

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3182 of 2010

and

M.P.No.1 of 2010

The Divisional Manager,
M/s.Royal Sundaram Alliance
Insurance Company Limited,
No.46, Whites Road,
Chennai 600 014.

.. Appellant/3rd Respondent

Vs.

1.Sulochana
2.M.Annamalai
3.K.Maniammal
4.P.Chellammal
5.K.Ellammal
6.Elumalai
7.Palaniammal

8.The Managing Director,
Tamil Nadu State Transportation
Corporation (Villupuram Division),
Villupuram.

...1 to 7 Respondents/Claimants

9.T.Siva

..8th & 9th Respondents/1st & 2nd
Respondents

(R9 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.10.2009 made in M.C.O.P.No.22 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Cheyyar, Tiruvannamalai District.

For Appellant	:	Mrs.R.Sree Vidhya
For R1	:	Ms.Ramya V.Rao
For RR 2 to 7	:	Mr.K.Varadha Kamaraj
For R8	:	Mr.K.J.Sivakumar
R9	:	exparte before the Tribunal

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 13.10.2009 made in M.C.O.P.No.22 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Cheyyar, Tiruvannamalai District.

3.The appellant is the 3rd respondent in M.C.O.P.No.22 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Cheyyar, Tiruvannamalai District. The respondents 1 to 7 filed the said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the death of one K.Govindhammal, who died in the accident that took place on 21.02.2005.

4.According to respondents 1 to 7, on 21.02.2005 at about 08.20 A.M., while the deceased was travelling as a passenger in the bus belonging to 8th respondent-Transport Corporation on Gingee ? Chetpet road near Neelampoondi Village, the driver of the lorry bearing Registration No.TN 23 B 1157 belonging to 9th respondent who was driving the lorry from the opposite direction in a rash and negligent manner, came and dashed against the 8th respondent's bus and caused the accident. In the accident, the said Govindhammal sustained grievous fatal injuries and immediately she was admitted in the Government Hospital, Gingee and thereafter she was shifted to JIPMER Hospital, Puducherry and further she was referred to Government Hospital, Vellore. Later, she was admitted in the Nagari Puthur Bone Setting Hospital. In spite of treatment, the said Govindhammal succumbed to injuries on 27.04.2005. Therefore, the respondents 1 to 7 filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation against the respondents 8, 9 and appellant-Insurance Company, being the owner of the bus, owner and insurer of the lorry respectively.

5.The 9th respondent, being the owner of the lorry remained exparte before the Tribunal.

6.The 8th respondent-Transport Corporation filed counter statement and denied all the averments made by the respondents 1 to 7. According to 8th respondent, the accident has occurred only due negligence on the part of the driver of the lorry belonging to 9th respondent. The driver of the 8th respondent's bus drove the bus at a moderate speed by observing the traffic rules. The driver of the 9th respondent's lorry only drove the same in a rash and negligent manner at a high speed without following the road traffic rules and dashed against the 8th respondent's bus and caused the accident. The driver of the 9th

respondent's lorry was not possessing driving license at the time of accident. The 8th respondent-Transport Corporation denied the age, avocation and income of the deceased. The respondents 1 to 7 have to prove that they are the legal heirs of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 7 are highly excessive and prayed for dismissal of the claim petition as against the 8th respondent-Transport Corporation.

7.The appellant-Insurance Company, being the insurer of the lorry belonging to the 9th respondent filed counter statement and denied various averments made by the respondents 1 to 7. According to the appellant-Insurance Company, the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to 8th respondent-Transport Corporation. The appellant denied the age, avocation, income, place of accident, nature of injuries, loss of clothes and articles and nature of death. The driver of the lorry belonging to 9th respondent was not having valid driving license at the time of accident. Hence, the appellant, being the insurer of the 9th respondent's lorry is not liable to pay any compensation to the respondents 1 to 7. The respondents 1 to 7 have to prove that they are the legal heirs of the deceased by producing valid documents. The quantum of compensation claimed by the respondents 1 to 7 is exorbitant and prayed for dismissal of the appeal as against the appellant-Insurance Company.

