

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

C O R A M

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.M.A.No.555 of 2017 and
CMP.No.3353 of 2017

Manager,
Royal Sundaram Allianz
Insurance Company Limited,
No.45, 46 Whites Road,
Chennai-14. ...Appellant/3rd Respondent

-Vs.-

1. Mohammed Nawaz
2. Minor Nafeesa
(2nd respondent minor represented by
father and Natural Guardian
1st respondent) ...Respondents 1&2/Petitioner

3. Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram District.

4. Saburath Begum ...Respondents 3&4/Respondents 1&2

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the judgment and decree in
MCOP.No.400 of 2012 dated 23.03.2016 on the file of the Motor
Accidents Claims Tribunal, III Additional District and Sessions
Court, Kallakurichi.

For Appellant सत्यमेव जयते ... Mr.N.Vijayaraghavan

For Respondents

J U D G M E N T

This is an appeal filed by the Insurance Company,
challenging the award of compensation passed by the Motor
Accidents Claims Tribunal, III Additional District and Sessions
Court, Kallakurichi, in MCOP.No.400 of 2012 dated 23.03.2016.

2. The challenge is only with respect to the question of
negligence. The accident occurred on 23.08.2009 at about 2.30
p.m. The car in which the deceased was travelling had hit on

collusion with a bus bearing Registration No.TN 32 N 2473 which was coming from the opposite direction and causing the instantaneous death. The husband and child of the deceased Jesima Parveen are claimants who have made a claim for Rs.40,00,000/- for the death of the deceased.

3. The 2nd respondent, who is the owner of the car, had filed her counter denying the negligence on the part of the driver. The 3rd respondent, who is the Insurance Company/appellant herein, while denying of the claim made by the claimants contended that the accident is only due to the negligence on the part of the car driver in which the deceased was travelling. Besides, it was also stated that on the date of the accident, the said car bearing Registration No.TN 32 AC 5748 did not have any valid insurance policy.

4. Based on the evidence, the Motor Accidents Claims Tribunal has held that both the drivers of the vehicles were negligent and the accident was only due to their rash and negligent driving. The Tribunal had awarded Rs.3,36,000/- to the 1st claimant who was the husband of the deceased and Rs.7,00,000/- to the minor child. But, however, as the negligence was on the part of the drivers of both the vehicles, the compensation apportioned and the Insurance Company as well as the owner of the vehicle are directed to pay 50% i.e. Rs.5,18,000/- to the claimants. Aggrieved by the said award, the Insurance Company has preferred the present appeal.

5. The contention of the learned Counsel appearing for the petitioner is that even as per the Claim Petition, P.W.2, who has been examined as an eye-witness, has specifically stated that the accident was due to the negligent driving of the bus driver, which hit the car resulting in the fatal injuries. Based on the said oral and documentary evidence, the Tribunal has held that the liability is only on the part of the 3rd respondent bus owner, by exonerating the liability of the Insurance Company. However, the apportionment on the liability of the Insurance Company in the absence of any evidence is unsustainable is the submission made by the learned Counsel.

6. Considering the fact that the Tribunal, which is the first fact finding court, specifically found that both the driver of the car as well as the driver of the bus were negligent on the road, resulting in the accident, causing death of two persons. Excepting this, there is no other evidence to show that the driver of the car was not negligent. As the Insurance Company is fastened with only 50% of liability, they cannot have any serious objection in this regard. Though it was contended that there was no valid policy for the car on that day, Ex.P.5, which is the copy of the Insurance Policy for the

car has been filed before the tribunal. Hence, the contentions of the learned Counsel appearing for the appellant is unacceptable.

7. In view of all the above, the award of the Tribunal is confirmed and the present Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram District.

2. The Motor Accident Claim Tribunal, Kallakurichi

+ 1 cc to Mr.N. Vijaya Raghavan, Advocate SR.14948

CMA No.555 of 2017

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सत्यमेव जयते

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