

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.09.2018	Delivered on 28.09.2018
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CORAM:

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

CMA.No.3533 of 2017

The Branch Manager,
The Oriental Insurance Company Ltd.,
No.81-c, 1st Floor,
KRC Complex, Chennai Salai, Krishnagiri.

... Appellant/Respondent 4

-vs-

1. Sangeetha
2. Minor P.Kilimozhi
3. Minor Shripathi .. RR2 & 3 Minor replay next
friend mother 1st Respondent
4. Murugesan .. Respondent/Petition
5. Malliga .. Respondents/Petitioners
6. I.V.L.Matriculation School, Harur, Dharmapuri
.. Respondent No.6/Respondent 1
7. The Branch Manager,
The New India Assurance Company Limited
D.No.105-A, Railway Station Road,
Tirupattur Town and Taluk, Vellore District.
.. Respondent No.7/Respondent 2
8. V.Venkatesan
.. Respondent No.8/Respondent 3

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 30th day of November 2016, made in M.C.O.P.No.782 of 2013, on the file of Motor Accident Claims Tribunal (Additional District Court), Krishnagiri.

For Appellant : Mr.S.Manohar

For Respondents : Mr.SP.Yuvaraj for R1 to R5
Mr.P.Mani for R8
Mr.Micheal Visuvasam for R7
No Appearance for R6

J U D G M E N T

R.SUBRAMANIAN, J.

The Insurance company which suffered an award for payment of a sum of Rs.14,24,000/- as compensation for the death of one Sakthi @ Palani in a motor accident that occurred on 05.03.2013 is the appellant. According to the claimants, who are the wife, children and parents of the deceased, the deceased who was working as a Mason was travelling in a goods vehicle (TATA ACE) bearing registration No.TN-24-F-2431 along with the goods. While so, the school bus bearing registration No.TN-31-F-8778 which was driven in a rash and negligent manner by its driver came in the opposite direction and dashed against the goods vehicle. In the impact, the deceased who was standing on rear side of the goods vehicle has thrown out of the vehicle and suffered grievous injuries, resulting in his death. Contending that it was the negligence of the bus driver that caused the accident. The claimants sought for a compensation of Rs.15,00,000/-.

2. The Insurer and the owner of the bus were arrayed as respondents 1 and 2, while the goods vehicle in which the deceased was travelling and its Insurer were arrayed as respondents 3 and 4.

3. The claim petition was resisted by the appellant Insurance company, contending that there was no negligence on the part of the bus driver. According to it, the accident was caused due to the reckless driving of the driver of the goods vehicle TATA ACE bearing registration No.TN-24-F-2431 which was carrying passengers in violation of the permit conditions. It is the further case of Insurance company that the driver of the goods vehicle who was driving at a high speed lost control and dashed against the bus on the right side back wheel in a turning and stopped at the distance more than 100 feet. It was, because of the impact, the deceased thrown out from the goods vehicle. It is also contended that the First Information Report was registered against the driver of the goods vehicle on a complaint by the driver of the school bus.

4. The 4th respondent Insurance company would contend that the deceased was unauthorized passenger in the goods vehicle and driver of the goods vehicle was not holding any driving license. It was, therefore, contended that the 4th

respondent Insurer of the goods vehicle is not liable to pay compensation. It is the further contention of the 4th respondent that the accident occurred due to the rash and negligent driving of the driver of the school bus.

5. The Tribunal on a consideration of the evidence on record relying upon the First Information Report and evidence of RW2, the bus driver who deposed that the accident had occurred due to the rash and negligent driving of the driver of the goods vehicle found that the driver of the goods vehicle was responsible for the accident. On the liability of the 4th respondent Insurance company indemnify the owner of the goods vehicle, the Tribunal found that the deceased was travelling along with the goods and, therefore, he cannot be treated as an unauthorized passenger or a gratuitous passenger. The Tribunal also took note of the evidence of PW3 and PW4 to come to the conclusion on the question of liability.

