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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2272 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
ICICI Lombard General Insurance Company Limited,
'Zenith House',
Keshavarao Khadye Marg,
Opposite to Race Course,
Mahalakshmi, Mumbai - 400 034. .. Appellant/4th Respondent

Vs.

1.Samjath @ Shamu
2.Minor. Ashvinsumiya
3.Minor. Nijamudheen
4.Minor. Ayiesha
5.Beebejohn
(Minor respondents 2 to 4 are represented by their
mother and next friend Samjath @ Shamu, 1st
respondent herein)
6.K.Jamuna
7.A.Balaji
8.The Branch Manager,
New India Assurance Company Limited,
No.80, Arcot Road, Porur,
Chennai - 600 116.

.. Respondents/Petitioners 1 to
5/1st Respondent/2nd Respondent/
3rd Respondent

(R6 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.02.2012 made in M.C.O.P.No.1060 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri.

For Appellant : Ms.R.Sree Vidhya
For RR 1 to 5 : Mr.C.Prabakaran
For R8 : Mr.R.V.Lakshmipathy
for Mr.P.G.Padmanabhan



J U D G M E N T

The matter is heard through "Video Conferencing".

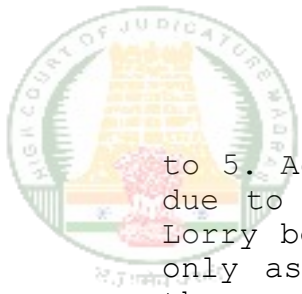
2.This Civil Miscellaneous Appeal has been filed against the award dated 01.02.2012 made in M.C.O.P.No.1060 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri.

3.The appellant is the 4th respondent in M.C.O.P.No.1060 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri. The respondents 1 to 5 filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Mohammed Kuthus @ Babu, who died in the accident that took place on 06.05.2008.

4.According to respondents 1 to 5, on 06.05.2008 at about 11.00 A.M., while the deceased was proceeding from Somanathapuram to his village with cloth bundles on backside with slowly and carefully on Krishnagiri - Hosur N.H.Road in his TVS XL motorcycle bearing Registration No.TN 29 V 0803, stopped at Somanathapuram Division Road to turn in the Highway road near 'U' Turn division. At that time, the driver of the Eicher Lorry belonging to 6th respondent bearing Registration No.TN 39 D 3794, drove the same in a rash and negligent manner at uncontrollable speed without blowing horn, lost his control and dashed on the backside of the Tata Indica car bearing Registration No.TN 24 C 8586 belonging to 7th respondent and caused the accident. Due to the said impact, the driver of the Tata Indica car belonging to 7th respondent lost his control and dashed against the deceased, who stopped his TVS XL motorcycle in the 'U' Turn space. Due to the said impact, the said Mohammed Kuthus @ Babu was thrown out along with his moped and sustained multiple grievous injuries all over his body. Immediately after the accident, the said Mohammed Kuthus @ Babu was admitted in Government Head Quarters Hospital, Krishnagiri and then he was shifted to Sparsh Hospital and thereafter he was taken to St.John's Medical College Hospital, Bangalore. In spite of treatment, the said Mohammed Kuthus @ Babu succumbed to injuries on 09.05.2008 on the way to his village. Therefore, the respondents 1 to 5 filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation against the respondents 6 to 8 and appellant, being the owner of the lorry, owner of the car, insurer of the lorry and insurer of the car respectively.

5.The 6th respondent-owner of the Eicher Lorry remained exparte before the Tribunal.

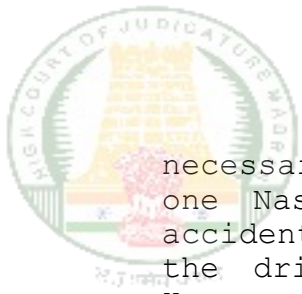
6.The 7th respondent-owner of the car filed counter statement and denied all the averments made by the respondents 1



to 5. According to 7th respondent, the accident has occurred only due to rash and negligent driving by the driver of the Eicher Lorry belonging to 6th respondent and the 7th respondent is added only as necessary party for proper adjudication. The driver of the car belonging to 7th respondent was not responsible for the accident. In any event, the quantum of compensation claimed by the respondents 1 to 5 are highly excessive and prayed for dismissal of the claim petition as against the 7th respondent.

7.The 8th respondent-New India Assurance Company Limited, being the insurer of the Eicher Lorry belonging to 6th respondent filed separate counter statement and denied all the averments made by the respondents 1 to 5. The 8th respondent denied the manner of accident. According to 8th respondent, the driver of the Eicher Lorry belonging to 6th respondent drove the same very slowly and cautiously by following the traffic rules. Only the driver of the Tata Indica car belonging to 7th respondent, proceeding in the same direction, without any caution and signal, suddenly stopped the car. On seeing this, the driver of the Eicher Lorry belonging to 6th respondent applied sudden brake to avoid the accident. In spite of best efforts taken by the driver of the Eicher Lorry, the Eicher Lorry hit on the backside of the car and caused the accident. Due to the sudden impact, the Tata Indica car hit the TVS XL motorcycle belonging to deceased and caused the accident. Hence, the accident has occurred only due to negligence on the part of the driver of the Tata Indica car belonging to 7th respondent. Therefore, the 8th respondent is not liable to pay any compensation to the respondents 1 to 5. Both the driver of the Tata Indica car as well as the driver of the Eicher Lorry were not possessing valid driving license at the time of accident. In any event, the quantum of compensation claimed by the respondents 1 to 5 is exorbitant and prayed for dismissal of the claim petition.

