunal (Sub Court), Attur, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw the same, by making necessary application before the Tribunal. Minors' share shall be deposited in any Nationalised Bank in fixed deposit, under the reinvestment scheme initially for a period of three years, proximate to the residence of the respondents/claimants. The interest accruing on the share of the minors shall be paid to the first respondent/ guardian once in three months, till they attain majority. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

skm

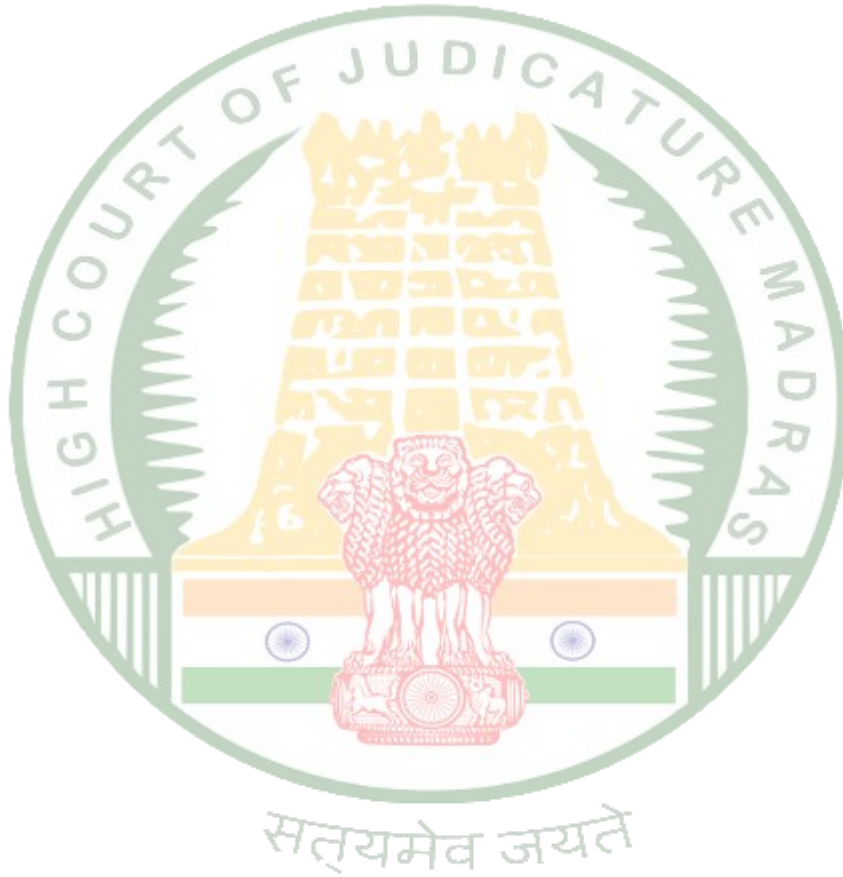
To

The Motor Accidents Claims Tribunal,
(Sub Court), Attur.

1 cc to Mr.S.Manohar, Advocate, Sr. 51821

C.M.A.No.1943 of 2016

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