

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.990 of 2006

and

CMP.No.3918 of 2006

The New India Assurance Co. Ltd.,
Ram Complex, Paramathi Road,
Namakkal-637 001.

.... Appellant/6th Respondent

Versus

1. V.Sailapathy ... Respondent 1/Claimant

2. K.Muthupandian

3. K.Markandayulu

4. United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai.

5. Kumaresan

6. S.M.R.Transport
No.127-A/5-B, Salem Road,
Namakkal Post, Namakkal District

7. Mani @ Arumugam

8. K.S.Karuppusamy

9. United India Insurance Co. Ltd.,
No.3, Giriram Buildings, Main Road,
Gobichettipalayam
(The respondents 2,3,5,6,7 & 8 remained
exparte in the lower court and hence
notice dispensed with for them)

.... Respondents 2 to 9/Respondents

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act 1988, against the Judgment and Decree made in
M.A.C.T.O.P.No.32 of 2005 on the file of the Motor Accidents

Claims Tribunal (Additional District Judge, Fast Track Court 2)
at Gobichettipalayam dated 30.03.2005.

For Appellant : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree made in M.A.C.T.O.P.No.32 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court 2) at Gobichettipalayam dated 30.03.2005.

2. The brief facts leading to the claim application are as follows :-

On 18.05.2002, at about 12.50 p.m., when the petitioner V.Sailapathy and Chandran were travelling in a Jeep bearing Registration No.TN-33-U-2688 from Salem to Bhavani in the main road from west to east and when they were nearing Kongu Kalyanamandapam, the lorry bearing Registration No.TN-04-Z-3859 which came from east to west direction in a rash and negligent manner and dashed against the lorry bearing Registration No.TN-28-J-5788 driven by fifth respondent herein from west to east and dashed against the Jeep in which the petitioner was travelling. Because of the sudden hit by the said lorry, the Jeep was capsized on the road and the lorry No.TN-04-Z-3859, which was proceeding in front of the Jeep, was also capsized on the road. After crushing the Jeep, the right side of the lorry No.TN-28-J-5788 was also damaged. The claimant, driver of the Jeep and Chandran were sustained severe injuries. The claimant was taken to Lotus Hospital, Erode for treatment. The claimant has stated that the driver of the lorry bearing Registration No.TN0423859, is solely responsible for the accident. The petitioner also claimed a sum of Rs.6,00,000/- as compensation for the injury, disability, loss of amenities and for the expenses incurred by him.

3.The sixth respondent/New India Insurance Company has filed the counter statement stating that the petitioner has suppressed the truth regarding the accident. It is also stated that perusal of the FIR will prove the fact that the respondents four and six are unnecessary parties. The petitioner has specifically stated that the first respondent/driver of the lorry No. TN-04-Z-3859 is solely responsible for causing the accident and the charge was also framed against him. The other aspects regarding the claim made by the claimant for the injury, treatment, disability, medical expenses are very much denied and stated as excessive.

4.The Tribunal after analyzing the evidence and documents placed before the same, has given a findings that both the lorries which came opposite to each other are responsible for the accident. The Tribunal has awarded a sum of Rs.3,73,000/- to be paid by the respondents. The driver, owner and insurer of the Jeep and all respondents are liable to pay the compensation. Aggrieved against the said liability, the sixth respondent/New India Assurance Company has preferred this appeal.

5.The sum awarded by the Tribunal at Rs.3,73,000/- under various heads as follows:-

Heads	Sum awarded by the Tribunal (Rs.)
Multiple Fracture	1,20,000.00
Pain and Sufferings	5,000.00
Fracture in the Jaw	50,000.00
Pain and Sufferings	5,000.00
Pain in knee	55,000.00
Pain and Sufferings	5,000.00
Another grievous injury	30,000.00
Permanent Disability	40,000.00
One simple injury	5,000.00
Medical Expenses	50,000.00
Loss of Income	5,000.00
Transport	1,000.00
Nourishment	2,000.00
Total Compensation	3,73,000.00

6.In the grounds of appeal, the appellant has stated that the finding of the Tribunal that the fifth respondent who is the driver of the tanker lorry bearing Registration No.TN-28-J-5788 owned by the sixth respondent and the insured who is the appellant herein are also responsible for the accident. Hence, the fixation of equal liability on this appellant is erroneous and unsustainable. It is the driver of the lorry owned by third respondent and insured with the 4th respondent is responsible for the said accident. The Tribunal has not considered the facts stated by the claimant in the claim application when the claimant has blamed only the second respondent for the said accident.

7.The Tribunal ought to have fixed the liability only on the fourth respondent. The sketch Ex.A3 was also not considered by the Tribunal wherein, it is clearly shows that it is the lorry bearing Registration No.TN-04-Z-3859 came in the wrong side of the road and after dashing against the another lorry No.TN-28-J-5788, dashed the Jeep No. TN-33-U-2688, which was coming behind the said lorry and further went extreme wrong side and capsized. The charge sheet also filed only against the second respondent. The driver of the said lorry was also prosecuted for rash and negligent driving and the judgment of the Criminal Court Ex.A7 was filed. Hence there are sufficient documentary and oral evidence for the negligence caused by the driver of the lorry Registration No. TN-04-Z-3859. Hence, the apportioning liability by the Tribunal is not proper and justified one. The appellant has also aggrieved against the sum awarded as compensation under various heads.

8.Heard both sides and perused the records.

