IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.2854 of 2008
and MP.No.1 of 2008

The Oriental Insurance Co. Ltd.,
Branch Office, P.B.No.8,
Jyothi Super Bazaar, Thodupuzha Post,
Palakkad District, Kerala State. ..Appellant/2nd Respondent

Vs.

1.S.Padmavathi
2.Minor S.Mallika
3.Minor S.Muniappa
4.Minor S.Arthanari
Minors rep by their mother and next friend S.Padmavathi ..Respondents 1to4/Claimants

A.Sornam (died)

5.C.Nanthakumar,
Jeep Owner
6.U.Narayanan,
Auto Driver
7.Azhakappa Muthaliar,
Auto Owner
8.National Insurance Co. Ltd.,
Branch Office working at East Fort Complex,
Fort Maidan, Palakkad - 678 013
Palakkad DIstrict,
Kerala State. ..Respondents/Respondents 1,3 to 5

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 06.02.2008 made in MCOP.No.379 of 2004 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Dharapuram.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.Ma.Pa.Thangavel [R1 to R4]
Mr.S.Vadivel [for R8]
No. appearance for R6 & R7
Batta due for R5

JUDGMENT

This is a case where the duel is essentially between the two insurance companies regarding apportionment of negligence-component involved in a road accident. The accident has taken place on 07-07-2004 at about 6.30 p.m. along Palakkad to Kongad

Main Road near Thadukasery river bridge. The victim was a passenger travelling in an auto bearing No.KL 9J 6228 and the allegation was that a jeep bearing No.KL 9K 1295, came from behind, hit the auto and knocked it down, as a result the auto capsized killing a passenger of the auto. For the death of the passenger, his legal heirs moved the Tribunal with a claim of Rs.10,00,000/-, whereas the Tribunal has passed an award for Rs.4,65,000/- payable with interest at 7.5% per annum and mulcted the entire liability on the owner and the insurance company of the jeep in question. This is now challenged by the insurance company in this appeal.

2. The learned counsel for the appellant/insurance company of the jeep argued that the legal heirs of the victim, who apparently was not the witness to the accident, contended that the jeep in question had come from behind and hit the auto, due to which the auto capsized. However, the report of the Motor Vehicle Inspector nowhere indicated any damage to any portion of the jeep and it is inconceivable that a vehicle coming in a high speed would escape without any damage to its body on collision with another vehicle moving in front of it. Therefore, the Tribunal was wrong in fastening the liability entirely on the insurance company of the jeep, since it cannot stated with any degree of certainty that driver of the jeep was negligent.

3. Per contra, the learned counsel appearing for the insurance company of the auto-rickshaw argued that it was a consistent case of the claimant that the jeep in question came at an intimidating speed from behind and pushed the auto to the edge of the road, and finally when it was knocked, the auto capsized. He also contended that inasmuch as the jeep was a bigger vehicle, there may not have been any damage to the body of the vehicle and therefore, seeking apportionment of liability equally on both the owner and their respective insurers may not be tenable in the context of evidence available on record.

4. This Court, carefully perused the records available before it. It must be stated, at the outset that the dynamics of no accident can be stated effectively nor an accident can be recreated with precision on paper. Having stated thus, it must also be remembered that negligence does not always warrant or require an actual collision between two vehicles, and wherever one of the drivers of the vehicle drive the same intimidatingly and forces the driver of the another vehicle, who might at that relevant point of time driving the vehicle defensively, into an accident situation that too can constitute negligence. In deciding the point on whom lies the duty to care, in situations such as the one referred to, it must be stated that it can includes ones failure to share the road space evenly. Tortious liability founded on negligence cannot be static. Here the contribution by the vehicle that is driven menacingly can amount to passive negligence, since its consequence has resulted in an actual accident situation. There is nothing on record to indicate that the driver of the jeep had driven the jeep at a speed, which

the driver of the auto-rickshaw might have felt safe for him to drive safe in his track peacefully. Having stated that since there is no damage to the jeep, this Court finds the driver of the auto-rickshaw might be in error of judgement as well.

5. Taking into consideration the factual situation, this court apportions negligence component in the ratio of 65:35, where 65% being attributed to the driver of the jeep and 35% is attributed to the driver of the auto-rickshaw and accordingly the appellant is held liable to an extent of 65% of the award and eighth respondent, the insurer of the auto-rickshaw is held liable for 35% of the award amount.

6. It is submitted by the learned counsel for the appellant that he had already deposited 50% of the compensation award as awarded by the Tribunal.

7. In the result the appeal is partly allowed and this Court directs the appellant to deposit 15% of the compensation amount and the eighth respondent is directed to deposit 35% of the award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, whereupon the claimants would be entitled to withdraw the award amount forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ds
To
1.The Sub Judge,
Motor Accident Claims Tribunal, Dharapuram.

2.The Section Officer,
VR Section,
High Court, Madras.(2-Copies)

+ 1 cc to MR. Pa. Thangavel, Advocate Sr.60427
+ 1 cc to Mr.S. Arunkumar, Advocate Sr.60051
+ 1 cc to Mr.S. Vadivel, Advocate Sr.59822

CMA.No.2854 of 2008

SV(CO)
EU(06/02/2018)