

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.2103 and 1652 of 2005

1.Thangavelu

2.Srimathi A.L.R.M.Deivani Achi
Proprietrix, Thanga Raja Bus Service,
117, 7th Street Extension,
Gandhipuram, Coimbatore- 641012

3.M/s.New India Assurance Company Ltd.,
R.S.Puram Branch, 435, D.B.Road, R.S.Puram,
Coimbatore-641002 .. Appellants in CMA.No. 2103/2005
and
Respondents in CMA.No.1652/2005

Versus

1.R.Latha
2.Minor S.R.Krishanth
3.Minor R.Kowshic
[Minors 2 and 3 represented by the
1st respondent herein]
4.P.Shanmugam
5.Sarojini .. Respondents in CMA.No.2103/2005
and
Appellants in CMA.No.1652/2005

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 17.06.2004 made in M.C.O.P.No.629/2001 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Judge, Fast Track Court No.III, Coimbatore.

For Appellants
in CMA.No.2103/2005 : Ms.R.Sreevidhya
in CMA.No.1652/2005 : Mr.M.A.Mudimannan for Appellants

For Respondents
in CMA.No.2103/2005 : Mr.M.A.Mudimannan for RR1 to 5
in CMA.No.1652/2005 : Ms.R.Sreevidhya

C O M M O N J U D G M E N T

The claimants have filed the claim application for the death of one Rajan, who is the husband of R1 and father of R2 & R3 and son of R4 & R5. On 22.12.1999, at about 8.00 pm, the deceased Rajan and one Krishnamoorthy as a pillion rider were travelling in a motor cycle bearing registration No.TN 41E 6985. At that time, the first respondent/driver, who drove the bus bearing registration No.TN38 4343 which came from behind in a rash and negligent manner, hit behind the motor cycle. Due to the sudden impact, the said Rajan and Krishnamoorthy were thrown off from the vehicle and sustained severe injuries. Subsequently, the said Rajan died in the hospital. So the petitioners who are the legal heirs of the deceased Rajan have claimed compensation to the tune of Rs.10 lakhs. The respondents 1 and 2, who are the owner and driver of the vehicles were set ex-parte and insurance company/ 3rd respondent appeared before the Tribunal and contested the claim petition.

2.The Tribunal upon analyzing the evidence and documents placed by both side, especially the facts placed by the 3rd respondent/ insurance company has awarded compensation of Rs.7,18,500/-. In view of the submissions made by the counsel for the 3rd respondent, the Tribunal has held that the deceased also contributed the negligence for the cause of the accident, hence the Tribunal quantify to pay the same at the rate of 50%. Accordingly, a sum of Rs.3,59,250/- was awarded to the claimants. As against the same, both the claimants and the insurance company have preferred these appeals.

3.Heard both sides and perused the records.

4.The appellant in the CMA No.2103/2005 has argued that it is a clear case and also the evidence placed before the Tribunal will prove that it is the negligent driving on the part of the deceased which contributed for the accident, since Ex.R1, the medical documents clearly prove the fact that the deceased was in a drunken state which was evident from the medical reports.

5.On the other hand the appellants/claimants in CMA No.1652/2005 have vehemently argued that it is only the bus, which came behind the two wheeler and hit against the same and caused the accident which resulted the death. This factum of accident was very much proved by MVI Report and also by the injuries sustained by the deceased.

6.On a perusal of the documents, it is seen that FIR was

registered against the driver of the bus and charge sheet was also filed and a criminal case was also conducted before the Magistrate and the judgment copy of the same was filed before the Tribunal. In the said judgment, a finding has been given that the accident did not occur due to rash and negligent driving. Even involvement of the driver was not proved before Criminal Court. It is also observed that the complaint was given by one Rajan wherein the name of the bus was not mentioned. P.W.1 who is the investigating officer in the said case has deposed before the Tribunal that he enquired the complaint of one Rajan and also Krishnamoorthy, the pillion rider along with the deceased at the time of accident. He has also clearly deposed that from investigation, he came to understand that there was no accident on 22.12.1999 at about 8.00 pm. Further, evidence gone through by the Tribunal is also at page 65. The fact that was found by the Tribunal, based on the evidence is that the bus was running 30 feet from behind the two wheeler at the time of occurrence. The two persons who were travelling in the motor cycle in front of the bus lost their balance and fell on the road. The Tribunal, based on the evidence of RW.1 and also the investigation report and also Ex.P2, the motor vehicle inspector's report regarding the damages caused to the two wheeler.

7.Per contra, it is argued by the learned counsel appearing for the Insurance Company that if the bus was driven in a rash and negligent manner and hit against the two wheeler from behind, then it would have crushed entire vehicle. The damage found on the two wheeler is only in the handle bar and the front wheel was damaged. If really the claim of the petitioners that the bus caused the accident from behind, then definitely the damages would have been more. Hence, he deny the accident was caused by the bus and the liability fixed on them has to be set aside.

8.It is also observed from the evidence and also medical documents that the deceased as well as pillion rider, had driven the two wheeler after consuming alcohol. The said bus also came behind the two wheeler at the distance of 30 feet. Hence, the finding of the Tribunal by fixing the negligence on the part of the deceased at 50% on the part of the driver of the bus has to be re-considered.