6. On the quantum, the Tribunal fixed the income of the deceased who was a Mason at Rs.8,000/- per month, after deducting $\frac{1}{4}$ towards his personal expenses, applying a multiplier of 17, the Tribunal arrived at the loss of dependency at Rs.12,24,000/-. The Tribunal also granted a sum of Rs.1,00,000/- towards loss of love and affection to the claimants 1,2,3 and 5. The Tribunal awarded a sum of Rs.75,000/- towards loss of consortium to the 1st claimant, Rs.5,000/- towards transportation and Rs.20,000/- towards funeral expenses. Thus, the Tribunal awarded a sum of Rs.14,24,000/- as compensation. The 4th respondent Insurance company/Insurer of the goods vehicle is on appeal.

7. We have heard Mr.S.Manohar learned counsel appearing for the appellant Insurance company, Mr.S.P.Yuvaraj appearing for respondents 1 to 5 / claimants, Mr. Micheal Visuvasam for the 7th respondent Insurer of the school bus bearing registration No.TN-31-F-8778. Though the 6th respondent had served, he does not appear either in person or through counsel.

8. Mr.S.Manohar learned counsel for the appellant Insurance company would vehemently contend that the Tribunal erred in fixing the entire negligence on the goods vehicle namely TATA ACE bearing registration No.TN-24-F-2431. He would also contend that the Tribunal erred in concluding that the Insurance company would be liable de hors fact that it was the admitted case of the claimants that the deceased travelled as a

passenger in the goods vehicle that too on the rear side of the vehicle and not in the cabin. Mr.S.Manohar draw our attention to the evidence of PW2 eye-witness who had specifically deposed that the deceased was standing in the rear side of the goods vehicle. Mr.S.Manohar would also contend that the quantum of compensation awarded by the Tribunal is on the higher side.

9. Per contra, Mr.S.P.Yuvaraj learned counsel appearing for the claimants would contend that the fact that the First Information Report was filed against the goods vehicle coupled with the evidence of the driver of the bus RW2 would show that the accident occurred due to the negligence of the driver of the goods vehicle. He would also add that considering the nature of the accident and nature of the damages to both the vehicles, the possibility of the driver of the bus contributing to the accident cannot be ruled out.

10. Mr.Micheal Visuvasam learned counsel appearing for the 7th respondent Insurer of the bus would contend that there was no negligence on the part of the bus driver. Relying upon the rough sketch filed as Ex.R2, Mr.Micheal Visuvasam would contend that the portion of the vehicles shown in Ex.R2 and R5 fortify his contention that it was the goods vehicle that was responsible for the accident.

11. We have considered the rival submissions. From the arguments of the counsel appearing for the parties, the following questions arise for determination in this appeal.

i) Which of the two vehicles contributed for the accident ?

ii) Whether, there was contributory negligence on the part of the driver of the bus also?

iii) Whether, the appellant Insurance company is liable to pay the compensation in view of the fact the deceased was travelling as a gratuitous passenger in a goods vehicle?

iv) Whether, the quantum of compensation awarded by the Tribunal is just and reasonable?

Questions 1 and 2: Both these questions are taken up for the consideration together since the aspect of negligence is common. The First Information Report which was filed by the driver of the bus on the date of the accident blames the driver of the goods vehicle for the accident. The driver of the bus has been examined as RW2.

12. On the other side, we have the evidence of PW2, the eye-witness, and PW3 the owner of the goods vehicle. While PW2 would claim that the bus was driven in the rash and negligent manner and it dashed against the goods vehicle, the driver of the bus RW2 would depose that it was the goods vehicle which was driven in a rash and negligent manner caused the accident. The very fact that the bus driver had informed police about the accident and pursuant to his report the First Information Report was registered would make the First Information Report a doubtful document as it is based on the version of one of the drivers of two vehicles which were involved in the accident. Therefore, we have to decide the question of negligence on the basis of the oral evidence and other documentary evidence that is available. The driver of the bus has been examined as RW2, he would depose that the accident was caused by the rash and negligent driving of the driver of the goods vehicle. While so, PW2 who claims to be an eye-witness has deposed that it was the bus which caused the accident.

