

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.Nos.3150 and 3151 of 2014
and
M.P.Nos.1 and 1 of 2014

The Divisional Manager
M/s. National Insurance Co.Ltd
Puducherry.

..Appellant in
both the appeals/2nd Respondent

..vs..

1.K.Thangaraju ... 1st Respondent/Petitioner in
M.C.O.P.No.2775 of 2007

2.R.Shobarani

3.The Managing Director,
TNST Corporation (Villupuram) Ltd
Thiruvannamalai Region,
Thiruvannamalai.

.. 2 & 3rd Respondents in
CMA.No.3150/2014/
Respondents 1 & 3

1.P.Vasuki

2.P.Janakidevi

3.P.Anandha Natarajan

4.Subharani (Minor)

5.R.Narayanasamy (Died)

6.Lakshmi (Died)

7.R.Shobarani

8.The Managing Director,
TNST Corporation (Villupuram) Ltd
Thiruvannamalai Region,
Thiruvannamalai.

.. Respondents 1 to 6/Petitioner

.. Respondents 7 & 8
in CMA.No.3151/2014/
Respondents 1 & 3

COMMON PRAYER:

Civil Miscellaneous Appeals has been filed against the common award and decree dated 28.03.2013 passed by the learned Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Cuddalore in MCOP.Nos.2775/20017 and 44/2008.

For Appellant : Ms.C.Harini for Mr.N.Vijayaraghavan

For Respondents : No appearance for R1 & R2 in
CMA.3150/2014 and R1 to R4 in
CMA.3151/2014
Mr.S.Sairaman for R3 in
CMA.3150/2014 and R8 in
CMA.3151/2014

COMMON JUDGMENT

(Judgment of this Court was made by R.Subbiah, J.)

Both these appeals have been preferred by the appellant-Insurance Company against a common award passed by the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Cuddalore (for brevity, "the Tribunal") in the respective claim petitions in MCOP.Nos.2775 of 2007 and 44 of 2008, whereby, the Tribunal directed the owner of the vehicle viz., Maruthi Omni bearing Regn.No.TN31 L7765 as well as its insurer viz., the appellant herein, to pay compensation of Rs.1,06,000/- and Rs.19,07,000/- to the respective claimants.

2.Since both the appeals arise out of a common award, the same are disposed of, by this common judgment.

3.The first respondent in CMA.No.3150 of 2014 by name Thangaraju, is the petitioner/claimant in MCOP.No.2775 of 2007, who sustained injuries in an accident that had occurred on 22.08.2007. The respondents 1 to 4 in CMA.No.3151 of 2014 are the petitioners/claimants 1 to 4 in MCOP.No.44 of 2008, who are the wife, daughter, son and minor daughter of one Palani, who died in the aforesaid accident. The owner of the offending vehicle viz., R.Shobarani and the Tamil Nadu State Transport Corporation (Villupuram) Limited, Thiruvannamalai, are arrayed as party respondents to these appeals.

4.The case of the petitioners/claimants is that on 22.08.2007 at about 7.00am, while the deceased Palani and the injured Thangaraju along with others, were travelling in a vehicle viz., Maruthi Omni bearing Regn.No.TN31 L 7765 towards Chennai, the driver of the said vehicle drove it at a hectic speed and in a rash and negligent manner; turned it to Uthiramerur Salai at Pazhamathur Koottu Road; and dashed against a bus bearing Regn.No.TN21 N 0764 belonging to the respondent Transport Corporation, which came from Chennai to Vandavasi. As a result of the same, the said Palani and another died on the spot and the said Thangaraju and some others sustained grievous injuries. Hence, the injured Thangaraju and the legal heirs of the deceased Palani filed two separate claims petitions i.e.,

MCOP.Nos.2775 of 2007 and 44 of 2008 before the Tribunal, against the owner as well as the insurer of Maruthi Omni and also the owner of the bus, seeking compensation of Rs.5,00,000/- and Rs.25,00,000/- respectively.

5.Before the Tribunal, common evidence was let in both the Original Petitions. On the side of the claimants, the wife of the deceased Palani, the injured Thangaraju and one Dr.Venugopal were examined as P.W.1 to P.W.3 and 14 documents were marked as Exs.P1 to P14. On the side of the Insurance company as well as the Transport corporation, neither oral nor documentary evidence was adduced.

6.The Tribunal, after analysing the evidence placed before it, concluded that the accident had occurred due to the rash and negligent driving of the driver of Maruthi Omni and hence, fastened the entire liability on the owner as well as the insurer of the aforesaid offending vehicle. Accordingly, the Tribunal awarded a sum of Rs.1,06,000/- and Rs.19,07,000/- towards compensation to the respective claimants. Aggrieved over the same, the Insurer of Maruthi Omni vehicle is before this Court.

7.The learned counsel for the appellant - Insurance Company submitted that when two vehicles were involved in the accident, it has to be construed that both the drivers of the offending vehicles have driven the same negligently and no negligence can be fastened on one particular vehicle, since it is a case of composite negligence on the part of the drivers of both the vehicles. However, without considering the same, the Tribunal held that the accident had occurred due to the rash and negligent driving of the driver of Maruthi Omni, on the ground that Ex.P1 -FIR was registered only against the driver of Maruthi Omni, based on the complaint lodged by the driver of the bus and accordingly, fastened the entire liability on the owner as well as the insurer of Maruthi Omni alone. The learned counsel further submitted that in the award passed in MCOP.Nos.39/2008, 165/2008 and 654/2008 arising out the same accident, the Tribunal has apportioned the liability between the insurance company and the Transport corporation equally and as such, the Tribunal ought not to have fastened the entire liability on the appellant insurance company alone. Hence, the learned counsel sought to modify the award passed by the Tribunal to that extent.

