



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.09.2020

Pronounced on: 28.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.1296 & 1297 of 2016
& C.M.P.Nos.9952 & 9953 of 2016

The Oriental Insurance Co Ltd.,
Branch Office - 2, No.281, Cross Cut Road,
Gandhipuram Post, Coimbatore - 641 012,
Coimbatore District.

...Appellant/3rd Respondent
in C.M.A.Nos.1296 & 1297 of 2016

/versus/

1. Ganesan,
S/o.Subbaiyan,
2. Indirani,
W/o.Ganesan,
Both are residing at,
No.2, Thandalraman Street,
Sankanur Post, Coimbatore - 641 027,
Coimbatore District.
Now residing at,
No.74, Indhira Nagar,Vallakovil Post, Dharapuram Taluk,
Thiruppur District.
3. Mr.Krishnan,
S/o.Anandan,
No.45/6, E.B.Office Road,
Lakkapuram Post, Erode Taluk, Erode District.
4. Tmt.Vijayakumari,
No.38, Bharathiyar Road,
New Sidhapudur Post,
Coimbatore - 641 044,
Coimbatore District.

...Respondents 1 and 2/
Petitioners in C.M.A.No.1296 of 2016
...Respondents 3 & 4/Respondents 1 & 2
in CMA.No.1296/2016



1. Vivekanandan,
S/o.Nataraj.

2. Shanthi,
W/o.Vivekanandan.

Both are residing at,
No.59/60, Marakkara Nanjappa Gounder Street,
Coimbatore - 641 001,
Coimbatore District.

Now residing at,
No.157, Natesan Nagar,
Vallakovil Post,
Dharapuram Taluk,
Thiruppur District.

3. Mr.Krishnan,
S/o.Anandan,
No.45/6, E.B.Office Road,
Lakkapuram Post, Erode Taluk, Erode District.

4. Tmt.Vijayakumari,
No.38, Bharathiyar Road,
New Sidhapudur Post,
Coimbatore - 641 044,
Coimbatore District.

...Respondents 1 and 2/Petitioner
in C.M.A.No.1297 of 2016

Prayer in C.M.A.No.1296 of 2016: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
Decree and Judgment in M.C.O.P.No.242 of 2013, dated 07.12.2015,
on the file of the Motor Accidents Claims Tribunal, Additional
District Court No.3, Dharapuram, Tiruppur District.

Prayer in C.M.A.No.1297 of 2016: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
Decree and Judgment in M.C.O.P.No.244 of 2013, dated 07.12.2015,
on the file of the Motor Accidents Claims Tribunal, Additional
District Court No.3, Dharapuram, Tiruppur District.

For Appellant : Ms.Harini,
in C.M.A.No.1296 & 1297 of 2016 for M/s.M.B.Gopalan Associates

For R1 & R2 : Mr.Ma.P.Thangavel
in C.M.A.No.1296 & 1297 of 2016

For R3 & R4 : No appearance
in C.M.A.No.1296 & 1297 of 2016



COMMON JUDGMENT

(The case has been heard through video conference)

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These two Appeals are preferred by the Insurance Company challenging the award passed by the Tribunal on the ground that they are not liable to compensate.

2. The brief facts leading to these appeals are as below:-

On 08.07.2012, at about 7.00 pm one Sengaliappan, with three others on the pillion was riding the motor cycle bearing registration No.TN-66/B-3954 on Coimbatore to Siruvani main Road. Near Sethalaxmi nagar Perur, he tried to over take the bus bearing registration No.TN-38/U-5569. He could not successfully negotiate since an auto bearing registration No.TN-37/BL-9331, was coming from the opposite direction in close proximity. Hence, he dashed the auto. The auto got capsized, Sengaliappan and his three companions on the pillion were throw off from the motorcycle, dashed against the bus and died.

3. A criminal complaint was lodged at Perur Police station in Crime No.162 of 2012 by one Vinoth Kumar, the driver of the capsulized auto. He was examined as P.W.3 in the claim petitions tried jointly.

