

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 05.12.2018

DELIVERED ON 12.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.487, 488, 489, 490, 491, 492, 493 and 494 of 2011
and
CMP No.1 of 2011

The Manager,
The New India Assurance Company Limited,
No.80, Arcot Road, Porur,
Chennai 600 110.

... Appellant/2nd respondent
in all CMAs

Vs.

Parvathy

.... 1st respondent/ Claimant
in CMA No.487 of 2011

Varadaraju

....1st respondent / Claimant
in CMA 488 of 2011

Saminathan

... 1st respondent / Claimant
in CMA 489 of 2011

Rajathi

... 1st respondent/ Claimant
in CMA 490 of 2011

Ambiga

... 1st respondent/Claimant
in CMA 491 of 2011

Rajamani

... 1st respondent/ Claimant
in CMA 492 of 2011

Pavayee

... 1st respondent / Claimant
in CMA 493 of 2011

Sengan

... 1st respondent / Claimant
in CMA 494 of 2011

2. P.Shanmuga Sundaram
3. Mohan
4. The Manager,

I.C.I.C.I.Lambard General Insurance
Company Limited, Opposite to Saradha College,
Asthampatti, Salem-7.

...Respondents 2 to 4 /respondents 1, 3, 4
in all CMAs

Prayer in CMA 487 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 14.10.2010 passed in M.C.O.P.No.185 of 2007 by the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Namakkal

Prayer in CMA 488 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 14.10.2010 passed in M.C.O.P.No.186 of 2007 by the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Namakkal.

Prayer in CMA 489 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 14.10.2010 passed in M.C.O.P.No.188 of 2007 by the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Namakkal.

Prayer in CMA 490 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 14.10.2010 passed in M.C.O.P.No.189 of 2007 by the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Namakkal.

Prayer in CMA 491 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 14.10.2010 passed in M.C.O.P.No.191 of 2007 by the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Namakkal.

Prayer in CMA 492 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 14.10.2010 passed in M.C.O.P.No.192 of 2007 by the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Namakkal.

Prayer in CMA 493 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 14.10.2010 passed in M.C.O.P.No.194 of 2007 by the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Namakkal.

Prayer in CMA 494 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 14.10.2010 passed in M.C.O.P.No.195 of 2007 by the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Namakkal.

In all CMAs

For Appellant : Mr.M.Krishnamoorthy

For 1st Respondent : Mr.C.Kulanthaivel

For 4th Respondent : R.Sreevidhya

Respondents 2 and 3 : Exparte

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

The Manager, New India Assurance Company Limited, Namakkal has filed the present appeal under Section 173 of the Motor Vehicle Act, 1988 questioning the liability fixed on them by the tribunal.

2. The claimants filed their respective claim petition under Section 166 of the Motor Vehicles Act before the Chief Judicial Magistrate, Namakkal sought compensation for the injuries sustained by them in a road accident that took place on 20.02.2007, when they were travelling in a tipper lorry bearing registration No.TN-30-Z-8676 on Thammampatti- Malliarai road. According to the claimants, when the tipper lorry was nearing Keeripatti Kizhkanavai Velalar Gounder Mariamman Koil at about 9.30 a.m., a milk van bearing registration No. TN 30-K-2664, driven by its driver rashly and negligently, came on the opposite direction after overtaking another goods lorry and hit the tipper lorry, as a result of which, they sustained injuries. It is further contended that since the said milk van was insured with the present appellant, both of them are jointly and severally liable to pay compensation to them.

4. Before tribunal, the owner of the lorry as well as his insurance company namely I.C.I.C.I. Lambard General Insurance Company Limited were also shown as parties. However, the tribunal held that only the driver of the milk van was rash and negligent in driving his vehicle and therefore, directed the present appellant to pay compensation to the persons, who travelled in the tipper lorry.

5. Aggrieved over the order passed by the tribunal, the present appeal has been filed by the appellant/Insurance company.

6. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant would contend that when the First Information Report (Ex.P1) and the final report (Ex.R4) speak about the negligence on the part of the tipper lorry, the tribunal was totally wrong in fixing the entire liability on the driver of the milk van. He would further contend that when there is a head on collision between two vehicles on a road, the negligence should be equally divided between the vehicles involved in the accident and the tribunal without considering the manner of the accident, had fastened the liability entirely on the driver of the milk van. It is also his contention that more than 20 persons were travelling in the tipper lorry and that since the tipper lorry was over loaded, the driver of the lorry did not have any control over his lorry and caused the accident.

