

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2019

CORAM :

THE HON'BLE MR.JUSTICE R.MAHADEVAN

CIVIL MISCELLANEOUS APPEAL NOS.2078 TO 2080 OF 2015

AND

MP.NOS.1,1 AND 1 OF 2015

The New India Assurance Co.Ltd.,
Premium Complex, Saradha
College Road, Salem-5.

...Appellant in all CMAs/
2nd Respondent

Vs

1.Minor

... R1 in CMA.No.2078 of 2015/
Claimant

1.Govindan

... R1 in CMA.No.2079 of 2015

1.Mayi

... R1 in CMA.No.2080 of 2015

2.P.Shanmuga Sundaram

3.Mohan

4.I.C.I.C.I.Lambard, Bandhra Kurla
Complex, East Mumbai, Bandhra,
Mumbai-51.

...R2 to R4 in all the CMAs/
Respondents in 1, 3 & 4

Prayer:-

Appeals under Section 173 of the Motor Vehicles Act, 1988
against the common award, dated 01.04.2015 in M.C.O.P.Nos.662,
1170 and 1171 of 2010 on the file of the Motor Vehicle Accidents
Claims Tribunal (Second Additional District Court), Salem.

For Appellant

in all Appeals : Mr.M.Krishnamoorthy

For R-4

in all Appeals : M/s.K.Poomalai

COMMON JUDGMENT

The Insurance Company has filed these Appeals under Section 173 of the Motor Vehicle Act, 1988 questioning the liability fixed on them by the Motor Accidents Claims Tribunal (Second Additional District Court), Salem by the common award dated 01.4.2015 made in MCOP.Nos.662, 1170 and 1171 of 2010.

2. The claimants filed their respective claim petitions under Section 166 of the Motor Vehicles Act before the Tribunal seeking compensation for the injuries sustained by them in a road traffic accident that took place on 20.2.2007, when they were travelling in a tipper lorry bearing registration No.TN-30-Z-8676 in Thammampatti-Malliakarai road. According to the claimants, when the tipper lorry was nearing Keeripatti Kizhkanavai Velalar Gounder Mariamman Koil at about 9.30 a.m., the mini lorry bearing registration No.TN-30-K-2664, driven by its driver rashly and negligently, came from the opposite direction after overtaking another goods lorry and hit the tipper lorry, as a result of which, they sustained injuries. It was further contended that since the said mini lorry was insured with the present appellant, both of them are jointly and severally liable to pay compensation to them.

3. Considering the materials and evidence, the Tribunal held that only the driver of the said mini lorry was rash and negligent in driving his vehicle and therefore, directed the appellant - Insurer to pay compensation to the persons, who travelled in the tipper lorry. Aggrieved over the award passed by the Tribunal, the above appeals were filed by the appellant - Insurer.

4. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant would contend that when the First Information Report (Ex.P1) and the Final Report (Ex.R2) spoke about the negligence on the part of the tipper lorry, the Tribunal is totally wrong in fixing the entire negligence on the driver of the said mini lorry. He would further contend that when there was a head on collision between two vehicles on a road, the negligence should be equally distributed between the vehicles involved in the accident and the Tribunal, without considering the manner of the accident, had fastened the negligence entirely on the driver of the said mini lorry. It is also his contention that more than 20 persons were travelling in the tipper lorry and at the relevant time 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.

5. In the instant case, immediately after the accident, the First Information Report was lodged with the police by the

cleaner of the said mini lorry. Incidentally, the driver of the said mini lorry died on the spot. All the claimants had filed claim petitions before the Tribunal and examined themselves as witnesses and clearly deposed that the driver of the said mini lorry was responsible for the accident. Apart from examining themselves, they 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 negligence on the driver of the said mini lorry and directed the present appellant - Insurer to pay compensation to the injured passengers, who were travelling in the tipper lorry. The Tribunal also observed that merely based on the First Information Report and the Final Report, the negligence cannot be fixed on the driver of the tipper lorry, since the police seemed to have filed a Final Report based on the complaint given by the cleaner of the lorry. It was also observed that the police were sympathetic towards the driver of the said mini lorry, since he died in the accident.

6. A perusal of the evidence adduced on both sides shows that the 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 had clearly spoken about the rash and negligent driving by the driver of the said mini lorry.

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

8. In the instant case, all the witnesses have deposed that the said mini lorry, 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 said mini lorry was responsible for the accident. Merely because the tipper lorry was found to have been over-loaded with 20 persons, it cannot be stated 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 been allowed to sit, because the seating space is only for a few passengers.

9. As already pointed out, no evidence was adduced on the side of the appellant to show that the driver of the said mini lorry was also responsible for the accident. Apart from this, the Tribunal has analysed the entire evidence on record and clearly held that the driver of the said mini lorry alone was responsible for the accident. The observations of the Tribunal are well founded and cannot be interfered with.

10. As far as the quantum is concerned, the claimants did not file any cross objection or appeal. The Tribunal had properly assessed the materials on record and awarded compensation, which, in the considered opinion of this Court, appears to be just and reasonable.

11. In the result:

(i) The Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected MPs are closed.

(ii) The common award dated 01.4.2015 in M.C.O.P.Nos.662, 1170 and 1171 of 2010 passed by the Tribunal is upheld.

(iii) The appellant - Insurer is directed to deposit the entire compensation amounts as awarded by the Tribunal along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit being made by the Insurer, the Tribunal is directed to transfer the compensation amount to the Savings Bank Accounts of the respective claimants through RTGS within one week thereafter.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Second Additional District Judge,
Motor Accident Claims Tribunal, Salem.

+3cc to Mr.M.Krishnamoorthy, Advocate in Sr.No.96327 to 96329

CMA.Nos.2078 to 2080 of 2015
& MP.Nos.1,1 and 1 of 2015

TM(CO)

CS/11/12/2020