



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.682 of 2016

and

CMP (MD) No.7140 of 2016

The Divisional Manager,
United India Insurance Company Limited,
Bharathiyar Salai,
Contonment,
Trichy

... Appellant/2nd Respondent

Vs.

1.Suriya Begum
2.Minor Satham Hussain
3.Minor Shanofar
4.Dhara Beevi
(2nd and 3rd respondents are represented
through their mother and natural guardian
the first respondent)

5.The Chairman,
M.A.R.College of Engineering Technology
No.5, M.A.R.Complex,
T.V.S.Tolgate,
Trichy.

... 5th Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 02.12.2015 made in MCOP.No.221 of 2013 on the file of the Motor Accident Claims Tribunal / Special District Judge, Tiruchirappalli.

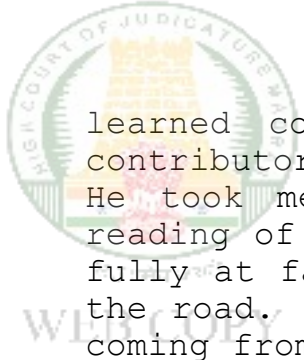
For Appellant : Mr.A.S.Mathialagan
For Respondents : Mr.C.Padmaraj for RR1 to 4
No Appearance for R5

JUDGMENT

Heard the learned counsel for the parties.

2.The insurance company has filed this appeal on the ground of liability.

3.The bus insured by the appellant insurance company and the two wheeler driven by the deceased collided with each other resulting in the death of the husband of the first respondent. The



learned counsel appearing for the appellant would contend that contributory negligence ought to have been fastened on the deceased. He took me through the evidence of D.W.1., the bus driver. A reading of the said testimony would show that the bus driver is not fully at fault. The accident had taken place on the right side of the road. The deceased was riding from East to West. The bus was coming from West to East. It could be seen that a van was going in front of the two wheeler of the deceased. The deceased had been following it very closely behind. The bus driver slowed down the bus. The van driver ably negotiated his vehicle and managed to take a quick left and go past. The deceased had not seen the bus coming from the opposite direction. He dashed against the bus and died in the resulting accident. This version of the bus driver is highly probable. But, if the bus driver had been a little more cautious, he could have even avoided this accident. The bus driver stated that he saw the van coming in a rash manner even at a distance of 50 feet. He also claimed that he slowed down the bus thereafter. In such circumstances, the bus driver ought to have envisaged that another vehicle could be following the van from behind. Since the bus driver had not slowed down his bus sufficiently, the accident had taken place.

4. In these circumstances, both the bus driver and the deceased must share a portion of the blame. I therefore fix contributory negligence on the deceased at 10%. The tribunal has awarded a sum of Rs.27,41,120/-. The same is reduced to a sum of Rs.24,67,008/- and rounded off to Rs.24,67,000/-. In all other respects, the award passed by the Tribunal is confirmed.

5. The appellant insurance company and the fifth respondent are fastened with the liability to pay the said sum of Rs.24,67,000/- with interest at the rate of 7.5% per annum and costs, within a period of twelve weeks from the date of receipt of a copy of this order, less the amount already deposited if any. On such deposit, the claimants are entitled to withdraw the said amount, as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application.

6. This civil miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(A.S)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal /
<https://hcservices.ecourts.gov.in/hcservices/>
 Special District Judge, Tiruchirappalli.



2.The Record Keeper,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.A.S.MATHIALAGAN Advocate in SR. No. 87398

+1cc to Mr.C.PADMARAJ Advocate in SR. No. 86949

SKM

JS/GT/SAR.1/11.12.2017/3P-5C

C.M.A. (MD) No.682 of 2016
and
CMP (MD) No.7140 of 2016
10.11.2017