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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.12.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.572 to 574 of 2014
and M.P.Nos.1,1,1 of 2014

Branch Manager
The New India Assurance Co. Ltd.
161-A, East Veli street, Madurai. ..Appellant
in all the three appeals/2nd Respondent
in all the M.C.O.Ps

Vs

1.Murugesan ..1st Respondent in C.M.A.No.572/2014/
Claimant in M.C.O.P.Nos.78/2012
1.Sureshkumar ..1st Respondent in C.M.A.No.573/2014/
Claimant in M.C.O.P.Nos.79/2012
1.Balaji ..1st Respondent in C.M.A.No.574/2014/
Claimant in M.C.O.P.Nos.80/2012
2.Karthik ..2nd Respondent in all the three appeals
1st Respondent in all the M.C.O.Ps

(2nd respondent remained exparte before
the Tribunal and hence, notice to the 2nd
respondent is dispensed with)

Prayer: Civil Miscellaneous Appeals are filed under Section 173
of Motor Vehicles Act, 1988, against the judgment and decree
dated 15.02.2013 made in M.C.O.P.Nos.78 to 80 of 2012 on the
file of Motor Accident Claims Tribunal, II Additional District
and Sessions Court, Tiruppur.

In all the CMAs.
For Appellant : Mr.R.Sivakumar

For R1 : Mr.MA.P.Thangavel

R2 : Exparte



C O M M O N J U D G M E N T

This matter is heard through "Video-Conferencing".

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These Civil Miscellaneous Appeals are filed against the common award dated 15.02.2013 made in M.C.O.P.Nos.78 to 80 of 2012 on the file of Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruppur.

2.All the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.Nos.78 to 80 of 2012 on the file of Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruppur. The 1st respondent in all the three appeals filed claim petitions claiming a sum of Rs.15,00,000/-, Rs.10,00,000/- and Rs.10,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 15.07.2012.

4.According to the 1st respondent in all the three appeals, on the date of accident i.e., on 15.07.2012 at about 17.30 hours, while the 1st respondent in all the three appeals were travelling in a two wheeler from South to North direction in Sevanthampalayam road, near Petrol Bunk, Tiruppur, the driver of the lorry belonging to the 2nd respondent, which came from the opposite direction, drove the same in a rash and negligent manner, dashed against the two wheeler in which the 1st respondent in all the three appeals travelled and caused the accident. In the accident, the 1st respondent in all the three appeals sustained grievous injuries all over the body and therefore, the 1st respondent in all the three appeals have filed the above claim petitions claiming compensation against the 2nd respondent and appellant/Insurance Company.

5.The 2nd respondent, owner of the lorry, remained exparte before the Tribunal.

6.The appellant/Insurance Company being insurer of the lorry filed separate counter statements in all the three claim petitions denying the averments made by the 1st respondent in all the three appeals and stated that the accident has occurred due to collision between the two wheeler and lorry. The owner and insurer of the two wheeler and the driver of the lorry were not made as parties and hence, the claim petitions are bad for non-joinder of necessary parties. At the time of accident, three persons travelled in the two wheeler, which is in violation of the Motor Vehicles Act and Rules. Therefore, the appellant/Insurance Company is not liable to pay any



compensation to the 1st respondent in all the three appeals. The appellant has also denied the age, avocation, income, nature of injuries and disability suffered by the 1st respondent in all the three appeals. In any event, the compensation claimed by them are excessive and prayed for dismissal of the claim petitions.

7. Before the Tribunal, the 1st respondents in C.M.A.Nos.573, 572 and 574 of 2014, examined themselves as P.W.1 to P.W.3, one Manikandan, co-worker of the 1st respondent in all the three appeals, was examined as P.W.4 and Dr.Senthilkumar was examined as P.W.5 and fourteen documents were marked as Exs.P1 to P14. The appellant/Insurance Company examined one Mr.Rajanbabu, Senior Assistant of the Insurance Company as R.W.1 and marked copy of the Insurance policy as Ex.R1.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said lorry to pay a sum of Rs.10,99,840/-, Rs.8,98,080/- and Rs.8,70,000/- as compensation to the 1st respondent in all the three appeals respectively.