4. In M.C.O.P.No.242 of 2013, Thiru.S.Ganesan and Tmt.G.Indirani, who are the parents of the deceased Aravindasamy, aged about 17 years, claimed Rs.15,00,000/- as compensation and in M.C.O.P.No.244 of 2013, N.Vivekanadhan and Santhi, the parents of V.Jayabharath, aged 19 years claimed Rs.20,00,000/- as compensation.

5. The Insurance company in the counter has contended that the accident as narrated in the claim petition is not correct. On the fateful day, Sengaliappan in the motorcycle bearing registration No.TN-66/B-3954 carrying three others namely Aravindsamy, Jayabharath and another on the pillion. He drove the vehicle rash and negligently. When he tried to over take the bus bearing registration No.TN-38-U-5969 without noticing the oncoming auto bearing registration No.TN-37-BL-9331 from the opposite direction towards him. He dashed that auto and thrown on the road. The rider of the two wheeler Sengaliappan, had no driving license, at the time of accident. Four persons including the rider of the motorcycle travelling in the motorcycle, which permits only two persons is violation of R.C and Motor Vehicles Act. Further, the claim petition is bad and not maintainable for non-joinder of necessary parties, such as the driver, owner and insurer of the auto and the owner and



11. Per contra, the Learned Counsel for the respondents rely upon judgments, where, the Courts have held in favour of the claimants even though they were travelling in triple and quadruple. Particularly, he relies upon the recent judgment of the Hon'ble Supreme Court in Mohammed Siddique Vs. National Insurance Company reported in 2020 TANMAC 161 SC, and submitted that the Court cannot presume negligence when more than one person are accommodated on the pillion of a motorcycle. In the absence of evidence to show the wrongful act on the part of the deceased contributed to the accident, the victim/deceased cannot be held guilty of contributory negligence.

12. In the light of the judgments cited by either side, it is clear that when more than one motor vehicle is involved in the accident, Court has to consider the evidence to decide whether the accident occurred due to the contribution of two or more vehicle or due to negligence of anyone vehicle. Depending upon the evidence, the contribution has to be decided and apportioned. If the accident has occurred due to the cumulative effect of the multiple vehicle then all the vehicles involved has to be held jointly and severally liable under composite negligence.

13. The difference between the contributory negligence and the composite negligence has been clarified by the Hon'ble Supreme Court in Khenyei Vs. New India Assurance reported in 2015 9 SCC 273. In Mohammed Siddique Vs. National Insurance Company (cited supra), the latest judgment of the Hon'ble Supreme Court on this point has also expressed its view that the triple riding in a motorcycle along with the driver may not by itself without any thing more, make him guilty of contributing negligence. There must be either be a causal connection between the violation and the accident or the causal connection between the violation and impact of the accident upon the victim.

14. The Learned Counsel for the claimants/respondents relied upon the following judgments:-

(i). Kattabomman Transport Corporation Limited Vs. Vellai Duraichi and others reported in 2004 (1) CTC 677.

(ii). Devi Singh Vs. Vikram Singh & others reported in 2008(2)TN MAC 456 (FB).

(iii). The Branch Manager, United India Insurance Company Ltd Vs. Uma & others reported in 2011 (1) TN MAC 136 (DB).

(iv). Thangammal Vs. The Managing Director, Tamil Nadu State Transport Corporation Ltd reported in 2013(2) TNMAC 861.

(v). Khenyei Vs. New India Assurance Company Ltd & others reported in 2015(1) TN MAC 801 SC.



(vi). Minor M.Balaji rep. by his father M.Murugesan Vs. S.Venkatachalam reported in 2016 (2) TN MAC 646.

(vii). Oriental Insurance Company Limited Vs. Panchavarnam and others reported in 2017 (2) TN MAC 388 (DB).

