

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2019

Coram

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

C.M.A.Nos.3459 of 2017 and 1245 of 2019
and
C.M.P.Nos.21975 of 2017 and 3451 of 2019

The Manager,
Oriental Insurance Company Ltd.,
Hub 3rd Party Claims, Vijayalakshmi Complex,
No.32/13, Phase No.2, Sathuvachari,
Vellore. ... Appellant/2nd Respondent in
both the appeals

vs.

1.Raja1st Respondent/Petitioner
in CMA 1245 of 2017

2.Arul Mani 2nd Respondent in
C.M.A.No.1245 of 2017

1.Santhoshi Madevi
2.Minor Karthiga
3.Minor Udhayaraj
4.Indirani
5.Shanmugam

...Respondents 1-5 in CMA 3459 of
2017/Petitioners 1-5

6.Arul Mani6th Respondent in
C.M.A.No.3459 of 2017/1st Respondent

(Minor respondents 2 and 3 are
rep. By their mother R1 as natural guardian)

Appeals filed under Section 173 of the Motor Vehicles Act,
1988 against the judgment and decree dated 24.01.2017 made in
M.C.O.P.Nos.205 and 206 of 2016 on the file of the Motor
Accidents Claims Tribunal (Special Sub Judge), Thiruvannamalai.

For Appellant : Mr.R.Ganesan
in both the appeals

For Respondents : Mr.B.Jawahar for R1 to R5
in CMA No.3459 of 2017
for R1 in CMA No.1245 of 2019
R6- Exparte in CMA 3459/2017

COMMON JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

These appeals are preferred by the appellant, who was the second respondent before the Tribunal. The appellant is the insurer of the vehicle bearing Regn. No.TN 25 E 3543. The said vehicle dashed against another vehicle bearing Regn. No.TN 23 J 3175 coming in the opposite direction. The rider of the other vehicle which is also a two wheeler died in the accident. An F.I.R. has been laid against the driver of the vehicle insured with the appellant. Thereafter, final report has also been filed. These two documents have been marked as Exs.P1 and P5.

2.The claimants being the dependents of the rider of the two wheeler bearing Regn. No.TN 23 J 3175 filed M.C.O.P.No.206 of 2016. M.C.O.P.No.205 of 2016 has been filed by one Raja, being the pillion rider of the vehicle bearing Regn. No.TN 25 E 3543, which has been insured with the appellant. Both these cases have been taken together and compensation has been awarded. Insofar as M.C.O.P.No.206 of 2016 is concerned, Rs.43,82,056/- has been awarded. Insofar as M.C.O.P.No.205 of 2016 is concerned, mere sum of Rs.25,000/- has been awarded. Challenging the award both on liability and quantum, the present appeals have been filed.

3.Learned counsel appearing for the appellant would submit that the challenge is with respect to the liability alone. The vehicle insured with the appellant bearing Regn. No.TN 25 E 3543 was admittedly involved in the accident, which was head on collision with the vehicle driven by the deceased bearing bearing Regn. No.TN 23 J 3175. There was some evidence to show that the deceased was smelling alcohol. Though the deceased was having a licence, there was no evidence to show that the vehicle was covered with any insurance policy. That is the reason why the Tribunal fixed the entire liability on the appellant. The evidence of P.W.2 ought not to have been relied upon insofar as M.C.O.P.No.206 of 2016 is concerned as he is the claimant in M.C.O.P.No.205 of 2016. Therefore, the Tribunal ought to have adopted contributory negligence on the part of the drivers of both vehicles. In support of his contention, learned counsel made reliance upon the following decisions:

- (i)Municipal Corporation of Bombay Vs. Laxman Iyer and Another ((2003) 8 SCC 731)
- (ii)Sindh and Others Vs. Sekar and Another (2008 ACJ 1475)
- (iii)T.O.Anthony Vs. Karvarnan and Others (Appeal (Civil) No.1082 of 2008)
- (iv)Pramodkumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak & Ors (AIR 2002 SC 2864)

4.Learned counsel appearing for the respondents/claimants in C.M.A.No.3459 of 2017 submitted that there is no material to hold that the deceased was under the influence of alcohol. The Tribunal took into consideration Exs.P1 and P5 read with the evidence of P.W.2. P.W.2 cannot be termed as an interested witness. This witness has been put to cross-examination. It is nobody's case that P.W.2 has not seen the occurrence. He himself is an injured witness. Though he being an injured witness, his evidence has been rightly taken into consideration. It is not as if in all cases of collision between two vehicles coming in opposite directions, the Tribunal is bound to fix contributory negligence. The word 'Negligence' is a relative term. It has to be seen contextually on the facts of each case. Inasmuch as there is no perversity in the finding of the Tribunal, no interference is required.

5.The Tribunal took into consideration not only the evidence of P.W.2 but also Exs.P1 and P5. Ex.P1 is the copy of the first information report. Thereafter, investigation has been done and final report has been filed under Ex.P5. Though these documents are not substantive pieces of evidence, we are dealing with summary proceedings. The Tribunal considered these documents along with the evidence P.W.2. We are not inclined to eschew the evidence of P.W.2. P.W.2 was the pillion rider of the two wheeler bearing Regn. No.TN 25 E 3543, which has been insured with the appellant. He is also an injured witness. Inasmuch as he is admittedly an eye witness, his evidence being in tune with Exs.P1 and P5, the Tribunal took it into consideration.