13. We have Motor vehicle inspection reports of both the vehicles which were marked as Ex.R1. The Motor Vehicle report of the bus shows that the damage to the bus was predominantly on the right rear side of the bus. The Motor Vehicle report of the bus recording the damages reads as follows:

"Right side body from area over rear right wheel to rear end got deep horizontal damages within one feet below windows". It is also observed that the accident was not due to any mechanical defect of the vehicle.

14. The Motor vehicle report of the goods vehicle recording the details of damages sustained by it reads as follows:

"Load body right side wall vertical angles total 5 Nos. bent back at 1 ¼ feet height from the level of side wood wall, load body front partition right top corner damaged, top horizontal angle front end damaged".

15. From the above description of the damages caused to both the vehicles it can be gathered that both the vehicles had brushed against each other on the sides. If the goods vehicle had rammed head on with the bus, as suggested by RW2, the driver of the bus then the cabin of the goods vehicle would have suffered damages. That is not the case. According to the Motor vehicle Inspectors report, the cabin of the goods vehicle was not damaged. Therefore, it can be safely concluded that both the vehicles had dashed against each other when the bus was taking at right turn and the goods vehicle was taking at left

turn coming from the opposite direction.

16. Considering the nature of damages and the point of impact, we are of the considered opinion that both the drivers had contributed to the accident. No doubt, Mr. Micheal Visuvasam learned counsel appearing for the 7th respondent Insurer of the bus would contend that the position of the bus as shown in the rough sketch would lead to the inference that the bus was on the extreme left side of the road, we are afraid, we cannot base our conclusion on the basis of the position of bus as shown in the rough sketch. The rough sketch is based on the First Information Report and it does not always reflect the exact position of the vehicles at the time of the impact. We are of the considered opinion that both the vehicles namely, the bus bearing registration

No.TN-31-F-8778 as well as the goods vehicle bearing registration No.TN-24-F-2431 have contributed for the accident. From the nature of damages caused particularly the damages caused to the goods vehicle, as seen from the Motor Vehicle Inspector's Report, it is the load body which has suffered damages and not cabin. This would demonstrate that the negligence on the part of the bus driver should have been more than the negligence on the part of the driver of the goods vehicle. We therefore, apportion the negligence at 60% on the part of the bus, and 40% on the part of the goods vehicle. Hence, question Nos. 1 and 2 have been answered as above, fixing the negligence at 60% on the bus driver and 40% on the driver of the goods vehicle.

17. Question No.3: Admittedly, the deceased was travelling in a goods vehicle but it is claimed that the deceased was travelling in a goods vehicle along with the goods and not as gratuitous passenger in violation of the policy conditions. The owner of the goods is permitted to travel in the goods vehicle, but he has to travel in the cabin, he cannot travel on the load area of the goods vehicle. The evidence of PW2 would show that the deceased was standing on the rear side of the TATA ACE vehicle which is definitely in violation of the policy conditions. Therefore, the appellant Insurance company cannot be made liable to pay the compensation as it is not liable to indemnify the owner of the goods vehicle. Hence, No.3 is answered infavor of the appellant Insurance company against the 8th respondent who is the owner of the goods vehicle.

18. Question No.4: On the quantum, the Tribunal has

taken the income of the deceased at Rs.8,000/-, after deducting 1/4th towards his personal expenses the Tribunal fixed the monthly loss of dependency at Rs.6,000/-. As rightly pointed out by Mr.S.P.Yuvaraj learned counsel for the claimant, the Tribunal has adopted a very low income particularly in view of the fact that the deceased was a Mason (Skilled Work) was on the accident had occurred in the year 2013.