7. In the instant case, immediately after the accident, the First Information Report was lodged with the police by the cleaner of the milk van. Incidentally, the driver of the milk van died on spot. All the petitioners had filed claim petitions before the tribunal and examined themselves as witnesses and have clearly deposed that the driver of the milk van was responsible for the accident. Apart from examining themselves, they have also examined some independent witnesses to substantiate their contentions. Relying on the evidence adduced on the side of the claimants, the tribunal fixed the entire liability on the driver of the milk van and directed the present appellant / Insurance company to pay compensation to the injured passengers, who were travelling in the tipper lorry and then to recover the same from the owner of the milk van. The tribunal has also observed that merely based on the first information Report and final report, the negligence cannot be fixed on the driver of the tipper lorry, since the police seems to have filed a final report based on the complaint given by the cleaner of the lorry. It is also observed that the police were sympathetic towards the driver of the milk van, since he died in the accident.

8. A perusal of the evidence adduced on both sides shows that the present appellant did not examine any witness to show that the driver of the tipper lorry was also responsible for the accident. On the other hand, all the claimants and other witnesses have clearly spoken about the rash and negligent driving of the driver of the milk van.

9. Determination of negligence depends on consideration of all surrounding facts and circumstances. What needs to be seen is whether the driver had exercised ordinary care and caution expected of a prudent person in those facts and circumstances. However, in evaluating evidence for a conclusion on the question of negligence, the standard of proof required in a criminal case is not to be applied and broad view on the basis of probabilities would be the proper approach.

10. In the instant case, all the witnesses have deposed that the milk van after overtaking another lorry loaded with hay stock, hit the tipper lorry bearing registration No.TN-30-Z-8676. Generally, the onus of proof of rash and negligent driving of the vehicle is on the claimants and in the instant case, as already observed, all the witnesses to the occurrence had deposed that the driver of the milk van was responsible for the accident. Merely because the tipper lorry was found to have been over loaded with 20 persons, it cannot be said that the driver of the tipper lorry was responsible for the accident. It is well known that mostly the passengers in this country are packed in these types of vehicle like chattels, and they would not even allowed to sit, because, the seating space is only for few passengers.

11. As already pointed out, no evidence was adduced on the side of the present appellant to show that the driver of the milk van was also responsible for the accident. Apart from this, the tribunal has analysed the entire evidence on record and had clearly held that the driver of the milk van alone was responsible for the accident. The observations of the tribunal are well founded and cannot be interfered with. As far as the quantum of compensation is concerned, the claimants did not file any cross objection or appeal. The tribunal had properly assessed the materials on record and had awarded compensation, which in the considered opinion of this court appears to be just and reasonable.

12. In the result,

(i) The appeals in CMA No.487, 488, 489, 490, 491, 492, 493 and 494 of 2011 are dismissed. No costs. The connected miscellaneous petitions are closed.

(ii) The order dated 14.10.2010 in M.C.O.P.No.186, 188, 189, 191, 192, 194 and 195 of 2007 passed by the Chief Judicial Magistrate, Motor Vehicle Accidents Claims Tribunal, Namakkal are upheld.

(iii) The appellant/ New India Assurance Company Limited is directed to deposit the entire compensation awarded by the tribunal along with interest at the rate of 7.5% per annum within a period of 4 weeks from the date of receipt of a

copy of this order and then recover the same from the owner of the milk van.

(iv) On such deposit being made by the Insurance company, the claimants are entitled to withdraw the same, as per the apportioned meant by the tribunal, after following due process of law.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mst

To

1. The Chief Judicial Magistrate,
Motor Vehicle Accidents Claims Tribunal,
Namakkal
2. The Section Officer, VR Section,
High Court, Madras. (2 copies)

+8cc to Mr.M.Krishnamoorthy, Advocate SR.No.85922 to 85929

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.85968

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.87038

CMA.No.487, 488, 489,
490, 491, 492, 493, 494 of 2011 and
and CMP No.1 of 2011

KJI (CO)
GMY (28/01/2019)

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