

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2647 of 2009

and

C.M.P.No.3 of 2009

The New India Assurance Company Limited,
No.23/2, Tiffany Sanex, Vittal Mallaya Road,
Bangalore - 560 001. ... Appellant/3rd Respondent

Vs.

1.S.Shanmugam
2.S.Rukmani
3.S.Akilamani
4.S.Sivakumar
5.The Managing Director,
Tamil Nadu State Transport Corporation,
Dharmapuri.

6.K.A.Sathyanarayana Chetty ... Respondents/Petitioners 1 to 4
and RR 1,2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 09.04.2009 passed in M.C.O.P.No.50 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

For Appellant : Mr.S.Jayasankar

For RR 1 to 4 : Mr.M.Johnkennady

For R5 : Mr.S.S.Swaminathan

For R6 : Exparte before Tribunal

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J U D G M E N T

The appellant / New India Assurance Company Limited is the third respondent in M.C.O.P.No.50 of 2007 on the file of the Motor Accident Claims Tribunal / Sub Court, Hosur. The respondents 1 to 4 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.15,00,000/- for the death of one Raja @ Nagaraj, son of the claimants 1 and 2 and brother of the claimants 3 and 4 in a road accident on 05.12.2006.

2. The case of the claimants is that on 05.12.2006, the deceased Raja was travelling in a van bearing Registration No. KA 07 N 757 on Pondicherry - Krishnagiri main road and at about 05.15 A.M., a speeding bus bearing Registration No. TN 29 N 1527 hit the van, as a result of which, the deceased sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the drivers of the van belonging to the sixth respondent and the bus belonging to the fifth respondent is responsible for the accident and therefore the owners and the insurers of both the vehicles are jointly and severally liable to pay compensation.

3. The owner of the van remained absent before the Tribunal and therefore, he was set ex-parte. The learned Subordinate Judge / Motor Accident Claims Tribunal, Hosur, after analysing the evidence on record, fixed negligence on the part of the drivers of the van and the bus in the ratio 60:40 and awarded a compensation of Rs.8,88,000/- together with interest at the rate of 7.5% per annum to the claimants. The Tribunal directed the appellant / New India Assurance Company Limited and the fifth respondent / Tamil Nadu State Transport Corporation to pay the award amount in the ratio 60:40.

4. Aggrieved over the orders passed by the Tribunal, the appellant / New India Assurance Company Limited, has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.S.Jayasankar, learned counsel appearing for the appellant / New India Assurance Company Limited contended that though First Information Report was registered against the driver of the bus, the Tribunal wrongly fixed the negligence on the part of the driver of the van and directed the appellant / New India Assurance Company Limited to pay 60% of the total compensation. He therefore prayed for setting aside the orders passed by the Tribunal.

6. Per contra, Mr.S.S.Swaminathan, learned counsel appearing for the fifth respondent / Tamil Nadu State Transport Corporation contended that the Tribunal after considering the oral and documentary evidence adduced on both sides, had clearly concluded that this is a case of head on collision between two vehicles and directed the New India Assurance Company Limited and the Tamil Nadu State Transport Corporation to pay the award amount in the ratio 60:40. He therefore prayed for dismissal of the appeal.

7. In the instant case, the First Information Report was registered against the driver of the bus, based on the complaint lodged by one of the passengers in the van. A copy of the final report filed by the Police has not been adduced before the Tribunal either by the claimants or by the respondents. However, one Radha who was travelling in the bus

was examined as (P.W.2). She is an eye-witness to the occurrence. She has clearly deposed that the drivers of both the van and the bus were rash and negligent on account of which, the accident took place. This is a case of head on collision between two vehicles. The Tribunal fixed composite negligence on the part of the drivers of the van and the bus in the ratio 60:40, for which no specific reason was assigned. When there was a head on collision on middle of the road, this Court is of the opinion that both the drivers should be held equally responsible for the accident and therefore the composite negligence is fixed in the ratio 50:50 on the part of the drivers of the van and the bus.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection / appeal was filed by the claimants. A perusal of the award also shows that it is not on the higher side.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The appellant / New India Assurance Company and the fifth respondent / Tamil Nadu State Transport Corporation are directed to deposit the compensation awarded by the Tribunal ie., Rs.8,88,000/- in the ratio 50:50 together with interest at the rate of 7.5% per annum to the credit of M.C.O.P.No.50 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur, (less the amount already deposited by them) within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimants at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

(v) The appellant / New India Assurance Company Limited is at liberty to withdraw the excess amount already deposited by them over and above the amount awarded by this Court.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Hosur.

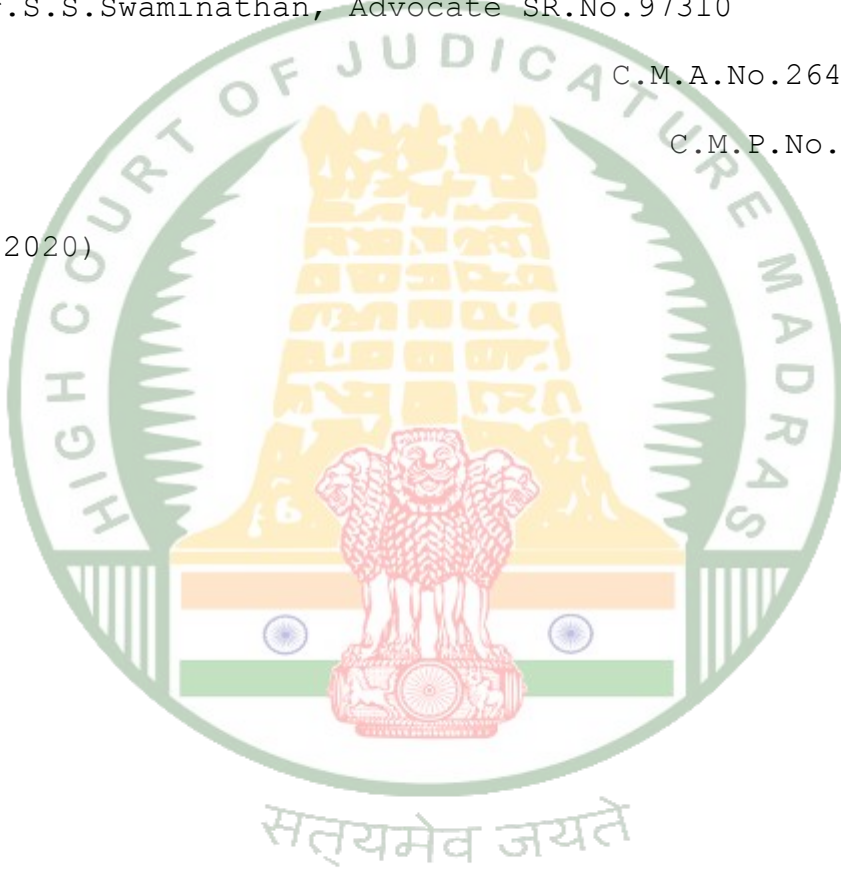
Copy To : The Section Officer,
VR Section,
High Court of Madras.

+1cc to Mr.S.Jayasankar, Advocate SR.No.97855

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.97310

C.M.A.No.2647 of 2009
and
C.M.P.No.3 of 2009

LN (CO)
GMY (21/07/2020)



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