8.Before the Tribunal, on behalf of the respondents 1 to 7, the 6th respondent examined himself as P.W.1 and one Venkatesan, who is a passenger in the 8th respondent's bus was examined as P.W.2 and 10 documents were marked as Exs.P1 to P10. The 8th respondent-Transport Corporation and the appellant-Insurance Company did not let in any oral and documentary evidence.

9.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the both the driver of the bus belonging to 8th respondent-Transport Corporation as well as the driver of the lorry belonging to 9th respondent and fixed negligence equally on both the drivers and awarded a sum of Rs.2,34,000/- as compensation to the respondents 1 to 7 and directed the 8th respondent-Transport Corporation as well as 9th respondent and appellant-Insurance Company to pay 50% each of the award amount, i.e., Rs.1,17,000/-each as compensation to the respondents 1 to 7.

10.Against the said award dated 13.10.2009 made in M.C.O.P.No.22 of 2006, the appellant-Insurance Company has come out with the present appeal.

11.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 50% negligence on the part of the driver of the lorry belonging to the 9th respondent also without properly considering the fact and damages caused to the vehicles. The Tribunal ought to have seen that the driver of the bus belonging to 8th respondent-Transport Corporation drove the bus in a rash and negligent manner and dashed against the lorry and driver of the bus was solely responsible for the accident. Police after investigating the case, filed charge sheet against the driver of the bus belonging to 8th respondent. The Tribunal ought to have dismissed the claim petition against the appellant-Insurance Company and 9th respondent-owner of the lorry and prayed for setting aside the portion of the award fixing 50% negligence on the part of the driver of the lorry belonging to 9th respondent as well as 50% liability fixed on the part of the appellant and for allowing the appeal.

12.Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the 8th respondent-Transport Corporation contended that the accident has occurred only due to the negligence on the part of the driver of the lorry belonging to 9th respondent. The Tribunal erroneously fixed 50% negligence on the part of the driver of the bus belonging to 8th respondent-Transport Corporation. The Tribunal ought to have fixed entire negligence on the part of the driver of the lorry belonging to the 9th respondent and directed the appellant-Insurance Company to pay entire compensation awarded and prayed for dismissal of the appeal.

13.Mr.K.Varadha Kamaraj, learned counsel appearing for the respondents 2 to 7 made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

14.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 8th respondent-Transport Corporation and the learned counsel appearing for respondents 2 to 7 and perused the entire materials on record.

15.From the materials available on record, it is seen that it is the contention of the respondents 1 to 7/claimants that both the driver of the bus and lorry drove the bus and lorry in a rash and negligent manner and both the drivers of the vehicles are responsible for the accident and further contended that it is head on collision. The respondents 1 to 7 examined one Venkatesan as P.W.2, who is an eye-witness to the accident, who deposed that accident occurred due to rash and negligent driving by both the driver of the lorry belonging to 9th respondent and 8th respondent-Transport Corporation bus. The complaint was lodged by one Narayanasamy, Village Administrative Officer stating that it was head on collision between the bus and lorry.

The appellant did not examine the driver of the lorry or any eye-witness to substantiate their contention that the accident has occurred due to the negligence on the part of the driver of the bus alone. The learned counsel appearing for the appellant-Insurance Company contended that Police after investigation, laid charge sheet against the driver of the bus. The alleged charge sheet was not filed before the Tribunal or before this Court. The Tribunal considering the evidence let in before it, held that accident has occurred only due to rash and negligent driving of both the lorry and bus and directed the appellant-Insurance Company and 8th respondent-Transport Corporation to pay 50% each of the award amount as compensation to the respondents 1 to 7. There is no error in the said reasoning of the Tribunal warranting interference by this Court.

16. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.2,34,000/- awarded by the Tribunal as compensation to the respondents 1 to 7, along with interest and costs is confirmed. The appellant-Insurance Company and the 9th respondent are directed to deposit 50% of the award amount, i.e., Rs.1,17,000/- and the 8th respondent-Transport Corporation is directed to deposit balance 50% of the award amount i.e., Rs.1,17,000/- along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.22 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Cheyyar, Tiruvannamalai District. On such deposit, the respondents 1 to 7 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk
To
1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Cheyyar,
Tiruvannamalai District

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to M/s. R.Sreevidhya, Advocate Sr.No. 35737

C.M.A.No.3182 of 2010

CP (CO)
RMP (07/04/2021)