

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.12.2019

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2319 of 2019
and
C.M.P.No.10423 of 2019

United India Insurance Co. Ltd.,
No.4, Royal City, Karur Road,
Tiruchirapalli and having
Regional Office at HUB,
3rd Party Claim, 3rd Floor,
361, Dr.Nanjappa Road,
Coimbatore. Appellant /Respondent No.3

vs.

1.J.Metilda
2.K.Umeshraj
3.K.Deepan Prakash
4.V.Santhanam
5.J.K.Tyre Industries Ltd.,
No.175, Kamarajar Salai,
Sundara Bhavanam Complex,
Madurai.
6.Thozil Arasu
7.The Managing Director,
Tamil Nadu State Transport
Corporation,
37, Mettupalayam Road,
Coimbatore.

.... Respondents/Petitioners 1
to 3/R1, R2, R4 and R5

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the award and decree dated 28.06.2018 made in
M.C.O.P.No.73 of 2015 on the file of the Motor Accidents Claims
Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.MA.P.Thangavel for R1 to R3
Mr.L.Ramkumar for R5
Mr.K.J.Sivakumar for R7
No appearance for R6

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal has been preferred by the appellant, who has been arrayed as the third respondent in M.C.O.P. No.73 of 2015 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Coimbatore, laying a challenge to the liability as against the quantum.

2.Respondents 1 to 3 are the wife, son and daughter of the deceased. The deceased was riding a Hero Honda Passion motorcycle bearing Registration No.TN 38 AD 8327 on Marudhamalai Road on 24.07.2014. From Kumaran Street, the deceased took a turn to the main road. The main road viz., Marudhamalai Road is a two way road separated by median. The vehicle belonging to the fifth respondent was parked on the left hand side i.e. in front of the hotel by name Cocaraco. There is another Tea Stall prior to hotel adjoining Kumaran Street. The deceased without noticing the parking of the car, at about 9.30 a.m., took a turn at a rapid speed and dashed against it. By the impact caused, he fell on the right hand side of the vehicle belonging to the seventh respondent, which was passing through the Marudhamalai Road. As the deceased fell on the right hand side, he was crushed by the speeding vehicle. Thus the accident caused the death of the deceased.

3.An first information report has been filed against the seventh respondent alone, which was marked as Ex.P1. Thereafter, upon completing investigation, final report has been filed under Ex.P6. The case has been filed for the alleged offence punishable under Section 307(2) IPC against the driver of R7.

4.Under those circumstances, respondents 1 to 3 filed a claim petition seeking a sum of Rs.30 lakhs. The Tribunal, by placing reliance upon the recent judgment of the Apex Court in National Insurance Co. Ltd vs Pranay Sethi and others (2017 (2) TN MAC 271), was pleased to enhance the compensation to Rs.46,09,744/-. Out of the said amount, liability was also fixed for the negligence of the deceased at 15% while fixing the remaining liability entirely on the appellant. Thus, aggrieved over the same, the present appeal has been filed.

5.Learned counsel appearing for the appellant would fairly submit that considering the facts of the case, though the Tribunal has passed an award much more than what has been sought for by respondents 1 to 3, the quantum could not be disturbed. Thus, he restricted the argument only on the question of

liability. It is submitted that the deceased drove the vehicle in a negligent manner at a very rapid speed and without slowing down on the curve and dashed against the parked vehicle. The vehicle was parked on the left hand side of the road. There is a hotel situated on the left hand side. It is a two way road. The road has been separated by median. The Tribunal has not considered these aspects, particularly the fact that the complaint itself has been given against the seventh respondent and after investigation, charge sheet was also laid against it. Thus, the appellant cannot be fastened with liability in its entirety.

6.Learned counsel appealing for respondents 1 to 3 submitted that the driver of the vehicle belonging to the fifth respondent has not parked the car on the left hand side. Had the vehicle not been parked, the occurrence would not have happened. The Tribunal took that into consideration while fixing the liability on the appellant, who is the insurer of the fifth respondent while exonerating the seventh respondent.

7.Learned counsel appearing for the seventh respondent submitted that the said respondent was driving the vehicle on the main road and it was the deceased who fell into the bus resulting in the accident. Therefore, the award does not require interference.

8. Learned counsel appearing for the fifth respondent supports the case of the appellant and submitted that even the Tribunal has found that the deceased was driving at a very high speed.

9.We have perused the documents produced especially the rough sketch prepared by the Inspector of Police about the investigation.

10.Admittedly, the deceased was travelling from Kumaran Street to Marudhamalai Main Road. Even as per the finding of the Tribunal, he was not slowing down on the curve but travelling at the very same speed. The hotel was not exactly on the curve but little bit away. The vehicle of the fifth respondent was parked on the right hand side in front of the hotel. Thus, it was a parked vehicle. The deceased dashed against the vehicle as he could not control the speed. Thereafter, due to the impact, the deceased was thrown on the right hand side and the vehicle of seventh respondent was proceeding on the main road. It appears that the vehicle was also proceeding at a higher speed. There were two roads cutting across the main road. The main road itself is a busy road. As stated, the road is divided by the median. Therefore, the negligence is very much available on the

part of all the parties viz., deceased, driver of the fifth respondent and the seventh respondent. Insofar as the driver of the fifth respondent is concerned, he ought not to have parked the vehicle in the said place. To be noted, the fifth respondent did not deny the case. Further, there is no dispute on the fact that the appellant is an insurer and the fifth respondent is the insured.

11. Thus, in the light of the aforesaid discussion, without interfering with the quantum, we are inclined to fix the liability at 25% on the deceased and 37.5% each on the appellant and the seventh respondent. This we do so as we find that the liability should be more on the appellant on behalf of the fifth respondent and the seventh respondent. Insofar as the fifth respondent is concerned, the vehicle ought not to have been parked but for the same the accident would not have occurred and the seventh respondent ought not to have driven the vehicle at such a speed, therefore, unable to prevent the fatal accident. As stated above, it is a busy road and therefore, there is no need for driving the vehicle at such a speed. We further note that the complaint itself has been given against the seventh respondent and after investigation, charge sheet was filed against it and therefore it cannot escape the liability in toto.

12. In such view of the matter, the appellant and the seventh respondent are directed to deposit the amount awarded by the Tribunal to the credit of M.C.O.P.No.73 of 2015 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Coimbatore, within a period of eight weeks from the date of receipt of a copy of the judgment.

13. We also direct the Tribunal to transfer the entire amount awarded along with proportionate interest at 7.5% per annum by way of RTGS to the bank account of the claimants within a period of three weeks from the date of deposit of the award amount. On such deposit, the claimants are entitled to withdraw the same. The appellant is permitted to withdraw the excess amount, if any.

14. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Coimbatore.

Copy to

The Record Keeper,
V.R. Section, High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate Sr.100824
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.100651
+1cc to Mr.K.J.Sivakumar, Advocate Sr.100865
+3cc to Mr.L.RamKumar, Advocate Sr.101134

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