

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1025 of 2018

United India Insurance Co. Ltd.,
No.34, C.J. Complex, 139,
Kumaran Road, Tiruppur. Appellant/5th Respondent

-vs-

Ramasamy (Deceased)

1.Palaniammal

2.Gomathi

3.Minor. Nandhini

4.Minor. Kamali

[3 and 4 minors represented by
her mother next friend and
guardian Gomathi]

5.K.Shanmugam

6.The Branch Manager,
Tamil Nadu State Transport Corporation,
(Coimbatore Division II) Limited,
Chennimalai Road, Erode.

7.Selvakumar

8.S.P.Boopathy Respondents/Petitioner 1 to 4
Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 17.09.2014 made in MCOP.No.1262 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.K.Varadha Kamaraj for R1 to R4
Mr.J.Lokesh
for M/s.K.J.Sivakumar for R6

J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]

The challenge in this appeal is to the award of the Motor Accident Claims Tribunal, Tiruppur made in MCOP.No.1262 of 2008. The respondents 1 to 4 along with one Ramasamy filed the claim petition in MCOP.No.1262 of 2008 seeking a

compensation of Rs.12,00,000/- for the death of one Saravanan who is the son of respondents 1 and 2, husband of the 3rd respondent and father of the minor respondents 4 and 5.

2. According to the respondents 1 to 5/ claimants, the deceased was riding a motor cycle along with his partner Sivakumar as pillion rider from South to North on the left side of the P.N.Road at about 7.00 pm on 11.06.2008. While so, the bus bearing Registration No.TN-33-N-1619 driven by the 6th respondent in a rash and negligent manner dashed against the Maruthi Car bearing Registration No.TN-39-B-7709 which came from the Eastern side cut road and turned right hit against the motor cycle in which the deceased and his partner Sivakumar were travelling. As a result of the impact the deceased was thrown off the vehicle and sustained severe head injuries and died on 15.06.2008 despite treatment.

3. It is claimed that the deceased was aged about 36 years at the time of accident and he was partner of Sri Murugan Knit Fashion at Tiruppur getting a monthly income of Rs.10,000/-. It is claimed that the deceased was only sole earning member in the family. Therefore, the claimants sought for compensation against the Corporation as well as the owner and the insurer of the Maruthi Car bearing Regn.No.TN-39-B-7709.

4. The said claim petition was resisted by the Corporation as well as the Insurance Company. The driver of the Corporation bus as well as the owners of the Maurthi Car remained exparte.

5. The Insurance Company/ appellant herein which was arrayed as 5th respondent in the Original Petition had contended that the complaint as well as the FIR would show that the accident occurred due to the negligence of the driver of the bus belonging to the Corporation, viz., the 5th respondent herein. Therefore, the Insurance Company would contend that it is only the Transport Corporation which is liable to pay the compensation.

6. The Transport Corporation had contended that the accident occurred only due to the fact that the Maruthi Car which came from the cut road turned into the main road without looking for any on coming vehicles on the main road, as a result of which the bus that was proceeding towards South had dashed against the car and the driver of the bus lost control due to the said impact which resulted in the bus dashing against the motor cycle which was coming in the opposite direction. Therefore, according to the 6th respondent Corporation, the cause of the accident is not the rash and negligent driving on the part of the bus driver but it was the negligence of the car driver.

7. The Tribunal had on the basis of the evidence concluded that the accident occurred due to the rash and negligent driving of the Maruthi Car. The Tribunal also took note of the sketch filed by the Sub-Inspector of Police, Tiruppur North Police Station demonstrating the location of the vehicles involved in the accident. While coming to the said conclusion, the Tribunal however found that the deceased was driving the motor cycle only on the left side of the road and the claim of the 6th respondent Corporation that the driver of the motor cycle was also negligent and he came and dashed against the parked bus is un-acceptable. Upon the said findings, the Tribunal held that it is the Insurance Company being the Insurer of the car, which is liable to pay the entire compensation.

8. While considering the quantum of compensation, the Tribunal arrived at a pecuniary loss of Rs.20,37,060/- and granted a further compensation of Rs.5,000/- for transportation. Rs.58,347/- towards medical expenses, based on medical bills, Rs.5,000/- for funeral expenses, Rs.1,00,000/- for loss of consortium and Rs.90,000/- for loss of love and affection. The Tribunal thus awarded a total compensation of Rs.22,95,407/-. Aggrieved by the said award, the Insurance Company has come forward with this appeal, claiming that the Tribunal was not justified in holding that the driver of the car was responsible for the accident and directing the Insurance Company to pay the entire compensation.

