

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.3744 of 2008
and MP.No.1 of 2008

Periyathambi @ Nallaiyan

..Appellant/Third party

Vs.

1.Periyannan
2.M.Sakthivel
3.Krishnan

...1st Respondent/Claimant

The Correspondent,
Holy Cross Matriculation Hr. Sec. School,
No.39K, K.O.N.Theatre Road,
Komarapalayam,
Tiruchengode Taluk,
Namakkal District.

4.The National Insurance Co. Ltd,
Rep. By its Branch Manager,
No.403, Mettur Road, Bhavani,
Erode District.

... Respondents 2 to 4/
Respondents No.1 to 3

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order made in MCOP.No.277 of 2004 on the file of the Motor Accident Claims Tribunal cum Sub Court, Bhavani dated 28.2.2007.

For Appellant :Mr.C.Kulanthaivel

For Respondents :Ms.N.B.Surekha [for R4]

JUDGMENT

There was a road accident on 17-07-2004 at a three road junction at Samiyapalayam in which a moped and a school van were involved. The claimant/the first respondent herein was the pillion rider of a moped of which the appellant herein was the rider cum owner. Their case was that the school van (belonging to the third respondent and insured with the fourth respondent herein) was driven negligently and it knocked down the moped owing to which both the rider as well as the pillion rider have suffered injuries. Both of them have preferred separate claims against the driver, owner of the van and its Insurance Company. In the claim petition filed by the pillion rider from which the present appeal arises, the appellant/rider of the motorcycle was not made as a party. In this setting, the Tribunal has passed

an award for Rs.1,92,034/- as compensation payable to the pillion rider, but it has apportioned the liability on equal terms and fastened 50% liability on the appellant herein (owner of the motorcycle) and the remaining 50% was imposed on the owner and the Insurance Company of the offending vehicle.

2. The learned counsel for the appellant submitted :

a) In a case where appellant is not even a party, 50% of the liability was imposed on him and he had no opportunity to defend the same.

b) There is no positive finding of any contributory negligence attributable to the appellant in order 50% liability can be mulcted on the appellant.

In the absence of any finding or even any material to suggest that the appellant/rider of the motorcycle has contributed to the occurrence of the accident, the same needs to be interfered with.

3. Per contra, the learned counsel for the fourth respondent/Insurance Company (third respondent before the Tribunal) vehemently contended that the Tribunal has entered a positive finding that the appellant did not possess a driving licence at that relevant time and did not even produce the vehicle for inspection for Motor Vehicle Inspector. Based on the above conduct of the appellant, the Tribunal appeared to have drawn adverse inference against the appellant and it fastened 50% liability on him and the same is in order.

4. So far as the factual justification for the Tribunal in fastening the liability on the appellant is concerned, the learned counsel for the fourth respondent is correct. It is solely because the appellant was proved not to possess a valid driving licence and also guided by the fact that the motorcycle was not produced for inspection, the Tribunal has fastened the liability against him. The pillion rider however is a third party to the accident from the angle of the owner of the van and its Insurance Company. In order the liability as concerning his injury is concerned there shall be a positive finding of contributory negligence against the rider. When it was not so done, then there will be no justification for apportioning the compensation amount. Secondly, and as very rightly pointed out by the counsel for the appellant, he is not made as a party before the Tribunal, and if only the Tribunal felt a need to apportion the compensation, it should have directed the claimant to implead the appellant and should have given him an opportunity to defend it. That too was not done. However, guided by my reasoning to the first part, I find that there is merit in this appeal and the same deserves to be allowed.

5. In the result, the appeal is allowed but without costs and the entire liability arising out of the accident vis-a-vis, the claimant/pillion rider of the motorcycle shall be borne by the Insurance Company and the same shall be deposited by it, less any amount already deposited within four weeks from the date of receipt of a copy of this order, whereupon the claimant may be permitted to withdraw the same forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

ds

To:

1.The Sub Judge,
Motor Accident Claims Tribunal,
Sub Court,
Bhavani.

+1cc to Mr.C.Kulanthaivel,Advocate sr.6298

+1cc to Mr.N.B.surekha,Advocate sr.5869

CMA.No.3744 of 2008

tm(co)
ss(27/3/2017)

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