8.Per contra, the learned counsel for the respondent Transport Corporation submitted that the Tribunal, after examining all the oral and documentary evidence, fixed the liability on the appellant Insurance Company and the same does not call for any interference.

9. Heard both sides and perused the records.

10. There is no dispute with regard to the quantum of compensation awarded by the Tribunal. What was disputed is the proportion of the liability fixed on the appellant - Insurance Company to pay compensation to the claimants.

11. Admittedly, two vehicles viz., Maruthi Omni and Transport Corporation bus were involved in the accident. Neither oral nor documentary evidence was adduced, either on the side of the appellant - Insurance Company or on the side of the respondent Transport Corporation. P.W.1 to P.W.3 and Exs.P1 to P14 were adduced only by the claimants.

12. It is the specific contention of the learned counsel for the appellant - Insurance Company that there was composite negligence on the part of the drivers of both the vehicles in causing the accident, however, no one was examined and no document was marked either on the side of the appellant - Insurance Company or by the respondent - Transport Corporation. In such circumstances, the Tribunal ought not to have fixed the entire liability on the appellant - Insurance Company to pay compensation to the claimants. The learned counsel further contended that the Tribunal, in the award dated 15.04.2013 passed in MCOP.Nos.39/2008, 165/2008 and 654/2008 arising out of the same accident, apportioned the liability between the appellant Insurance Company and the respondent Transport Corporation equally and the said award was not challenged by the respondent Transport Corporation by filing any appeal and hence, the Tribunal ought not to have taken a different stand in respect of the present claim petitions alone. We find some bonafide in the contentions so made by the learned counsel for the appellant - Insurance Company.

13. The Tribunal simply relied on Ex.P1 FIR registered against the driver of Maruthi Omni and found that the accident had occurred due to the rash and negligent driving of the driver of the said vehicle. Apart from the FIR, there was absolutely no piece of evidence available to conclude that the accident was solely due to the negligence on the part of the driver of Maruthi Omni. We do not agree with the finding so rendered by the Tribunal, as it is well settled that the mere registration of a criminal case or submission of a final report alleging commission of a criminal offence, shall not be ipso facto taken into account for the purpose of fixing the negligence on the part of the driver of the Omni Vehicle.

14. Yet another factor to be taken into consideration is that the Tribunal, in the award passed in some other claim petitions, arising out of the same accident, arrived at a conclusion that

the accident was due to the rash and negligent driving of the drivers of both the vehicles and ultimately, fastened the liability on both the appellant Insurance Company and the respondent Transport Corporation equally and the said award has not been questioned by the respondent Transport Corporation. Hence, we come to an irresistible conclusion that the finding of the Tribunal in fixing the liability on the appellant - Insurance Company needs to be modified to the extent of 50% alone.

15. Now, the position with regard to the case of composite negligence is well settled by the Supreme Court that where an accident had happened due to the composite negligence of the drivers of two vehicles, their liability would be joint and several and the claimant could proceed against both or any one of the joint tort feors and recover full compensation, to which, he is entitled and the apportionment of negligence between joint tort-feors is for the benefit of the respondents to claim contribution from the other tort-feasor, if one of them satisfies the award against the claimant and that, it is open to the tort-feasor, who satisfies the award, to proceed against the other tort-feasor for contribution. At this juncture, it is noteworthy to refer to the decision reported in 2015(1) TNMAC 801 (SC) (Khenyei v. New India Assurance Company Ltd. and others), wherein, in para 18, it has been held as follows:

18....What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feors and to recover the entire compensation as liability of joint tort feors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been

determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

16. In the light of the aforesaid decision of the Supreme Court, we have no hesitation to hold that the accident had occurred as a result of composite negligence of both the vehicles viz., Maruthi Omni and bus and the victims are the occupants of Maruthi Omni vehicle. As such, the claimants are entitled to claim compensation against both or any one of the joint tortfeasors and to recover the entire compensation, as the liability of the tortfeasors is joint and several. In the instant case, the claimants have impleaded all the tortfeasors. Hence, we apportion the liability to pay compensation to the claimants between the appellant - Insurance Company and the respondent Transport Corporation in the ratio of 50 : 50. In view of the same, it is open to the appellant - Insurance Company to recover the amount from the respondent Transport Corporation in the same execution proceedings.

17. Both these appeals are allowed to the extent as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rk

To

The Motor Accidents Claims Tribunal
I Additional District and Sessions Judge,
Cuddalore.

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Copy To

The Section Officer/Record Clerk,
VR Section, High Court,
Madras (2 Copies)

+1cc to M/S.Sreethi Law Firm, Advocate, S.R.No.14438

+1cc to Mr.S.Sairaman , Advocate, S.R.No.14019

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.15011

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.15012 (07.08.19)

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RSI (CO)
CS/07/02/2019



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