

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2019

Coram

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

C.M.A.No.2068 of 2018
and
CMP No.16105 of 2018

M/s.Reliance General Insurance Co. Ltd.,
Legal Department, Reliance House,
6th Floor, No.6, Haddows Road,
Nungambakkam, Chennai - 6. .. Appellant/2nd Respondent

vs.

1.J.Rose Mary
2.J.Bernold Sherin
3.J.Beula Jenifer
4.S.Gnanabai ... 1-4 Respondents/Petitioners
5.M.Rangasamy .. 5th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 12.02.2018 made in M.C.O.P.No.3510 of 2014 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.R.S.Anandan for R1 to R4

R5 - No appearance

JUDGMENT

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

This appeal has been filed by the appellant insurance company, questioning the liability. The appellant herein is the insurer of the trailer lorry which was involved in the accident. The claimants are the wife two children and the mother of the deceased.

2.The case of the claimants/respondents 1 to 4 in brief is that the deceased being the driver in the State Transport Corporation was driving the passenger carriage bearing Regn.

No.TN 01 AN 0281 the vehicle was proceeding from Chennai to Kanyakumari. When the bus was proceeding on Trichy to Madurai Road at Manikandam near Manaparipatty, a trailer lorry bearing Regn. No.TN 28 AH 4957 was parked in the middle of the road, as a result, the deceased driver dashed the bus against the trailer lorry, resulting in his death.

3.The Tribunal held that the negligence was attributed solely to the driver of the trailer lorry in parking the said vehicle. Much reliance has been made on the evidence of P.W.2 who is the Conductor of the bus along with Ex.P3 which is an F.I.R. filed. Having fixed the negligence and liability on the part of the owner of the trailer lorry, the appellant was made to compensate for the same since it was insured with it.

4.Learned counsel appearing for the appellant submitted that the challenge is mainly on the question of negligence. The Tribunal ought to have fixed the contributory negligence on the part of the deceased as well. It is the case where the bus was driven by the deceased and hit against a stationed trailer lorry. It happened on the four lane highway from Trichy to Madurai. The evidence of P.W.2 is to the effect that lights were fully on and visibility was good. One could see the road along with movement of the men and animals from 100 metres. Lights would cover 100 metres. There was sufficient way on the right hand side to take the bus. Thus, simultaneously two heavy vehicles such as bus can travel. Therefore, from the evidence, the Tribunal ought to have fixed the contributory negligence.

5.Learned counsel appearing for respondents 1 to 4/claimants submitted that the evidence of P.W.2 has to be considered as a whole but for the parking of the trailer lorry, the accident would not have occurred. There is no evidence to show that sufficient measures have been taken by the driver of the lorry including the emergency lights and apart from other safety measures indicating parking of the vehicle. The Tribunal has not awarded any amount towards the loss of love and affection for the claimants.

6.Learned counsel appearing for respondents 1 to 4/claimants placed reliance upon the judgment of the Apex Court in Archit Saini and Ors. Vs. The Oriental Insurance Company Ltd. and Ors. (Civil Appeal Nos.7300-7309 of 2016 dated 09.02.2018). Per contra, learned counsel appearing for the appellant has made reliance upon the subsequent judgment of the Apex Court in Nishan Singh and Others Vs. Oriental Insurance Co. Ltd. and Others (2018 (1) TNMAC 745 (SC)).

7.Admittedly, the accident occurred when the deceased drove the bus and hit the trailer lorry which was stationed on the

left hand side. The evidence of P.W.2 is to the effect that two buses can travel on the very same side. It is a four way lane. It is also a highway. The evidence of P.W.2 is also to the effect that reach of the lights is 100 metres. The visibility was good and there was no other vehicle coming in the opposite direction obstructing his eye sight.

8. From the above evidence given by P.W.2, we are of the view that the Tribunal ought to have fixed the contributory negligence on the part of the deceased as well. Though we find negligence on the part of the driver of the trailer lorry in not placing triangle marking and put the safety light indicating the lorry having been parked, the negligence on the part of the deceased cannot also be ruled out. After all, the deceased was driving a passenger bus and therefore, he ought to have been really careful. The decision relied upon by the learned counsel for respondents 1 to 4/claimants does not help the case of the claimants. In the said case, the facts are different. The driver of the car was incapacitated by the flash light coming from the other side. There was a bit darkness. Now, the evidence of P.W.2 itself is that the visibility was upto 100 metres. In the decision relied upon by the learned counsel for the appellant, Regulation 23 of the Rules of Road Regulations, 1989 was taken note of, which mandates a driver of the motor vehicle to keep sufficient distance from the other vehicle to avoid collision if the vehicle in front suddenly slows down or stops. As stated, we are dealing with the case in which the deceased dashed against the parked vehicle. After all, each case has to be decided on its own facts.

9. In such view of the matter, we are inclined to fix the contributory negligence on the part of the deceased driver at 30% while fixing the same at 70% as against the driver of the vehicle insured with the appellant.

10. Coming to the question of quantum, admittedly, no amount has been awarded towards parental consortium, loss of love and affection for the children apart from that, no amount has been fixed for loss of estate. Accordingly, by adding the aforesaid amounts as per the judgment of the Apex Court in National Insurance Co. Ltd vs Pranay Sethi and others (2017 (2) TN MAC 271), the compensation payable is arrived at Rs.21,73,181/-, which is rounded off to Rs.21,75,000/-. The breakup details are as under:

Loss of income	..	Rs.19,83,181.00
(Rs.24885+3753-7155(1/4)		
x12x11x70/100)		
Loss of consortium	..	Rs. 40,000.00
Filial Consortium (mother) ..	Rs.	40,000.00

Parental Consortium	..	Rs.	80,000.00
Funeral expenses	..	Rs.	15,000.00
Loss of estate	..	Rs.	15,000.00
			== = = = = = = =
Total	..	Rs.	21,73,181.00
			== = = = = = = =

11.The Civil Miscellaneous Appeal is allowed to the extent indicated above. The interest awarded by the Tribunal is confirmed and the above compensation amount shall be apportioned amongst the claimants as ordered by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

12.It is submitted that the appellant insurance company has already deposited the compensation awarded by the Tribunal. We direct the Tribunal to transfer the amount now awarded by this Court along with proportionate interest at 7.5% per annum by way of RTGS to the bank accounts of the claimants within a period of three weeks from the date of receipt of a copy of this judgment. On such transfer, the claimants are entitled to withdraw the same. The appellant is permitted to withdraw the excess amount, if any.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mmi

To

The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 104169
+1cc to Mr.R.S.Anandan, Advocate, S.R.No. 104083
+1cc to Mr.R.S.Anandan, Advocate, S.R.No. 104083(10/03/2020)
C.M.A.No.2068 of 2018

RJI (CO)
GN(09/03/2020)