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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.501 of 2012

A.Kannan

.. Appellant/Petitioner

Vs.

1.S.Selvaraj

2.The Tamil Nadu State
Transport Corporation
Coimbatore Division II Ltd.
Represented by its Managing Director
Chennimalai Road, Erode-1.

3.The United India Insurance Co. Ltd.
P.B.No.34, C.G.Complex, 139
Kumaran Road, Tiruppur-641 601.

4.Punitha

5.Kannammal

6.Minor Illakkia

(Minor represented by her next
friend and mother Punitha/R4)

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 13.07.2007 made in M.C.O.P.No.765 of 2004 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Erode.

For Appellant : Mr.Suganthan
for Mr.N.Manokaran

For R1, R4 to R6 : No appearance

For R2 : Mr.Arun
for Mr.A.Sundaravadhanam

For R3 : Mr.J.Chandran



J U D G M E N T

This matter is heard through "Video-Conferencing".

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The Civil Miscellaneous Appeal is filed challenging the portion of the award exonerating the respondents 4 to 6 from their liability passed by the Tribunal dated 13.07.2007 made in M.C.O.P.No.765 of 2004 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Erode.

2.The appellant is the claimant in M.C.O.P.No.765 of 2004 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Erode. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.10.2003.

3.According to the appellant, on the date of accident, i.e., on 27.10.2003 at about 3.30 p.m., while the appellant was travelling in the Maruthi Van along with his friends from Erode to Tiruppur and when the Maruthi van proceeded near Vijayamangalam, Kambiliampatty Road junction, on the left hand side of the road, the 1st respondent, driver of the bus belonging to the 2nd respondent/Transport Corporation drove the same in a rash and negligent manner, dashed against the Maruthi van and caused the accident. In the accident, the driver and owner of the Maruthi van and other occupants of the van viz., Selvam @ Muthusamy and Sivamohan died. The appellant sustained grievous injuries and therefore, he filed the above claim petition claiming compensation against the 1st respondent, driver of the bus, 2nd respondent/Transport Corporation, 3rd respondent, insurer of the van and the respondents 4 to 6, who are the legal heirs of the deceased owner of the van. The legal heirs of the said Selvam @ Muthusamy filed M.C.O.P.No.442 of 2006 and the legal heirs of the said Sivamohan filed M.C.O.P.No.443 of 2006.

4.The 2nd respondent/Transport Corporation filed counter statement, which is adopted by the 1st respondent, driver of the bus, denying the averments made in the claim petition and stated that the accident has occurred only due to negligence on the part of the driver of the van. The 1st respondent, driver of the bus drove the same in a careful manner and therefore, the 2nd respondent/Transport Corporation is not liable to pay any compensation to the appellant. The 2nd respondent/Transport Corporation has also denied the age, avocation, income and nature of injuries sustained by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition as against the respondents 1 and 2.



5.The 3rd respondent/Insurance Company, insurer of the van filed counter statement and stated that the accident has occurred due to rash and negligent driving by the 1st respondent, driver of the bus belonging to the 2nd respondent/Transport Corporation and the same was admitted by the appellant. The liability under the Insurance policy is only a contractual liability. The 3rd respondent/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition as against the 3rd respondent/Insurance Company.

6.The 3rd respondent/Insurance Company, insurer of the van filed additional counter statement and stated that the appellant and others travelled in a private Maruthi van as passengers at the time of accident. The insurance policy does not cover the risk of passengers travelled in a private Maruthi van. The driver of the van alone is responsible for the accident. Therefore, the 3rd respondent/Insurance Company is not liable to pay any compensation to the appellant.

7.The 6th respondent, daughter of the deceased owner of the van, filed counter statement and stated that the accident has occurred and a case in Crime No.436 of 2003 has been registered against the driver of the van, which is not correct. The accident has occurred only due to negligence on the part of the 1st respondent, driver of the bus. Therefore, the respondents 1 and 2 alone are liable to pay compensation to the appellant. The father of the 6th respondent, owner of the van, died in the accident, the said van was insured with the 3rd respondent/Insurance Company at the time of accident and hence, the 3rd respondent is liable to pay compensation. The 6th respondent has also denied the age, avocation, income, disability, nature of injuries and period of treatment taken by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st claimant in M.C.O.P.No.443 of 2006 examined herself as P.W.1, the 1st claimant in M.C.O.P.No.442 of 2006 examined herself as P.W.2, the appellant examined himself as P.W.3 and Dr.S.M.Duraisamy was examined as P.W.4 and marked 30 documents as Exs.P1 to P30. On the side of the respondents 1 and 2, one Nandhakumar, was examined as R.W.1 and the 1st respondent, driver of the bus was examined as R.W.2 and three documents were marked as Exs.R1 to R3.