(viii). Mohammed Siddique & another Vs. National Insurance Company Limited reported in 2020 (1) TN MAC 161 (SC).

15. In all these judgments, consistently Courts have held that in any accident involving a motorcycle, negligence on the part of the motorcycle rider is not a fact of presumption, because he has accommodated more than one person in his vehicle. The negligence has to be emanated from the evidence placed before the Court. If the negligence is proved, it has to be decided whether it is contributory negligence, if so, the percentage of contribution and accordingly liability has to be apportioned. If it is composite negligence, liability will be on all the joint tortfeasors and the liability is joint and severable. In such case, the claimant is entitled to recover entire amount from the easiest solvent joint tortfeasor.

16. The difference between contributory negligence and the composite negligence is explained extensively by Supreme Court in Khenyei Vs. New India Assurance Company Ltd & others reported in 2015(1) TN MAC 801 SC by three judges bench referring the earlier judgment of the Hon'ble Supreme Court rendered in T.O.Anthony Vs. Karvarnan & others reported in 2008 (3) SCC 78.

17. The relevant portion in T.O.Anthony case is extracted below:-

"6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately.



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On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

18. Referring T.O. Anthony case, in Khenyei Vs. New India Assurance Company Ltd & others reported in 2015(1) TN MAC 801 SC, three judges have capsulized the difference between contributory negligence and composite negligence as below:-

"There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the



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injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons."

19. In the instant case, in F.I.R as well as the ocular evidence of P.W.3 (the auto driver), who was party to the accident, speaks about the involvement of three motor vehicles they are:-

(1). The motorcycle in which the four deceased persons travelled.

(2). The auto which hit by the motorcycle and

(3). The passenger bus on which the four persons fell and got crashed.

20. The eye witness P.W.3 had deposed that the accident occurred when the motorcycle rider hit his auto. There is no variance about this fact either in the F.I.R or the oral evidence.

21. Whether the motorcycle rider hit the auto coming from the opposite direction while over taking the passenger bus going ahead of him or which trying to move right when the bus driver suddenly turned to right without any indication is the actual fact in dispute. If the later version is true, then the bus should have first hit the auto coming from the opposite direction. The motorcycle rider could not have hit the auto first and then fell on the left, to be hit by the bus. The Tribunal has failed to consider the facts elucidated from the driver of the auto who is a vital witness in this case.

22. To be noted, the claimants have not impleaded the owners and insurer of the other two motor vehicles (auto and motorcycle) admittedly involved in the accident. The evidence emanated from the eye witness clearly proves that the motorcycle rider was the tortfeasor though F.I.R was registered against the bus driver.

23. The evidence further emanated in the Trial establishes that the four persons travelling in the two wheeler were caught between the auto coming from the opposite side and the passenger bus moving ahead of the motorcycle while the rider of the motorcycle tried to over take the bus from the right side.

24. Negligence occur due to lack of diligence or due to



recklessness. Rashness is an act done without careful consideration of the possible result. The accident in the instant case if looked with these understanding of the term negligence and rashness, one will come to an irresistible conclusion that the motorcycle rider has failed to consider the possible result by not applying the break when the bus moving ahead of him turned right, instead he has proceeded to dash against the auto coming from the opposite side. When four persons along with the motorcycle fell on the road suddenly whether the bus driver had enough time to realise it and apply break or not is difficult to ascertain in the absence of evidence. However, having been prosecuted for rash and negligent driving, the bus Insurer has to be held for his contribution to the accident.

25. In the latest judgment the Hon'ble Supreme Court Mohammed Siddique case relied by the Learned Counsel for the respondent, the motorcycle with three persons was hit by a car from behind, in the said factual circumstances the Hon'ble Supreme Court has observed that it is presumptuous to say two person on pillion could have added to imbalance. In the absence of evidence such presumption is wrong.

26. In Mohammed Siddique case, the Hon'ble Supreme Court has illustrated circumstances under which the contribution can be mulcted:-

"the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for



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the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked."

