

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.763 of 2016
and CMP.6272 of 2016

Iffco Tokio General Insurance Company Limited
Tulsi Chambers, 3rd Floor,
195, T.V.Swamy Road (West), R.S.Puram,
Coimbatore - 641 002.

... Appellant

vs.

1. Mathammal
W/o Late Ramar

2. Selvi
D/o Late Ramar

3. Mohan,
S/o Late Ramar

4.Minor Thenmozhi,
D/o Late Ramar

5. Minor Saravana Kumar,
S/o Late Ramar

(Minors 4 and 5 represented by
mother and NF Mathammal)

6. M/s. Rajasekar Textiles,
554/15, Rajapalayam Road,
Sathrapathy Post, Rajapalayam Taluk,
Virudhunagar District.

7. National Insurance Company Limited,
Branch Manager,
706, Thenkasi Road,
Rajapalayam Post and Taluk,
Virudhunagar District - 626 117.

8. A.Nirmal Kumar
S/o Albert

...Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.03.2015 made in M.C.O.P.No.927 of 2008 on the file of Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Dr.Jagedeesan
for R1 to R5

J U D G M E N T

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

This appeal is filed by the Insurance Company challenging the award dated 06.03.2015 passed in M.C.O.P.No.972 of 2008 by the Motor Accidents Claims Tribunal (Special District Court), Salem.

2. It is a case of fatal accident. On 10.07.2007 at about 7.10 p.m., near Anna Nagar Bridge, on Mettur R.S to Thermal Road, the Bajaj Motor Cycle bearing Registration No.TN-30-V-1400 driven by the 8th respondent herein came from the opposite side at high speed, in a rash and negligent manner and dashed on the Hero Hondo Motor Cycle driven by the deceased Ramar. As a result of the said accident, the deceased fell down on the road from his motor cycle and at that time the Tanker Lorry, bearing Registration No.TN-67-Q-7173 which came behind the deceased in high speed, driven in a rash and negligent manner, ran over the legs of the deceased and the deceased suffered grievous injuries and succumbed to injuries on the way to hospital.

3. The claimants/ wife and four children of the deceased filed a claim petition in M.C.O.P.No.927/2008 seeking a compensation of Rs.25,00,000/-. In support of the claim, the wife of the deceased was examined as P.W.1 and one Jayabalan, stated to be an eye-witness to the accident, was examined as P.W.2 and Exhibits Plto P11 were marked on the side of the claimants. On behalf of the respondents, the driver of the lorry was examined as R.W.1, the Motor Vehicle Inspector was examined as R.W.2 and the Spl.Sub Inspector of Police, Karumalai Police Station, was examined as R.W.3. However, no exhibits were marked on the side of the respondents. The court of its motion marked exhibits C1 and C2.

4. The Tribunal, taking note of the oral and documentary evidence held that the accident had happened only due to the rash and negligent driving of the drivers of the offending motor cycle and the lorry and fastened the liability on the insurer of the offending motor cycle and the insurer of the lorry and directed both the insurers to pay 50% of the compensation each.

5. Accordingly, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:

Sl.N o	Head	Amount granted by the Tribunal
1	Loss of income	Rs. 19,29,420/-
2	Funeral expenses	Rs. 10,000/-
4	Loss of love and affection	Rs.85,000/-
5	Loss of conjugal happiness	Rs.25,000/-
	Total	Rs.20,49,420/-

6. In the present appeal, the appellant/insurer of the offending motor cycle is disputing the factum of the accident.

7. Heard the learned counsel for the Insurer of the offending two wheeler in question and also the learned counsel appearing for the claimants.

8. Learned counsel for the appellant submits that it was the deceased who had contributed to the happening of the accident and not the rider of the motor cycle. He further contended that the liability ought to have been fastened on the deceased himself to that extent. Therefore, the finding rendered by the Tribunal holding that the driver of the offending motorcycle, insured with the appellant/insurer, who came from the opposite direction, is liable to the extent of 50%, is erroneous.

9. Learned counsel for the respondents/claimants submitted that insofar as the finding rendered by the Tribunal to the extent of fastening liability in the ratio of 50% on the offending motor cyclist insured with the appellant herein need not be found interfered with. It is submitted that the accident happened in a busy road and there was scope for the offending motor cyclist who came in high speed to avoid the happening of the accident but he dashed against the motor cycle of the deceased, which resulted in the after math. Hence, there is no error or illegality in the finding rendered by the Tribunal.

10. Having gone through the award passed by the Tribunal and taking into account the evidence of P.W.2 and R.W.1, we are of the view that the finding rendered by the Tribunal, fastening the liability on the part of the driver of the lorry and the driver of the offending motor cycle, which had coverage with the appellant herein/ insurer, cannot be found fault with. Though it is argued by the learned counsel for the appellant/insurer of the motor cycle in question that the 50% liability cannot be

fastened on the owner and insurer of the offending motor cycle, the fact remains that it was a busy road and the offending motor cycle, driven in rash and negligent manner, came at high speed and dashed against the motor cycle of the deceased, due to which, the deceased fell down and the lorry which came behind also driven in a rash and negligent manner, ran over the legs of the deceased and contributed to the happening of the accident. Based on the evidence on record, the Tribunal, taking into consideration the place of accident which is in the middle of a busy road has fastened the liability on the driver of the lorry as well as the motor cycle in the ratio of 50 : 50 respectively . The Insurer of the lorry has no quarrel over the award which has fastened 50% liability on the owner, as no appeal has been filed by the insurer of the lorry. In these circumstances, the fastening of liability on the insurer and the owner of the motor cycle at 50%, cannot be found fault with. There is no merit in the appeal and accordingly, the civil miscellaneous appeal is dismissed.

11. The Appellant/Insurer of the Motor cycle is directed to deposit his share of the amount as awarded by the Tribunal with interest within a period of three months from the date of receipt of a copy of this order, if not already deposited, and on such deposit the same shall be released in favour of the claimants as apportioned by the Tribunal, on proper identification. Consequently, connected miscellaneous petition is closed. There will be no order as to costs.

vsi

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal
Special District Court, Salem.

+ 1 cc to M/s.M.B.Gopalan Associates, Advocate SR 23746

+ 1 cc to Mr.Dr.P.Jagadeesan, Advocate SR 23417

lrs (co)
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