9. We have heard Mr.S.Arun Kumar, learned counsel appearing for the appellant Insurance Company, Mr.K.Varadja Kamaraj, learned counsel appearing for the respondents 1 to 4/ claimants and Mr.J.Lokesh, learned counsel appearing for Mr.K.J.Sivakumar for the 6th respondent. The respondents 5, 7 and 8 had remained exparte even before the Tribunal and they are not represented by the counsel in this appeal also.

10. Mr.S.Arun Kumar, learned counsel appearing for the appellant/ Insurance Company would rely upon the FIR filed as Ex.P1 which has been filed against the driver of the bus. He would also rely upon the evidence of PW2 who was a pillion rider and eye witness to the accident. Drawing our attention to the contents of the FIR as well as the evidence of PW2, wherein, PW2 has squarely blamed the bus driver for the accident, Mr.S.Arun Kumar, would contend that the Tribunal was in error in directing the Insurance Company to pay the entire compensation. PW2 who is an eye witness, in his chief examination had stated that it was the driver of the bus who had driven the bus in a rash and negligent manner and after dashing against the Maruthi Car swerved the bus towards South and dashed against the motor cycle which was being driven by the deceased Saravanan. During the cross examination by the learned counsel for the Transport Corporation, he has stated that it is not correct to say that the cause of the accident is the driver of the Maruthi Car. Relying upon the aforesaid

evidence Mr. S.Arun Kumar, would strenuously contend that the cause of the accident is rash and negligent driving of the bus driver and not the Maruthi Car.

11. Contending contra Mr.J.Lokesh, learned counsel appearing for the 6th respondent Corporation would submit that it is the Maruthi Car which came into the main road from the cut road and therefore the driver of the car should have been careful to watch the vehicles on the main road. It is because of the sudden entry of the car on to the main road, the driver of the bus had lost control and dashed against the car as well as the two wheeler. Mr.J.Lokesh, would further submit that the Tribunal was justified in directing the Insurance Company to pay the entire compensation.

12. Mr.K.Varadha Kamaraj, learned counsel appearing for the respondents 1 to 4 would submit that the Tribunal had come to a conclusion based on the assessment of the evidence on record and the award does not call for any interference.

13. We have given our anxious consideration to the contentions of the counsels on either side and we also perused the material papers including the documentary evidence in the form of Ex.P1, FIR and oral evidence of PW2. A perusal of the Ex.P1, FIR as well as the evidence of PW2, eye witness would go to show that the entire blame has been made against the driver of the Corporation bus. However, we cannot also loose sight of the fact that the Maruthi Car insured with the appellant/ Insurance Company had come into the main road from East to West cut road and turned towards South. The plan marked as Ex.R3 shows that the bus which was travelling from North to South had hit against the car on the eastern side of the road. The place of impact shows that the bus was also coming in the right direction and it is as a result of the impact with the car the bus had swerved to right and dashed against the motor cycle driven by the deceased.

14. From the plan marked as Ex.R3 and the evidence of PW2, we are of the considered opinion that both the bus driver as well as the car driver had contributed to the accident. The Tribunal was therefore not justified in concluding that it was the car driver alone who was responsible for the accident. As rightly pointed out by Mr.S.Arun Kumar, learned counsel for the Insurance Company, the car driver alone could not be said to have been 100% responsible for the accident. The very fact that the bus after dashing against the car had travelled towards right and had hit against the two wheeler shows that the bus was also speeding. We are therefore of the considered opinion that, the interest of the justice would be served by apportioning the liability to pay compensation equally between the appellant Insurance Company and the 6th respondent Corporation.

15. In view of the foregoing discussions the award of the Motor Accident Claims Tribunal, Tiruppur is modified while confirming the award of R.22,95,407/-, we direct the Insurance Company and the Transport Corporation to pay the compensation amount in equal moieties that is 50% each. The apportionment made by the Tribunal among the claimants is sustained.

16. The appeal is partly allowed, the award of the Tribunal is modified to the extent indicated above, there will be no costs in this appeal. The appellant Insurance Company and the 6th respondent Corporation is directed to deposit its share of compensation with proportionate interest and costs, with the Tribunal to the credit of MCOP.No.1262 of 2008 within a period of eight (8) weeks from the date of receipt of a copy of the order.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

dsa

To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court, Tiruppur.

+ 1 cc to Mr. V.T. Narendhiran, Advocate Sr.56217
+ 1 cc to Mr. K.J. Sivakumar, Advocate Sr.56464
+ 1 cc to Mr.S. Arunkumar, Advocate Sr.56220

CMA.No.1025 of 2018

NM(CO)
EU(16/10/2018)

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