19. We find that the contention of the learned counsel was justified. The Mason would have at least earned Rs.300/- per day during the relevant period. Hence, we fix the monthly income of the deceased at Rs.9,000/- adding 40% towards future prospects, the monthly income for the purposes of calculations of the dependency would be Rs.12,600/- deducting 1/4th towards personal expenses, the monthly loss of dependency would be Rs.9,450/-. The multiplier of 17 is to be adopted since the deceased was aged about 30 years. Therefore, the compensation for loss of dependency is Rs.19,27,800/- (9,450 x 12 x 17). The Tribunal has granted a sum of Rs.1,00,000/- towards loss of love and affection, Rs.75,000/- towards loss of consortium. These amounts are on the higher side. Following the guide lines of the larger bench of the National Insurance Company Vs. Pranay Sethi reported in 2018 (1) LW 331. We fix the compensation for loss of consortium at Rs.40,000/- and compensation for loss of love and affection at Rs.75,000/- (Rs.25,000/- each to claimants 1,3 and 5). The Tribunal has awarded Rs.20,000/- towards funeral expenses, the same is enhanced to Rs.25,000/-. The Tribunal has awarded Rs.5,000/- towards transportation and the same is sustained. The Tribunal has not awarded any amount towards loss of estate. Hence, we award a sum of Rs.15,000/- towards loss of estate. Thus, the total compensation would be Rs.20,87,800/- and the same is rounded off to Rs.21,00,000/-.

20. The said amount is apportioned between the driver of the bus and the driver of the goods vehicle at 60:40. Therefore, the 7th respondent Insurance company who is the Insurer of the bus would be liable to pay a sum of Rs.12,60,000/- being 60% of the total compensation and the owner of the goods vehicle will be liable to pay the remaining amount of Rs.8,40,000/-, since, we have found that the appellant Insurance company is not liable to pay the compensation. The award will carry an interest of 7.5% per annum from the date of petition till date of payment. It is contended on behalf of the 7th respondent Insurance company that the bus did not have a fitness certificate on the date of the accident. The Tribunal has not rendered any finding on the said question. The evidence of RW2, the driver of the bus in his evidence admits that the bus did not have a fitness certificate on the date of the

accident. Therefore, there is violation of the policy condition is on the part of the owner of the bus. Hence, the 7th respondent would be entitled to an order of pay and recovery.

21. In fine, the appeal is allowed in part, the award of the Tribunal is modified as follows:

i) A sum of Rs.21,00,000/- has been awarded as compensation to the claimants.

ii) The 7th respondent Insurance company, the Insurer of the bus is directed to pay a sum of Rs.12,60,000/- with 7.5% interest from the date of petition till date of payment being 60% of the compensation.

iii) The owner of the goods vehicle namely, 8th respondent is liable to pay the balance of Rs.8,40,000/- with interest at 7.5% per annum from the date of petition till date of payment.

iv) The 7th respondent Insurance company would be entitled to recover the compensation paid by them from the owner of the bus namely, 6th respondent. The 7th respondent Insurance company is granted 6 weeks time from the date of judgment to deposit it's share of the compensation.

22. The award amount is apportioned as follows:

The 1st claimant, wife of the deceased would be entitled to 30% of the compensation with proportionate interest and entire costs. The claimants 2 & 3 (Minor) children will be entitled to 20% each with proportionate interest. The 5th claimant, mother would be entitled to 20% of the compensation with proportionate interest and the 4th claimant would be entitled to 10% of the compensation with proportionate interest. The Tribunal is directed to deposit the share of the minors as and when its realized in a interest bearing fixed deposit in any one of the Nationalized banks and the 1st claimant mother is permitted to withdraw quarterly interest for the maintenance of the children. There shall be no order as to costs in this appeal.

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Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.Motor Accident Claims Tribunal
(Additional District Court),
Krishnagiri.

2.The Branch Manager,
The Oriental Insurance Company Ltd.,
No.81-c, 1st Floor,
KRC Complex, Chennai Salai, Krishnagiri.

3. The Branch manager,
The New India Assurance Company Limited
D.No.105-A, Railway Station Road,
Tirupattur Town and Taluk, Vellore District.

+1cc to Mr.P.Mani, Advocate SR.No.67482
+1cc to Mr.S.P.Yuvaraj, Advocate SR.No.67636
+1cc to Mr.S.Manohar, Advocate SR.No.67615
+1cc to Mr.J.Michael, Advocate SR.No.67523

CMA.No.3533 of 2017

VBA (CO)

GMV (19/12/2018)



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