

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 15.04.2019	Date of Pronouncing Judgment 31.07.2019
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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.849 of 2012

1.M.Chenniappan
2.C.Sarasu

...Appellants/Petitioners

Vs.

1.S.Anandha Bharathy

2.B.Dhandapani

3.United India Insurance Co., Ltd.,
280 Main Road,
Mettupalayam.

4.M.Eswaramoorthy

5.The President,
Sanatorium Co-op Stores K-785,
Sanatorium, Perundurai.

6.The New India Assurance Co., Ltd.,
34, Erode Road,
Perundurai, Erode District.

7.K.Gunasekaran

8.N.Mohanasundaram

...Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to fix 40% liability on the respondents 3 to 5 herein in the Judgment and Decree dated 29.11.2002 made in M.C.O.P.No.7 of 2001 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Erode.

For Appellants	: Mr.N.Manokaran
For Respondent 3	: Mr.T.Ravichandran
For Respondent 6	: Mr.J.Chandran
For Respondent 8	: Served
For R1, 2, 4, 5	: Tapal Returned
For Respondent 7	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant to fix 40% liability on the respondents 3 to 5 herein in the Judgment and Decree dated 29.11.2002 made in M.C.O.P.No.7 of 2001 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Erode.

2. The brief facts of the case are as follows:

Claimants are the appellants herein, who are the legal heirs of the deceased one Mohan and they have filed the present appeal, seeking enhancement of compensation for the death of their son.

3. According to the respondents, the Lorry in question is bearing Registration No. KL-13-7286. The second respondent is the owner of the said vehicle, which was insured with the third respondent / United India Insurance Co., Ltd., and it was driven by the driver / first respondent, who tried to overtake the Tempo Van bearing Registration No. TN-33-U-0285 in the wrong side of the road and dashed against on coming vehicle in the opposite side the Tempo Van. The fifth respondent is the owner of the said Tempo Van and it was driven by its driver / fourth respondent, which was insured with the sixth respondent / The New India Assurance Co., Ltd. The first respondent / driver lost his control and dashed against the deceased who traveled in the Van bearing Registration No. TN-57-A-2835, which was owned by the eighth respondent, which was driven by the seventh respondent.

4. For the sake of convenience, the parties are referred to as per litigative status as mentioned in the claim petition.

5. As per the claim petition, the deceased traveled as an additional driver in the eighth respondent's Van and the driver / seventh respondent drove the Van in a rash and negligent manner and collided with the Lorry. On consideration of the documents Ex.P1 to P6, the Tribunal has come to the conclusion that the accident has taken place due to the composite negligence on the part of the first respondent, who is the driver of the Lorry and the seventh respondent who is the driver of the Van and hence, the Tribunal has fixed 60% of the liability on the part of the Lorry driver and 40% on the part of the Van driver.

6. Based upon the oral and documentary evidence and considering the age of the deceased, avocation and income in the year 1999, the Tribunal fixed the notional income at Rs.3000/- and after deducting 1/3rd towards his personal expenses, the Tribunal arrived a sum of Rs.1,28,000/- as compensation.

7. The learned counsel for the appellants / claimants would contend that the rash and negligence fixed by the Tribunal was erroneous and the entire accident had taken place, due to the rash and negligent driving of the first respondent / driver of the Lorry and relied on Ex.P5 / Charge Sheet and Ex.P6 / Judgment Copy. It is further submitted that the driver / first respondent has pleaded guilty and paid the fine.

8. After hearing both the parties, it is seen that the claimants / appellants would contend that finding by the Tribunal that the accident has taken place due to the rash and negligent driving of both the driver of the Lorry belongs to the second respondent as well as 8th respondent's Van.

9. It is seen from the records that along with this claim petition, another person namely, Mohanasundaram, who is injured in the very same accident has filed M.C.O.P.No.7 of 2001 and common Judgment was pronounced from the pleadings as well as from the documentary evidence filed before the Tribunal in Ex.P1 FIR, Ex.P2 Observation Magazar, Ex.P3 Motor Vehicle Inspector Report and Ex.P5 Charge sheet filed before the Judicial Magistrate, Ex.P6 Judgment copy issued by the Magistrate Court. It is seen that the first respondent herein, who is the driver of the Lorry bearing Registration No. TN-KL-13-7286 is charge sheeted and also pleaded guilty.

10. It is seen from Ex.P5 charge sheet which clearly shows that while the Tempo Van bearing Registration No. TN-33-U-2085 was driven by the 4th respondent and his vehicle was going in front and at that time, the Lorry bearing Registration No. TN-KL-13-7286 driven by the first respondent was following the above said Tempo Van and tried to overtake the Van driven by the 4th respondent. When his attempt to overtake the same, he lost his balance and in that process, he dashed on the 4th respondent's Van when he came to the right hand side of the road, dashed against the Van (driven by the 7th respondent) coming in the opposite direction.

11. Thus, this Court finds that oral evidence of P.W.1 is duly corroborated by the documentary evidence of Ex.P5. When that being the case, this Court finds that the accident has taken place due to the rash and negligent driving of the driver of the first respondent Lorry who ought to have exercised diligence while overtaking the vehicle going in his front and as he was negligent also he dashed against the Van driven by the 7th respondent which is coming on the opposite direction. The Van driven by the 7th respondent is coming on its line on discipline and it is the first respondent who went away and dashed against the upcoming vehicle in the opposite direction. Furthermore, it is seen that the claimant are the LR's of the deceased cleaner

who traveled in the 8th respondent's Van (driven by the 7th respondent) and therefore, the Tribunal has committed an error in fixing 40% of contributory negligence on the part of the driver of the upcoming Van namely the 7th respondent and 8th respondent and that finding suffers from non appreciation of the factual background and hence, the finding rendered by the Tribunal on the contributory negligence at 60% : 40% between the first respondent and 7th respondent is hereby stands vacated and consequently, in view of the discussion in the proceeding paragraphs, it is held that the accident has taken place due to the rash and negligent driving on the part of the driver of the first respondent owned by the second respondent insured with the third respondent and accordingly, the compensation awarded in respect of M.C.O.P.No.7 of 2001 has to be paid by the second and third respondents jointly and severally and this point is answered in affirmative in favour of the appellants / claim petitioners.

12. On the point of quantum, I have perused the compensation granted under various heads. Taking note of the fact that the accident has taken place in the year 2002, I am of the considered view that the compensation awarded appears to be just and reasonable and hence, with regard to the quantum of compensation, the award of the Tribunal is hereby confirmed.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) to the limited extent indicated above namely, the entire liability is fixed on the respondents 2 and 3 and the second and third respondents are liable to pay the award amount. Respondents 2 and 3 are directed to deposit within a period of eight weeks from the date of receipt of a copy of this Judgment, less the amount already deposited if any.

(iii) On such deposit being made, the appellants/claimants are permitted to withdraw the same, in the same apportionment as apportioned by the Tribunal, less the amount already withdrawn if any.

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Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

rna

To

The Motor Accidents Claims Tribunal,
The Principal Sub Court,
Erode.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.65632

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.66416

C.M.A.No.849 of 2012

NRL (CO)
CS/29/01/2020



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