27. The facts of the case in hand for consideration is entirely different from the facts of the case relied and extracted above. The facts of the case under consideration, the two wheeler rider with three persons on the pillion went under the wheels of the bus after hitting the upcoming auto while taking extreme right to overtake the bus, unlike the case dealt by Supreme Court where the two wheeler going ahead was hit behind by the car.

28. Therefore, this Court holds that only 1/3rd negligence can be attributed to the bus driver and to that extent, the appellant insurance company is liable to indemnify. In respect of remaining 2/3rd portion, the owner of the two wheeler and its insurer, if any alone are liable. The claimants for reasons best known, not impleaded either the owner of the motorcycle or its Insurer. Therefore, no order passed for the remaining portion. It is open to the claimants to proceed against them, if law permits. The liability of the appellant insurer is restricted to 1/3rd.

29. As far as the quantum of compensation, the Learned Counsel for the appellant canvassed that the tentative income of the deceased person fixed excessively without any evidence. Whereas, the Learned Counsel for the claimants/respondents submitted that the tribunal ought to have considered future prospects of the deceased persons and ought to have awarded 40% more. The accident took place on 08.07.2012, Aravindasamy, the son of the claimants in M.C.O.P.No.242 of 2013 was 17 years old student. The Tribunal has tentatively fixed his income as Rs.6,000/- per month. After applying multiplier 18 has awarded Rs.6,80,000/- as compensation. The other victim of the accident Jayabharath was 19 years old at the time of accident. He was a diploma holder undergone apprentice training in TVS Company. The Tribunal has fixed his income as Rs.7,000/- per month and has awarded a sum of Rs.7,86,000/-.

30. Even though no cross appeal is filed, applying the guideline of Pranay Sethi case, 40% more towards future prospects has to be awarded. The compensation for the respondent Nos. 1 and 2 in C.M.A.No.1296 of 2016, who are the claimants in M.C.O.P.No.242 of 2013 has to be therefore modified as:-



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(Rs.6,000/- + Rs.2,400 (FP) x ½ x 18 x 12	Rs.9,07,200/-
Loss of love and affection	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
Totally Rs.9,62,200/-	
Less: 2/3 rd for contributory ----- negligence Rs.6,41,466	Rs.3,20,733/-
Total Compensation Rounded Off to	Rs.3,21,000/-

31. The compensation for the respondent Nos.1 & 2 in C.M.A.No.1297 of 2016, who are the claimants in M.C.O.P.No.244 of 2016 has to be modified accordingly.

(Rs.7,000/- + Rs.2800 (FP) x ½ x 18 x 12	Rs.10,58,400/-
Loss of Love and affection	Rs.40,000/-
Funeral Expense	Rs.15,000/-
Totally Rs.11,13,400/-	
Less: 2/3 rd for contributory ----- negligence Rs.7,42,266/-	Rs.3,71,134/-
Total Compensation Rounded Off to	Rs.3,72,000/-

32. The award amount shall be equally shared by the claimants along with proportionate interest. The Insurance Company is directed to deposit the award amount with 7.5% interest from the date of filing the petition till the date of realisation, within a period of 12 weeks, from the date of receipt of a copy of this order. The Learned Counsel for the respondents would submit that 50% of the award amount has already been withdrawn by the claimants pursuant to the interim direction given by this Court. In such case, the balance amount has to be paid by the appellant with the time mentioned above. On such deposit, the claimants are permitted to withdraw the same on proper petition. Accordingly, the Civil Miscellaneous



Appeals are party allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(I)

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//True Copy//

Sub Assistant Registrar

bsm

To

The Motor Accidents Claims Tribunal,
Additional District Court No.3,
Dharapuram, Tiruppur District.

Copy to:
The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.Nos.1296 & 1297 of 2016
& C.M.P.Nos.9952 & 9953 of 2016

PP(CO)
CB(23/09/2021)