8.The appellant-ICICI Lombard Insurance Company, being the insurer of the Tata Indica car belonging to 7th respondent filed separate counter statement and denied all the averments made by the respondents 1 to 5. According to appellant, the respondents 1 to 5 have to prove that they are entitled to get compensation from the appellant and also they have not filed any separate claim petition before any other Claims Tribunal. The 7th respondent's Indica car bearing Registration No.TN 24 C 8586 was not insured with the appellant. The appellant has not received any premium towards insurance of the Tata Indica car belonging to 7th respondent. The deceased was not possessing driving license at the time of accident and also he carried heavy luggage in his motorcycle at the time of accident against the provisions of Motor Vehicles Act. The accident has occurred due to negligence on the part of the deceased and hence, the owner and insurer of the TVS XL motorcycle have to be added as



necessary parties in the claim petition. According to appellant, one Nasarullah, who witnessed the accident deposed that the accident has occurred only due to rash and negligent driving by the driver of the Eicher Lorry belonging to 6th respondent. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 5. The 7th respondent and appellant are impleaded only as formal parties. Hence, the appellant is not liable to pay any compensation to respondents 1 to 5. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 5 are extremely high and prayed for dismissal of the claim petition.

9. Before the Tribunal, the 1st respondent examined herself as P.W.1, one Nazamullah, who was an eye-witness to the accident was examined as P.W.2 and 12 documents were marked as Exs.A1 to A12. On behalf of the respondents 7, 8 and appellant, no oral and documentary evidence was let in.

10. The Tribunal, considering the pleadings, oral and documentary evidence, held both the driver of the Eicher Lorry belonging to 6th respondent as well as the driver of the Tata Indica car belonging to 7th respondent are responsible for the accident, fixed negligence in the ratio 70% : 30%, awarded a sum of Rs.6,42,000/- as compensation to the respondents 1 to 5 and directed the respondents 6 and 8 to jointly and severally pay 70% of the award amount and 7th respondent and appellant to jointly and severally pay balance 30% of the award amount.

11. The appellant has come out with the present Civil Miscellaneous Appeal challenging the portion of the award dated 01.02.2012 made in M.C.O.P.No.1060 of 2008 fixing 30% liability on them.

12. The learned counsel appearing for the appellant contended that the accident occurred only due to rash and negligent driving by the driver of the Eicher Lorry belonging to 6th respondent. The Tribunal considering the pleadings, F.I.R, oral and documentary evidence which shows that driver of the Tata Indica car was victim rather than a tortfeasor, due to rash and negligent driving by the driver of the Eicher Lorry, hit the Tata Indica car and car was thrown and pushed forward and hit the moped rode by the deceased. P.W.1 is not an eyewitness. P.W.2/eyewitness has stated that accident has occurred only due to rash and negligent driving by the driver of the Eicher Lorry and Tribunal erroneously fastened 30% liability on the appellant, insurer of the Tata Indica car. The award of the Tribunal is liable to be set aside and prayed for allowing the appeal.



१२.५ : प्रमेय ५२८

15. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and the learned counsel appearing for the 8th respondent and perused the entire materials on record.

17.The Tribunal considering the pleadings and evidence of P.W.2, Ex.A1/F.I.R. and in the absence of contra evidence by the appellant as well as by the 8th respondent, fixed 70% negligence on the part of the driver of the Eicher Lorry belonging to 6th respondent and 30% negligence on the part of the driver of the



Tata Indica car belonging to 7th respondent and directed the respondents 6 and 8 to jointly and severally pay 70% of the award amount and 7th respondent and appellant to jointly and severally pay 30% of the award amount as compensation to the respondents 1 to 5. Considering the manner in which the accident has occurred, there is no error in the apportionment of the negligence fixed on the part of two drivers and fastening the liability on the part of the appellant and 7th respondent and respondents 6 and 8. For the above reason, this Civil Miscellaneous Appeal is liable to be dismissed.

18. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.6,42,000/- awarded by the Tribunal as compensation to the respondents 1 to 5, along with interest and costs is confirmed. The respondents 6 and 8 are jointly and severally directed to deposit 70% of the award amount, (i.e., Rs.4,49,400/-) and appellant and 7th respondent are jointly and severally directed to deposit 30% of the award amount, (i.e., Rs.1,92,600/-) along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1060 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri. On such deposit, the respondents 1 and 5 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. The share of the minor respondents 2 to 4 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 to 4 attain majority. On such deposit, the 1st respondent, being the mother of the minor respondents 2 to 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 to 4. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

Dt 26/03/2021

//True Copy//

Sub Assistant Registrar

krk

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.



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

+1cc to Ms.R.Sree Vidhya, Advocate, S.R.No.42056

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.41871

+1cc to Mr.P.G.Padmanabhan, Advocate, S.R.No.41656

C.M.A.No.2272 of 2014

VBA (CO)
HS (12/08/2021)