6.As rightly submitted by the learned counsel for the claimants, it cannot be followed as a straitjacket formula in all cases that when two vehicles collide with each other, contributory negligence will have to be fixed. The word 'Negligence' has to be given very extended meaning. It is not absolute but only relative. It is an omission or inadvertence on the part of the tort-feasor in a given circumstance. As discussed above, there is absolutely no material to hold that the deceased was responsible for the accident. On the contrary,

there are evidence in the form of Exs.P1 and P5 along with P.W.2. Therefore, the Tribunal considered those aspects and came to the conclusion. The non-furnishing of the insurance cover by the claimants would not be fatal. After all, the liability of the owner can be transformed to that of the appellant herein. When once the owner of the vehicle is fastened with the liability, resultant liability of the appellant would arise, being the insurer. That is exactly what has happened in this case. We find that there is absolutely no material with respect to the contributory negligence by the deceased. Investigation by the police also did not disclose the same. In such view of the matter, we are of the view that the appeal in C.M.A.No.3459 of 2017 deserves to be rejected. There is no difficulty in appreciating the law laid down in the judgment referred by the learned counsel appearing for the appellant. However, the facts therein are different and we do not find any negligence on the part of the deceased.

7.In such view of the matter, both the Civil Miscellaneous Appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

8.The appellant insurance company is directed to deposit the compensation amount awarded by the Tribunal along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.Nos.205 and 206 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge), Thiruvannamalai, within a period of eight weeks from the date of receipt of a copy of the judgment.

9.We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank accounts of the claimant in M.C.O.P.No.205 of 2016 and the respective shares of the claimants 1, 4 and 5 in M.C.O.P.No.206 of 2016 within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same. Insofar as the shares of minor claimants 2 and 3 in M.C.O.P.No.206 of 2016 are concerned, the same shall be deposited in any one of the Nationalised banks till they attain majority. The first claimant/mother of minor claimants 2 and 3 is entitled to withdraw the interest accrued on the minors' deposits once in three months directly from the Bank.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

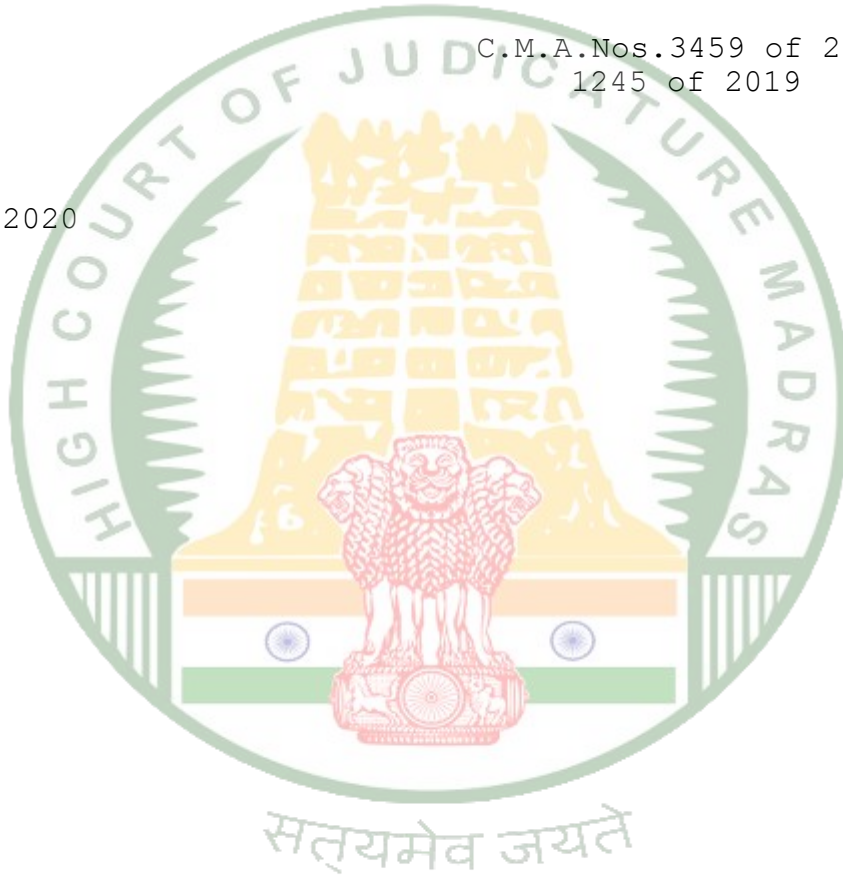
1.The Motor Accidents Claims Tribunal
Special Sub Judge, Thiruvannamalai.

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

+2cc to M/s.B.Jawahar, Advocate Sr.105986, 105987

C.M.A.Nos.3459 of 2017 and
1245 of 2019

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