



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

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CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.323 of 2015

and

MP(MD)No.1 of 2015

The Royal Sundaram Alliance
Insurance Co., Ltd,
Rep.by Authorized Person,
Door No.21, Whites Road,
Chennai.

... Appellant/2nd Respondent

Vs.

1.A.Latha
2.A.Sahana (Minor)
3.A.Deepak (Minor)
4.A.Dinesh (Minor)

... Respondents 1 to 4/Petitioners

5.Messer's Road Carriers of India,
Door.No.374, Chenoy Trade Center,
Park Lane, Secunderabad, Hyderabad,
Renga reddy, Andhra Pradesh.

...5th respondent/1st Respondent

6.M/s.Bharti AXA General Insurance
Company Ltd,
Through its Competent Authority,
No.180, P.P.Chavadi, Theni Main Road,
Madurai.

... 6th respondent/3rd respondent

(Minor respondents 2 to 4 are
rep.by their mother and guardian,
1st respondent herein)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.02.2014 made in M.C.O.P.No.1550 of 2010 on the file of the VI Additional District Judge, Motor Accident Claims Tribunal, Madurai.

For Appellant
For Respondents

: Mr.M.Jerin Mathew
: Mr.M.Sankaralingam for R1
Mr.P.T.Ramesh Raja for R5
Mr.G.Maruthaiah for R6

**JUDGMENT**

The Royal Sundaram Alliance Insurance Company Limited has filed this appeal questioning the impugned award principally on the ground of negligence.

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2. One Anandhan was travelling with his relatives in a Scorpio car bearing Registration No. TN 48 J 7575 on 22.04.2010 at about 02.00 A.M. The said car was hit by a Taurus lorry bearing Registration No. HR 38 K 5771 insured by the appellant herein from behind. In the resulting accident, the said Anandhan died. His wife and children filed MCOP.No.1550 of 2010 before the Motor Accident Claims Tribunal, VI Additional District Judge, Madurai. The Tribunal awarded a sum of Rs.14,54,640/- as compensation. Negligence was equally apportioned between the Scorpio car insured with the Bharti AXA General Insurance Company Ltd, the sixth respondent herein and a Taurus lorry insured with the appellant herein. Contending that liability was not properly apportioned, this appeal has been filed by the insurer of the lorry.

3. Heard the learned counsel for the parties.

4. The learned counsel appearing for the appellant pointed out that immediately after the occurrence of the accident, F.I.R was lodged by one of the occupants of the car. The said F.I.R in Crime No.135 of 2010 registered on the file of Mangalamedu police station, Perambalur District was marked as Ex.P1. The said F.I.R was given by one Prabhu who was travelling as a occupant of the car. In the F.I.R, it has been specifically mentioned that the Scorpio car was hit by a Taurus lorry on the right side. As a result the left side of the car was damaged.

5. Therefore, it is not open to the claimants to wriggle out of the consequences that flow from an apparent reading of the said F.I.R. Probably, that is why the claimant did not choose to examine the said Prabhu. Instead they examined the brother of the Prabhu, Balasubramanian as P.W.2, who was also travelling in the said car.

6. In this case, there were totally three claims. One arose out of the death and other two, out of injuries in MCOP.No.618 of 2010 and 629 of 2010. In MCOP.No.629 of 2010, the said Balasubramanian deposed that the fault lay on the part of the driver of the Scorpio car. But he also took an about-turn and deposed in the proceedings that the fault lay on the lorry driver.

7. The learned counsel appearing for the appellant would contend that the said Balasubramanian had committed perjury in the present proceedings. Taking note of the contents of the said Ex.P1 F.I.R and the contrary stand taken by the said



Balasubramanian in the present case, I would like to come to the conclusion that the substantial portion of the blame and negligence will have to be fastened only on the car driver and not on the lorry driver. At the same time, the lorry driver cannot be totally exonerated of all negligence. It is relevant to note here that the appellant herein did not examine the driver of the lorry. He was the best person to speak about the manner of occurrence. Similarly, the defacto complainant Prabhu was also not summoned even as a court witness and examined by the appellant herein. The Motor Vehicle Inspector report was not also marked. Therefore, I am unable to accept the submission made by the learned counsel appearing for the appellant that the appellant must be totally exonerated.

8. In cases of collision of this nature occurring in the highway, in the very nature of things, negligence will have to be necessarily apportioned. I am therefore of the view that 70% of the negligence can be fixed on the car driver and 30% negligence on the lorry driver. The impugned award fastens liability equally on 50:50 basis on both the insurance companies. It requires modification. The award dated 12.02.2014 made in M.C.O.P.No.1550 of 2010 on the file of the VI Additional District Judge, Motor Accident Claims Tribunal, Madurai is modified.

9. The Tribunal awarded a sum of Rs.14,54,640/- as compensation. The appellant insurance company is directed to deposit the 30% of the compensation amount that is Rs.4,36,392/- and the sixth respondent insurance company is directed to deposit the 70% of the compensation amount that is Rs.10,18,248/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the first respondent is permitted to withdraw the same as apportioned by the Tribunal, by filing proper application, less the amount already withdrawn by her, if any. The share of the minor claimants shall be deposited in any one of the nationalized bank and the mother of the minor children, the first respondent herein is permitted to withdraw interest once in three months from the bank directly, till the minors attain majority. The appellant insurance company is permitted to withdraw the balance amount, if any.

10. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)



To

1. The VI Additional District Judge,
Motor Accident Claims Tribunal, Madurai.

2. The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR No. 90054

+ 1 CC TO Mr.G.MARUTHIAH, ADVOCATE IN SR No. 90301

SKM

TE/RP/SAR-1 : 07/08/2018 : 4P/6C

C.M.A. (MD) No.323 of 2015 and
MP (MD) No.1 of 2015
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