9. Against the said common award dated 15.02.2013 made in M.C.O.P.Nos.78 to 80 of 2012, the appellant/Insurance Company has come out with the present three appeals challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

10. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to see that the accident has occurred only due to rash and negligent riding by the rider of the two wheeler bearing Registration No.TN-39-BD-0700, who rode the two wheeler in a rash and negligent manner, with two pillion riders contrary to the statutory provisions and the Tribunal ought to have dismissed the claim petitions. The Tribunal erred in fixing entire negligence on the part of the driver of the lorry and liability on the appellant. The Tribunal failed to see that the accident is head on collision, which occurred in the middle of the road in Highways. The Tribunal ought to have fixed atleast 50% contributory negligence on the part of the 1st respondent in all the three appeals. The Tribunal erred in fixing the notional income of the 1st respondent in all the three appeals at Rs.7,000/- without any basis. The Tribunal erred in accepting the disability certificates issued by P.W.5/Doctor and fixed the disability of the 1st respondent in all the three appeals at 63%, 57% and 50% respectively for loss of earning power without any evidence and materials. The Tribunal failed to see that there is no assessment of disability



by P.W.5/Doctor for the whole body and awarded compensation excessively by adopting multiplier method. The 1st respondent in all the three appeals failed to prove that they suffered functional disability and lost earning capacity, therefore, the Tribunal ought not to have adopted multiplier method and granted compensation. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10(i). In support of his contention, the learned counsel relied on the following judgment of this Court reported in 2019 (1) TNMAC 571 (Lakshmi and others vs. M.Shanmuganathan and others);

"10.From the materials on record, it is seen that all the three appellants traveled in a motorcycle in violation of statutory provision. In a two wheeler only two persons can travel. If more than two persons travel in violation of rules, this Court had held that they had contributed negligence for the accident. The Division Bench of this Court held that when three persons travel in a two wheeler, the rider of the two wheeler is cramped so much and he has no full control over the brake and in certain cases he is almost sitting on the petrol tank. Whether a plea of contributory negligence is taken and proved or not, when more than two persons traveled in a two wheeler, they automatically contribute negligence and 25% of contributory negligence is fixed. Applying the said principle, this Court is of the considered view that all the three appellants contributed 25% of the contributory negligence for the accident. In view of the same, the second respondent-Insurance Company is liable to pay 75% of the award amount as compensation to the appellants."

11.The learned counsel appearing for the 1st respondent in all the three appeals contended that the driver of the lorry belonging to the 2nd respondent came in a rash and negligent manner in the opposite direction, dashed against the two wheeler and caused the accident. The 1st respondent in C.M.A.Nos.573, 572 and 574 of 2014 examined themselves as PW.1 to P.W.3 respectively and marked F.I.R. as Ex.P1 to prove that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent. The rider of the two wheeler rode the same in the left hand side and the driver of the lorry, which was coming in the opposite direction, dashed against the two wheeler and caused the accident.



Therefore, the driver of the lorry was responsible for the accident. In view of the same, contributory negligence cannot be fixed on the 1st respondent in all the three appeals. In the accident, the 1st respondent in C.M.A.No.572 of 2014 suffered fractures of right thigh, right leg and right foot great toe, the respondent in C.M.A.No.573 of 2014 suffered right hand thumb amputation, fracture of 2nd and 3rd finger and right thigh and the 1st respondent in C.M.A.No.574 of 2014 suffered fractures of right hand and right thigh and multiple injuries all over the body. They examined the Doctor as P.W.5, who deposed about the nature of injuries, disability and treatment taken and certified that the 1st respondent in all the three appeals suffered 64.7%, 67.2% and 51.4% disability respectively. The appellant/Insurance Company did not let in any evidence to disprove the evidence of the 1st respondent in all the three appeals and the percentage of disability assessed by P.W.5/Doctor. The Tribunal without any reason reduced the disability assessed by P.W.5/Doctor and awarded meagre sum as compensation for loss of earning power. The 1st respondent in all the three appeals were working as tailors in a Banian company, Tiruppur and were earning a sum of Rs.12,000/- per month each. They examined P.W.4, their co-worker and proved their avocation and income. The Tribunal without considering the same, fixed only a meagre sum of Rs.7,000/- as their monthly income and awarded meagre sum as compensation. The total compensation awarded by the Tribunal are not excessive and prayed for dismissal of all the three appeals.

11(i). In support of his contention, the learned counsel relied on the following judgment of the Hon'ble Apex Court reported in 2020 (1) TNMAC 161 SC (Mohammed Siddique and another vs. National Insurance Company Ltd. and others);

"13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two? wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194?C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, 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



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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 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. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW?3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

12. In reply, the learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent in all the three appeals in the claim petitions have not stated that they rode the motorcycle in the left hand side of the road.