9.On perusal of the damages found on the two wheeler and also the report of the investigation officer, it is clear that there is no rash and negligent driving on the part of the driver of the bus. But it is the argument of the claimants that the consumption of alcohol is not the cause for the accident and it is due to the rash and negligence driving on the part of the

bus, the accident had occurred. But the report and also evidence placed before the criminal Court reveals the fact that the said two wheeler was not driven in a proper manner. Ex.R5 final opinion submitted by the Insurance Company also confirms the same.

10. In view of the above, this Court comes to the conclusion that, if the accident occurred due to the rash and negligence driving by the driver of the bus and hit behind the two wheeler as stated by the claimants, the most injured person would be the pillion rider whereas, in this case, the rider of the two wheeler sustained injuries and died and the front side of the motor cycle got damaged. Hence it is clear that the rider of the two wheeler has invited the accident on his own negligence. In view of the above, this Court is of the view that, it would be appropriate to modify the liability fixed by the tribunal. Accordingly, from the total compensation of Rs.7,18,500/- the liability fixed by the tribunal on the rider of the two wheeler/deceased is modified to the extent of 75% and the liability fixed on the Insurance Company to the extent of 25%. The award passed by the Tribunal is modified accordingly.

11. In the result, the appeal preferred by the claimants in CMA No.1652 of 2005 is dismissed and the appeal preferred by the Insurance Company in CMA No.2103 of 2005 is partly allowed.

12. The Insurance Company/3rd appellant in CMA No.2103 of 2005 is directed to deposit 25% of the award passed by the Tribunal i.e., Rs.1,79,625/- and if already deposited the award amount as ordered by the Tribunal, withdraw the remaining amount. The modified award shall carry the rate of interest at 7.5% per annum. The apportionment shall be as ordered by the Tribunal. The Insurance Company is directed to deposit the said amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimants bank account through RTGS within one week thereon. The amount awarded towards minor respondents shall be deposited in any one of the Nationalised Bank till they attain majority. The accrued interest on such deposit shall be withdrawn by R1/Mother of the minor children.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

AT

To

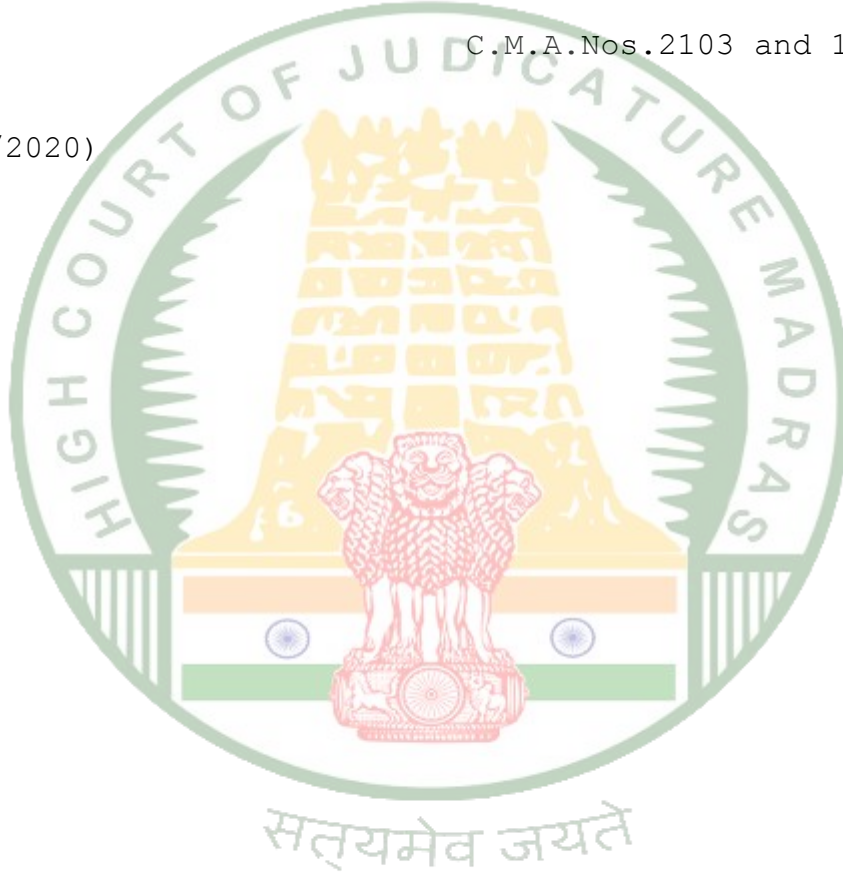
1.The Motor Accident Claims Tribunal,
Additional District & Sessions Judge,
Fast Track Court No.III, Coimbatore.

2. The Section Officer,
V.R. Section,
High Court,
Madras - 104.

+1cc to Ms.R.Sreevidhya, Advocate SR.No.68619

C.M.A.Nos.2103 and 1652 of 2005

MR(CO)
GMY(06/01/2020)



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