9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the bus belonging to the 2nd respondent/Transport Corporation as well as the driver of the van, fixed 50 : 50 contributory negligence on the part of the 1st respondent as well as the driver of the van, awarded a sum of Rs.4,49,890/- as compensation to the appellant and directed the respondents 1 and 2 to pay a sum of Rs.2,24,945/- being 50% of the award amount as compensation to the appellant and directed the 3rd respondent, insurer of the van to pay a sum of Rs.1,00,000/- from remaining 50% of the compensation to the appellant and exonerated the respondents 4 to 6, legal heirs of the deceased owner of the van, from their liability.

10.The appellant has come out with the present appeal challenging the portion of the award exonerating the respondents 4 to 6 from their liability.

11.The learned counsel appearing for the appellant contended that the offending vehicle was insured with the 3rd respondent and the respondents 4 to 6, who are the legal heirs of the deceased owner of the van are equally liable to pay 50% of their liability. The insurer is indemnifying the owner for the loss caused to the injured. The Tribunal failed to see that only when the insured is liable to pay compensation, insurer/Insurance Company is liable to indemnify the insured and pay the compensation. The Tribunal erred in exonerating the respondents 4 to 6, the legal heirs of the deceased owner of the van instead of fixing joint liability on the respondents 3 to 6. The reasons given by the Tribunal for exonerating the respondents 4 to 6 from their liability are not valid and prayed for a direction to fix the liability jointly and severally on the respondents 3 to 6 and prayed for allowing this appeal.

12.Though notice has been served on the respondents 4 to 6 and their names are printed in the cause list, there is no representation for the respondents 4 to 6 either in person or through counsel.

13.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Transport Corporation and the learned counsel appearing for the 3rd respondent/Insurance Company and perused the entire materials on record.

14.The issue in the present appeal is whether the Tribunal is right in exonerating the respondents 4 to 6 from their liability.



15. From the award of the Tribunal, it is seen that the Tribunal considering the materials placed before it, held that the accident has occurred due to rash and negligent driving by the 1st respondent, driver of the bus and the driver of Maruthi van and fixed negligence equally on both the drivers. In the accident, one Ravichandran, owner of the Maruthi van, who was also travelling in the Maruthi van at the time of accident died. The respondents 4 to 6 are the legal heirs of the deceased Ravichandran, owner of the van. The Tribunal considering the nature of injuries, disability suffered and treatment taken by the appellant, awarded a sum of Rs.4,49,890/- as compensation to the appellant. The Tribunal directed the respondents 1 and 2 to pay a sum of Rs.2,24,945/- being 50% of the award amount. As far as another 50% of the award amount is concerned, as per the policy marked as Ex.R1, owner of the Maruthi van has paid premium for unknown passenger travelling in the vehicle only up to Rs.1,00,000/-. By Ex.R1/Insurance policy, the liability of the 3rd respondent/Insurance Company is restricted only to maximum of Rs.1,00,000/-. The Tribunal rightly appreciating the terms of policy, directed the 3rd respondent/Insurance Company to pay a sum of Rs.1,00,000/-. The Tribunal erroneously exonerated the respondents 4 to 6 from their liability, when the Tribunal has fixed 50% negligence on the part of the driver of the Maruthi van, the owner of the Maruthi van is vicariously liable to pay compensation for the negligence of his driver. The respondents 4 to 6 who are the legal heirs of the deceased owner of the van are liable to pay compensation. As per the policy marked as Ex.R1, the Insurance Company is liable to pay only Rs.1,00,000/- as compensation to the appellant. Therefore, the respondents 4 to 6 are liable to pay the balance sum of Rs.1,24,945/- to the appellant.

16. For the above reason, the award of the Tribunal exonerating the respondents 4 to 6 from their liability is liable to be set aside and is hereby set aside. The respondents 4 to 6 are directed to pay the balance sum of Rs.1,24,945/- to the appellant.

17. In the result, this Civil Miscellaneous Appeal is allowed by setting aside the portion of the award exonerating the respondents 4 to 6 from their liability and the compensation awarded by the Tribunal at Rs.4,49,890/- along with interest and costs is confirmed. The respondents 1 and 2 are directed to pay a sum of Rs.2,24,945/- being 50% of the amount awarded by the Tribunal, the 3rd respondent/Insurance Company is directed to pay a sum of Rs.1,00,000/- and the respondents 4 to 6 are directed to pay balance sum of Rs.1,24,945/- along with proportionate interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a



copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Principal Subordinate Judge
The Motor Accident Claims Tribunal
Erode.

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

+1cc to Mr.N.Manokaran, Advocate, S.R.No.38282

+1cc to Mr.J.Chandran, Advocate, S.R.No.38189

C.M.A.No.501 of 2012

VBA(CO)
CB(27/08/2021)