IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved On	30.07.2020
Pronounced On	17.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3361 of 2011
and
M.P.1 of 2011

(Through Video Conferencing)

The New India Insurance Co. Ltd.,
No.45, Moore Street,
Chennai - 1. ... Appellant/3rd Respondent

Vs.

1.Gunasundari

2.The Manager Director,
TNSTC (VPM) Ltd.,
No.3/137, Salamedu,
Villupuram.

3.D.Ramalingam ... Respondents/ Petitioner/ 1st & 2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 17.02.2011 made in M.C.O.P.No.1397 of 2008, on the file of Motor Accident Claims Tribunal, Chennai (V Court of Small Causes), Chennai.

For Appellant : Mr.K.Vinod for M/s.Elveera Ravindran

For R2 : Mr.C.S.K.Sathish
R1 &R3 Not ready in Notice

J U D G M E N T

The insurance company is the appellant in this appeal. It is aggrieved by the impugned judgment and decree dated 17.02.2011 passed by the Motor Accident Claims Tribunal (V Court of Small Causes) in M.C.O.P.No.1397 of 2008 (hereinafter referred to as the " order").

2. By the impugned order, the Tribunal has awarded a sum of Rs.3,45,000/- to the claimant/1st respondent together with

interest at 7.5% from the date of claim petition till the date of deposit. The 1st respondent/claimant had suffered injury while travelling in a bus of the 2nd respondent-State Transport Corporation on 25.04.2007. The 1st respondent/claimant in her claim petition stated that the insured lorry bearing registration No.T.N. 09-K-2889 of the 3rd respondent was driven in a rash and negligent manner and and hit the bus from behind in which she was travelling. In the accident, the 1st respondent/claimant suffered grievous injuries as follows:-

a) fracture of right femur;
b) fracture of both bones on the right leg;
c) head injury;
d) multiple injuries all over her body.

3. Before the Tribunal, the 1st respondent-State Transport Corporation successfully managed to distance itself from the liability by stating that the accident lorry did not belong to it and therefore no liability can be fastened on it. As far as the appellant-insurance company was concerned, it merely stated that the 1st respondent/claimant was negligent and that the compensation claim was exorbitant. Alternatively, it was also submitted that the driver of the lorry was not rash and negligent while driving the lorry and that the driver of the State Transport Corporation bus was also negligent as he contributed to the accident by stopping the bus in the middle of the road. Before the Tribunal, the appellant also obtained leave under section 170 of the Motor Vehicles Act, 1988.

4. The Tribunal has found that the driver of the insured lorry guilty of driving the lorry in a rash and negligent and thereby hitting by bus of the 2nd respondent State Transport Corporation and thereby caused injury to the 1st respondent. The Tribunal relied on Ex.P.1-FIR dated 25.04.2007, as per which, an altercation broke between a fellow passenger and the conductor and therefore the driver of the bus of the 2nd respondent State Transport Corporation stopped the bus all of a sudden and asked the passenger to get down from the bus when the insured lorry belonging to the 3rd respondent came from behind and hit the rear side of the bus and as a result of the impact, the 1st respondent claimant suffered the above injuries.

5. The Tribunal primarily relied on Ex.P.3 the judgment of the criminal Court, wherein, the driver of the lorry admitted of his guilt for rash and negligent driving of the insured lorry. The Tribunal further referred to the Ex.P.2 charge sheet which established the case of the state in the criminal proceeding against the driver of the lorry.

6. In this appeal, the appellant-insurance company submits that the Tribunal failed to note Ex.P.1-FIR which clearly stated that the bus, in which the 1st respondent claimant was travelling, stopped suddenly in the middle of the road due to altercation between the crew of the bus with a

fellow passenger and that the later was asked to disembark when the insured lorry came from behind and hit the bus, resulting in the accident, passengers suffered injuries.

7. The learned counsel for the appellant submits that as per the decision of the Hon'ble Supreme Court in Oriental Insurance Company Limited Vs. Prem Lata Shukla and others, 2000 7 ACJ 1928, the Tribunal ought to have seen that a party bringing a record cannot be permitted to turn around and content that the other content of the F.I.R. had not been proved. It is contended by the learned counsel for the appellant that the fact that the bus of the 2nd respondent State Transport Corporation stopped in the middle of the road even as per Ex.P.1 shows that no guilt can be fastened on the driver of the lorry.

8. Further, the learned counsel for the appellant also relied on the decision of this Court in New India Assurance, Limited Vs. Saker and another, 2010 ACJ 2390 to buttress the point that mere conviction of the driver in a criminal proceeding ipso facto cannot mean that the owner of the lorry was vicariously liable for the accident so as to fasten liability on the insurer namely the appellant. He submits that as far as the admissibility of a criminal Court judgment in the civil proceedings are concerned, it is the consistent view of the Court that same cannot be relied upon on its face value and some other independent evidence has to be put in place by the person who tries to establish the facts before the Court.

