



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 15.12.2020

DATE ON WHICH PRONOUNCED : 21.12.2020

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A(MD) No.930 of 2010

and

MP(MD)No.1 of 2010

WEB COPY

United India Insurance Co Ltd,
Rep by its Divisional Manager,
Madurai-6.

... Appellant/2nd Respondent

vs.

1.Kondappan

... 1st Respondent / Petitioner

2.P.Balaji

... 2nd Respondent / 1st Respondent

3.Managing Director,

Tamilnadu State Transport Corporation,
Ltd (Madurai Division II)
Tirunelveli-3.

... 3rd Respondent / 3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 23.02.2007 made in M.C.O.P.No.27 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kovilpatti.

For Appellant	: Mr.J.Jawahar Ravindran
For R1	: Mr.K.K.Senthil
For R3	: Mr.M.Prakash
For R2	: Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company against the order/award dated 23.02.2007, passed by the Motor Accidents Claims Tribunal - Sub Court, Kovilpatti in M.C.O.P.No.27 of 2005.

2. The first respondent herein has filed a claim petition in M.C.O.P.No.27 of 2005 on the file of the Motor Accidents Claims Tribunal - Sub Court, Kovilpatti, under Sections 166 and 140 of the Motor Vehicles Act, claiming a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) for the injuries sustained by him in a motor accident. The Tribunal, by the order/award, dated 23.02.2007, has partly allowed the said claim petition and directed the 2nd respondent / Insurance Company to pay a sum of Rs.85,000/- (Rupees Eighty Five Thousand Only) with interest at the rate of 7.5% per annum from the date of filing of petition till the date of deposit (excluding the



period of default, if any). Feeling aggrieved, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

3. The case of the claimant before the Tribunal:-

(i) on 22.02.2004, the claimant was travelling in the third respondent's bus bearing Registration No.TN-72-N-0792 from Kovilpatti - Nagercoil, near the place of Idaiseval, the third respondent vehicle's driver tried to over take the lorry, which was going ahead of him. As a result of which, the third respondent's vehicle driver lost his control and dashed against the Tamarind tree, which was standing on the other side of the road. The accident took place only due to the rash and negligent driving on the part of the lorry driver bearing Registration No.TAY-7711. After the incident, the petitioner was admitted in Government hospital, Kovilpatti and thereafter admitted in Arthi Hospital and took treatment as inpatient till 14.04.2004 and thereafter, admitted in Meenakshi Mission Hospital from 04.07.2004 to 19.07.2004 as inpatient and thereafter, he was discharged, but, till today, he is taking treatment as outpatient. The petitioner was not able to walk freely and attend to his routine work.

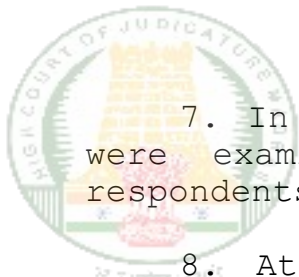
(ii) With regard to the aforesaid accident, a complaint was lodged before the Nalattiaputhur Police Station, Kovilpatty, and based on the same, First Information Report has been registered in Crime No.34/2004 under Sections 279, 337 and 338 IPC against the driver of the lorry respondent namely the 1st respondent and after investigation, a charge sheet has been filed and the case is pending before the Jurisdiction Magistrate, Kovilpatti.

(iii) At the time of accident, the lorry belonging to the first respondent was driven by the driver and the said lorry was duly insured with the second respondent and hence, the respondents 1 to 3 are jointly and severally liable to pay compensation.

4. The respondents 1 and 3 remained ex-parte before the Tribunal. The Appellant / Insurance Company alone contested the claim petition by filing counter statement.

5. The second respondent has filed counter stating that the accident took place only due to the rash and negligent driving on the part of the third respondent's vehicle driver and the first respondent's vehicle driver is no way responsible for the occurrence. The liability must be fixed upon the third respondent.

6. The case of the third respondent is that the accident occurred only due to the rash and negligent driving on the part of the first respondent's vehicle driver and so, the third respondent is not liable to pay any compensation.