The present contention of the 1st respondent in all the three appeals that they rode the motorcycle on the left hand side and the driver of the lorry, which came in the opposite direction, dashed against them, was not proved by them. The 1st respondent in all the three appeals have not filed rough sketch to show the place of accident. The accident has occurred in the middle of the road, it is head on collision and the 1st respondent in all the three appeals have also contributed to the negligence. In view of the same, the judgment of the Hon'ble Apex Court relied on by the learned counsel appearing for the 1st respondent in all the three appeals reported in 2020 (1) TNMAC 161 SC (Mohammed Siddique and another vs. National Insurance Company Ltd. and others) cited supra is not applicable to the facts of the present case and prayed for fixing contributory negligence on the part of the 1st respondent in all the three appeals and for allowing the appeals.

13. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent in all the three appeals and perused the entire materials on record.

14. From the materials on record, it is seen that it is the contention of the 1st respondent in all the three appeals that while they were travelling in a two wheeler, the driver of the lorry drove the lorry in a rash and negligent manner, which was coming in the opposite direction, dashed against the two wheeler and caused the accident. To substantiate the said contention, the 1st respondent in C.M.A.Nos.573, 572 and 574 of 2014 examined themselves as P.W.1 to P.W.3 and marked F.I.R., which was registered against the driver of the lorry as Ex.P1. It is the contention of the appellant that three persons travelled in the two wheeler at the time of accident, contrary to the statutory provisions and the accident has occurred only due to their negligence. The Tribunal did not accept the said contention as the appellant did not examine the driver of the lorry or any eye-witness. The Tribunal considering the evidence of P.W.1 to P.W.3 and Ex.P1/F.I.R., held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent. The Tribunal failed to consider the fact that the 1st respondent in all the three appeals have not filed any rough sketch to show the place of accident and prove their contention that the accident occurred in the left hand side. In the absence of any rough sketch, the Tribunal failed to consider the fact that the accident has occurred in the middle of the road in the Highways and it is head on collision. It is constantly held by the Courts that when three persons travelled in the motorcycle, the rider of the motorcycle will not have control over the vehicle, he will be sitting almost in the petrol tank and he will be contributing to



15. In the judgment relied on by the learned counsel appearing for the 1st respondent in all the three appeals reported in 2020 (1) TNMAC 161 SC (Mohammed Siddique and another vs. National Insurance Company Ltd. and others) cited supra, the Hon'ble Apex Court has held that in a case of riding triples in two wheeler, it has to be proved that the rider of the two wheeler also contributed to the negligence. Due to statutory violation, the contributory negligence cannot be fixed automatically. In the case before the Hon'ble Apex Court, the accident has occurred when a car hit the motorcycle from behind. In view of the same, the Hon'ble Apex Court has held that contributory negligence on the part of the rider of the motorcycle must be proved. In the present case, the accident has occurred due to head on collision in the Highways in the middle of the road and admittedly three persons travelled in the two wheeler at the time of accident. Therefore, the ratio laid down in the judgment of the Hon'ble Apex Court referred to above does not advance the case of the 1st respondent in all the appeals. Considering the entire materials on record, it will be just and equitable, if 30% contributory negligence is fixed on the part of the 1st respondent in all the three appeals. The 1st respondent in all the three appeals are entitled to receive only 70% of the compensation awarded and the appellant/Insurance Company is directed to pay 70% of the compensation.

17. In the result, all the three Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.10,99,840/-, Rs.8,98,080/- and Rs.8,70,000/- along with interest and costs are confirmed. The appellant/Insurance Company is directed to deposit 70% of the award amount i.e., (Rs.7,69,888/-, Rs.6,28,656/- and Rs.6,09,000/-) now determined by this Court 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. On such deposit, the 1st respondent in all the three appeals are permitted to withdraw



their award amount now determined by this Court along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.Nos.78 to 80 of 2012 on the file of Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruppur, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar(CS VIII)

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Sub-Assistant Registrar

To
1.II Additional District and Sessions Judge
The Motor Accidents Claims Tribunal
Tiruppur.

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

+1 CC to Mr.MA.P.Thangavel, Advocate sr 40472.
+1 CC to Mr.R.Sivakumar, Advocate sr 40598.

C.M.A.Nos.572 to 574 of 2014
and M.P.Nos.1,1,1 of 2014

VBA(CO)
SP(24/08/2021)