



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.466 of 2009

WEB COPY

National Insurance Company Limited
56, Creams Road,
Chennai-6

: Appellant/3rd Respondent

-VS-

1.G.Varadarajulu

2.D.Vijayalakshmi

3.G.V.Sai Madusudanan

: Respondents 1 to 3/Petitioners

4. The Managing Director

Tamil Nadu State Transport Corporation
Coimbatore Unit II, Erode Head Quarters
Sathyamangalam Branch, Erode District

5. R.Raja

: 4 & 5th Respondents/Respondents 1,2

[*Ex parte* in Tribunal]

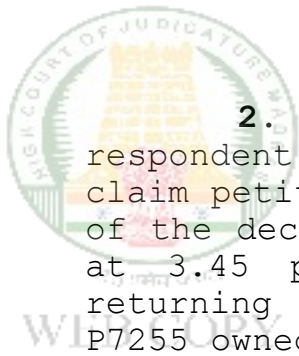
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree dated 06.07.2006, passed in M.A.C.O.P.No.2235 of 2004, on the file of the Motor Accident Claims Tribunal / III Additional Sub Court, Tiruchirappalli.

For Appellant : Mr.J.S.Murali

For Respondents : R1 to R3 - Dismissed
(Vide Court order dated 07.02.2017)
Mr.Asaitambi for R4
R5 - *Ex parte*

J U D G M E N T

This civil miscellaneous appeal is directed against the Judgment and Award, dated 06.07.2006, passed in M.A.C.O.P.No.2235 of 2004, by the Motor Accident Claims Tribunal / III Additional Sub Court, Tiruchirappalli.



2. The respondents 1 and 2 are the parents and the third respondent is the brother of the deceased Dinesh. They filed a claim petition claiming Rs.20,00,000/- as compensation for the death of the deceased Dinesh. According to the claimants, on 12.05.2004, at 3.45 p.m., when the deceased Dinesh and his friends were returning from Kodaikanal in a Van bearing registration No.TN22 P7255 owned by the fifth respondent and insured with the appellant - Insurance Company, near Semmadaipatti on Palani - Dindigul Road, a Bus bearing registration No.TN33 N1294 belonging to the fourth respondent - Transport Corporation came in a rash and negligent manner and hit against the Van. In the accident, the deceased sustained grievous injuries and immediately, he was taken to Dindigul Government Hospital. However, despite of giving better treatment, he succumbed to the injuries.

3. The appellant - Insurance Company filed a counter disputing the liability to pay compensation on the ground that the accident had taken place only on account of the rash and negligent driving by the driver of the Bus.

4. In order to substantiate their case, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P1 to P5 were marked and on the side of the Insurance Company, R.W.1 was examined and no document was marked.

5. The Tribunal, on consideration of the evidence adduced by the parties, fixed contributory negligence on both drivers of the Bus and Van at 75% : 25% and awarded a compensation of Rs.9,65,000/- along with interest at the rate of 7.5% per annum and directed the fourth respondent - Transport Corporation to pay 75% of the award amount and the fifth respondent - owner and the appellant - insurer of the Van to pay 25% of the award amount to the claimants. Challenging the Award passed by the Tribunal, the appellant - Insurance Company has filed the present appeal.

6. Mr.J.S.Murali, learned counsel appearing for the appellant - Insurance Company, would submit that the Tribunal has not properly appreciated the evidence adduced on the side of the Insurance Company. According to the learned counsel, P.W.2, who is the eyewitness to the accident, has deposed that the driver of the Bus drove the Bus in a rash and negligent manner and caused the accident and hence, the Tribunal ought to have held the driver of the Bus responsible for the accident. The learned counsel would further contend that award is on the higher side and it requires reduction to some extent.

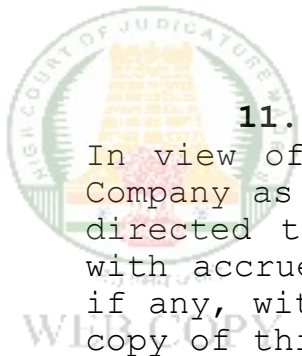
7. Per contra, Mr.Asaithambi, learned counsel appearing for the fourth respondent / Transport Corporation, supported the conclusion arrived at by the Tribunal and prayed for dismissal of the appeal.



8. Heard Mr.J.S.Murali, learned counsel appearing for the appellant - Insurance Company and Mr.Asaithambi, learned counsel appearing for the fourth respondent - Transport Corporation and carefully perused the materials available on record.

9. In the matter on hand, in order to prove the negligence, the eyewitness, namely, Shankar was examined as P.W.2 and the Conductor of the Bus, namely, Shanmugam was examined as R.W.1. P.W.2, in his evidence, has deposed that on 12.05.2004, at about 03.45 p.m., while he was travelling in an Ambassador Car from Palani to Dindigul, near Oddanchatram Semmadaipatti, a Van bearing registration No.TN22 P7255, in which the deceased was travelling, was going in front of the Car on the extreme left side of the road. At that time, a Bus bearing registration No.TN33 N1294 belonging to the fourth respondent - Transport Corporation came on the right side of the road and dashed against the Van. P.W.2, in his cross-examination, has deposed that when the Car in which he was travelling and the Van in which the deceased was travelling were going on in the extreme left side of the road, the Bus belonging to the fourth respondent - Transport Corporation came in the right side of the road, even though there was a space for about 15 feet on the left side of the road, dashed against the Van and caused the accident. Further, it is seen that even though R.W.1 - Conductor of the Bus has deposed that the driver of the Bus drove the vehicle in the left side of the road and the driver of the Van came in the right side of the road and caused the accident, however, both the drivers have not been examined to prove the said contention and no documentary evidence was marked. Further, Ex.P1 - first information report would reveal that the driver of the Bus drove the vehicle in a rash and negligent manner and caused the accident. Besides those evidence, the fact remains that both the Bus and Van were moving at the time of the accident and therefore, the Tribunal apportioned the negligence on both drivers of the Bus and Van. I am of the opinion that the Tribunal has rightly fixed the contributory negligence on both the drivers, which does not warrant any interference of this Court.

10. Insofar as the quantum is concerned, according to the claimants, the deceased died at the age of 20 years and he was studying third year B.E. in S.R.M.Engineering College. the Tribunal has taken the notional income of Rs.96,000/- per annum and after deducting 1/3rd for his personal expenses, applied multiplier "15" taking note of the age of the mother of the deceased and awarded Rs.9,60,000/- towards loss of income, loss of love and affection and loss of future maintenance and awarded Rs.5,000/- towards funeral expenses. In total, the Tribunal awarded Rs.9,65,000/- along with interest at the rate of 7.5% per annum as compensation to the claimants. On going through the records, I found that the award of the Tribunal is fair and reasonable, which does not warrant interference of this Court.



11. In fine, the civil miscellaneous appeal is dismissed. In view of the dismissal of the appeal, the appellant - Insurance Company as well as the fourth respondent - Transport Corporation are directed to deposit their proportionate share of the award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw their share in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

The III Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.

Copy to: The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1cc to Mr.J.S.Murali, Advocate, SR.No.25216.

C.M.A. (MD) No.466 of 2009

10.12.2020

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