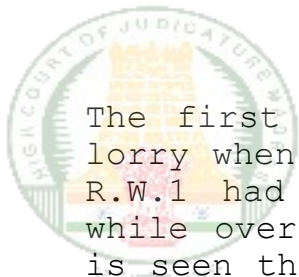
7. In the enquiry, on the side of the claimant, two witnesses were examined and 26 documents marked. On the side of the respondents, one witness was examined and one document marked.

8. At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's driver and awarded a sum of Rs.85,000/- (Rupees Eighty Five Thousand only) as compensation. The Tribunal has also directed the second respondent/Insurance Company to pay interest for the aforesaid amount at the rate of 7.5% per annum from the date of filing of petition till the date of deposit and also directed the 2nd respondent/Insurance Company to pay the costs to the claimant.

9. Against which, the appellant / second respondent filed this appeal only on the ground that liability fixed upon this appellant, is not correct. Since the manner of the accident shows that both the vehicles' drivers were responsible for the occurrence, the learned counsel for the appellant confined his argument only with regard to the negligent aspect. In respect of the compensation amount, since no argument was advanced, the same is to be confirmed and accordingly it is confirmed.

10. A perusal of records shows that the first respondent's vehicle driver was charge sheeted before the Magistrate Court. Ex.P.5 / copy of the charge sheet is also marked on the side of the claimant before the Tribunal and the same shows that the first respondent's vehicle driver admitted the charge. It is the argument of the 3rd respondent that when the first respondent's vehicle driver himself admitted that he was negligent, the argument that the third respondent's vehicle driver has to be held liable, should not be accepted. Even though, the charge sheet as well as guilt admitted by the particular vehicle's driver can be taken into account by the Tribunal, the Tribunal must analyse on its own and arrive at its conclusion independently on the criminal proceedings.

11. The learned counsel for the appellant wants to stress that this principle for apportionment of the manner of the accident, must be taken into account. At the time of the accident, the lorry was proceeding ahead of the bus in North - South direction and behind that, the bus was proceeding. According to P.W.1, R.W.1 was the driver, at the time of occurrence and he got signal from the lorry for over-taking and when the bus was in the process of over-taking, the lorry driver negligently dashed the bus, as a result of which, R.W.1 lost the control and the bus hit on the Tamarind tree, standing on the other side of the road. R.W.1 has also admitted that the lorry dashed the bus, when he was in the process of over-taking and at that time, the tyre of the lorry burst. So, it is seen that only because of the bursting of the lorry tyre, it happened to dash on the side of the bus. So, the manner of the accident clearly shows that the vehicle's driver were not careful in their driving.



The first respondent's vehicle driver should have slowed down his lorry when the bus was in the process of over-taking, similarly, if R.W.1 had taken proper care and caution by maintaining distance while over-taking the lorry, it could not have taken place. So, it is seen that both the vehicle's drivers were not taking proper care at the time of the accident. So, the manner of the accident clearly shows that it is a case of composite negligence and percentage can be fixed at 50 : 50. So, the contention on the part of the third respondent cannot be accepted, since the first respondent's lorry driver admitted his guilt, no contra finding can be recorded. The Tribunal has been carried away by the admission made by the first respondent's vehicle driver before the Jurisdictional Magistrate Court. But, the lorry driver has not been examined before the Tribunal. But the non-examination of the lorry driver can have no effect, when we see the manner of the accident. The manner of the accident clearly shows that both the vehicle's drivers were negligent in their driving. So that, 50 : 50 composite negligence can be fixed upon the first respondent as well as the third respondent vehicle drivers. In the light of fixation of percentage of the negligence, the award passed by the Tribunal is required to be modified to the effect that the appellant must pay 50% amount with cost and interest and the third respondent is liable to pay 50% with interest and cost. If the appellant / Insurance Company has already deposited the entire award amount, they can receive back the balance amount. The third respondent must pay his portion of the compensation with interest at the rate of 7.5% with proportionate cost within a period of two months from the date of receipt of a copy of this order and on deposit being made, the first respondent / claimant is entitled to withdraw the entire amount with interest and cost.

12. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

Note:

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

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Motor Accidents Claims Tribunal,
Sub Court, Kovilpatti.

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

+1cc to Mr.M.Prakash ,Advocate Sr.No.26907

JUDGMENT MADE IN
C.M.A(MD) No.930 of 2010
and
MP (MD) No.1 of 2010
21.12.2020

VB (04.02.2021) 5P 5C