9.On the side of the appellant, it is argued that when there is a clear statement by the claimant in the claim application that it is the driver of the lorry bearing Registration No.TN-04-Z-3859 driven by its driver in a rash and negligent manner and dashed against the fourth respondent lorry and again hit at the Jeep, in which the petitioner was travelling and the said Jeep was also capsized. On perusal of the records, it is observed that the driver of the other lorry bearing Registration No.TN-28-J-5788 preferred the complaint. Ex.P1 who has furnished the registration of the lorry which came in the opposite direction and its driver by stating that it is the said tanker lorry driven in a rash and negligent manner and hit against the vehicle which was proceeding before him. Then, further dashed against the Jeep and for which Ex.P3 the rough sketch also filed before the Tribunal.

10.Hence, when the said fact was not informed to the driver of the Jeep by the lorry driver. The driver of the said lorry is also responsible for the negligence. It is also observed that Ex.P4, the report regarding the lorry and the inspection report of the Jeep is Ex.P5 were all filed before the Tribunal. It is also observed that the lorry bearing Registration No.TN-04-Z-3859 sustained severe damages. The said report was marked as Ex.P5. As per Ex.P7 judgment, the charge sheet was preferred against the first respondent and he has also admitted the offence and the judgment is marked as Ex.P7.

11.The Tribunal has observed that based on the said reports it is the driver of the lorry which came in the opposite direction has caused the accident and further it is also stated that the driver of the both the lorries and also the driver of

the Jeep are also responsible for the accident. But, it is argued by the appellant that when the petitioner of the Jeep himself has clearly stated the fact that it is the first respondent lorry which came in the opposite direction hit against the another lorry and again hit against the Jeep and caused the accident, the liability fixed by the Tribunal on all the respondents by stating the reasons is not proper and justified. It is also argued that when the charge sheet is filed against the driver of the lorry No. TN-04-Z-3859 as he was solely responsible for the accident and the judgment the judgment was also passed against the said lorry driver, the findings given by the Tribunal by fixing the liability on this appellant is not based on any eye witness or any other document. The Tribunal has also observed in its findings that it is the driver of the other lorry who has responsibility to give signal to the driver of the Jeep who was coming behind his vehicle about the vehicle, which is coming in the opposite direction.

12. On perusal of the evidence and the fact stated in the claim application and also the documents relating to FIR, judgment and the rough sketch, it is very much observed that the accident occurred only due to rash and negligent on the part of the driver of the lorry Registration No. TN-04-Z-3859. Therefore, this Court is of the view that the findings of the Tribunal is not proper.

13. Under these circumstances, this Court inclined to hold that the appellant cannot be made liable. The Tribunal has passed an award not only against the appellant herein but also against the other respondents. The other respondents 2 to 9 herein had not chosen to come up on appeal. Therefore, in all fairness, the liability on the appellant herein is set aside. The award passed by the Tribunal is modified accordingly. The claimant/1st Respondent herein is entitled to proceed against the other respondents herein for enforcing the award. This Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gbi/at

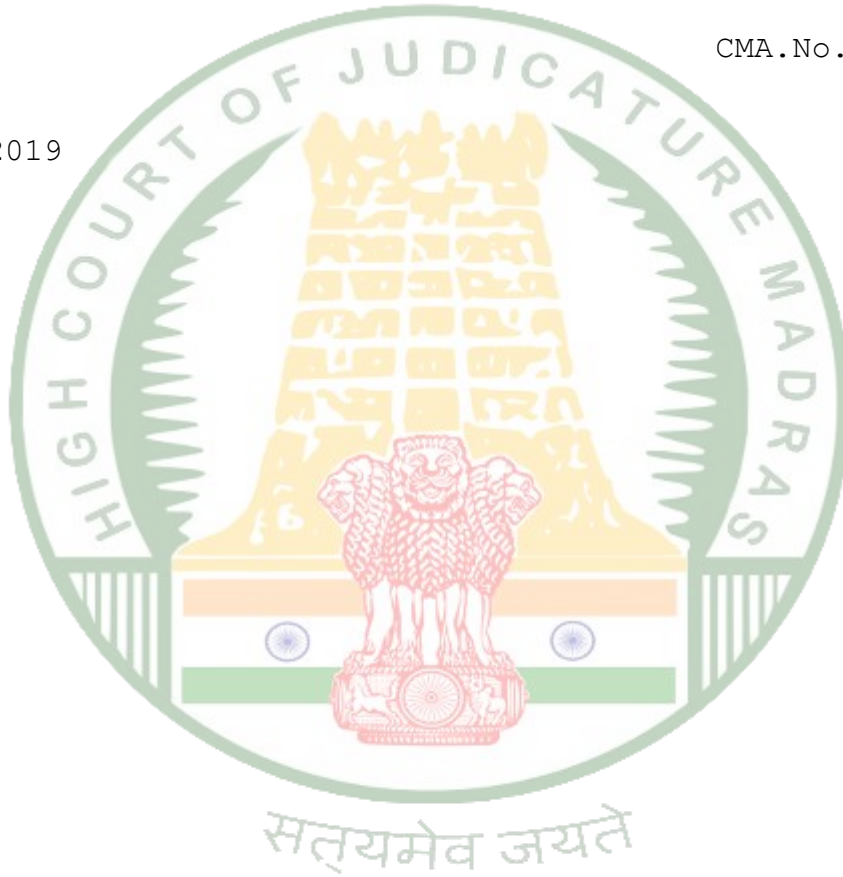
To

1. The Motor Accident Claims Tribunal,
(Additional District Judge, Fast Track Court 2)
Gobichettipalayam.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No.74199
+lcc to Mr.M.Krishnamoorthy, Advocate, S.R.No.74457

CMA.No.990 of 2006

MG(CO)
CS/08/08/2019



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