9. Learned counsel for the appellant also relied on the decision of the Division Bench of this Court in Metropolitan Transport Corporation Limited Vs. G.Gnanam, 2004 (2) T.N. M AC 115, wherein, it was held that the Tribunal was not correct in relying on the penalty paid by the driver before the criminal Court to fix the entire liability on the driver.

10. The learned counsel for the 1st respondent submitted that the impugned order was well reasoned and requires no interference. As far as the defence of the 2nd respondent’s State Transport Corporation was concerned, a question was posed as to why contributory negligence should not be inferred by applying the ratio of the Hon'ble Supreme Court in Nishan Singh and others Vs. Oriental Insurance Co. Ltd. and others, 2018 ACJ 1466, wherein, the Hon'ble Supreme Court taking note of Rule 23 of the Rules of Road Regulations, 1989 interpreted the expression “sufficient distance” as at least a safe distance of 2 or 3 seconds gap in an idle condition to avert collision and to allow the following driver time to respond.

11. There the distance of 10 to 15 ft between the two vehicles was held not to be a safe distance and therefore held that it must necessarily follow that the vehicle which came from behind was negligent. The Hon'able Supreme Court observed that the Tribunal also noted that there was no evidence on

record to indicate that the driver of the truck had applied the brakes in the middle of the road and therefore it was held that the driver of the truck was not guilty of driving the vehicle rashly and negligently.

12. I have considered the arguments advanced by learned counsels for the appellant and the 2nd respondent. I have also perused the evidence on record.

13. Considering the factual matrix of the case, it is evident that the accident had taken place at about 16:45 hours on 25.4.2007. It could not have been dark as there is no suggestion or pleadings to the effect that it was raining and therefore cloudy to hamper visibility.

14. There is also no denying that the driver of the bus belonging to the 2nd respondent State Transport Corporation had decided to stop the bus in the middle of the road when the insured lorry which was behind the said bus and hit the bus in which the 1st respondent/claimant was travelling. Thus, there is evidence of contributory negligence on the part of the driver of the bus as he ought not to have stopped the bus on the highway with a view to disembark the feuding passenger in the middle of the road. If the bus had not stopped in the middle of the road perhaps, the 1st respondent/claimant would have not suffered the injury and escaped the fate even if the lorry was driven in a rash and negligent manner. Since the driver of the lorry has also accepted his guilt of driving the lorry in a rash and negligent manner and thereby caused the accident, the owner of the lorry was vicariously liable to compensate the 1st respondent injured person. Consequently, the appellant insurance company was also liable as per the policy.

15. In my view, both the driver of the insured lorry belonging 3rd respondent and the driver of the bus belonging to the 2nd respondent State Transport Corporation were guilty and responsible for the accident and the injury to the 1st respondent/claimant. Therefore, the question that arises consideration is to what extent of liability has to be shared between two of them. In my view, it would be fair to apportion a portion of liability on the 2nd respondent State Transport Corporation in as much as the driver had made a non-scheduled stop in the middle of the highway there when the speeding insured lorry tailing from behind came and hit the bus resulting in collision and injuries to the passengers. If the bus had not stopped in the middle of the road on the highway, there would have been no accident and injury to the 1st respondent/claimant.

16. In my view, 30% of the liability can be fixed on the 2nd respondent State Transport Corporation as the driver made an un-schedule stop in the middle of the road on a Highway. The fact that the bus was stopped in the middle of the road makes it clear that the driver of the 2nd respondent was also guilty.

17. Accordingly, I partly allow the present appeal by shifting 30% of the liability on the 2nd respondent State Transport Corporation. If the appellant has already deposited the award amount together with interest accrued thereon,

i. the 1st respondent claimant is permitted to withdraw the amount of compensation deposited by the appellant Insurance Company together with interest from the date of claim petition till the date of deposit, by filing necessary application before the Tribunal.

ii. the 2nd respondent State Transport Corporation is directed to deposit 30% of the liability together with interest at 7.5% p.a from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

iii. the appellant Insurance Company shall file appropriate application before the Tribunal to withdraw the excess amount of deposit together with interest thereon at 7.5% p.a.

18. In case, if the appellant insurance company has not deposited the amount of compensation awarded by the Tribunal,

i. the appellant Insurance Company is directed to deposit only 70% of the award amount together with interest at 7.5% p.a from the date of claim petition till the date of deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

ii. the 2nd respondent State Transport Corporation is directed to deposit 30% of the award amount together interest at 7.5% p.a from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment to the credit of the above M.C.O.P.No.1397 of 2008 before the Tribunal.

19. On such deposit being made by the appellant Insurance Company and 2nd respondent-State Transport Corporation, within such time, the 1st respondent shall file necessary application to withdraw the amount of compensation.

20. This Civil Miscellaneous Appeal stands partly allowed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

jen

To:
TheMotor Accident Claims Tribunal, Chennai
(VCourt of Small Causes), Chennai.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to Mr.C.S.K.Sathish, Advocate SR.No. 27145

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A.SK(05.01.2021)