



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.10.2020

Pronounced on : 18.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.M.A(MD) No.194 of 2019

&CMP(MD)No.2531 of 2019

& CMP(MD)No.2436 of 2020

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The Branch Manager,
New India Assurance Company Limited,
Having its Office at No.85-P,
2nd Floor, Market Road,
Thanjavur

...Appellant/Respondent No.2

Vs.

1.Sudha
2.Minor Sakthi Malini
3.Minor Abarna
4.Minor Hariharan

...Respondents 1 to 4/
Petitioners 1 to 4

(minors 2 to 4 represented through their mother
and Guardian Sudha, 1st Respondent herein)

5.The Managing Director,
M/s Sree Gokulam Chit & Finance Co., Ltd.,
Having its Office at No.67-A,
Nageswaran Kovil North Street,
Kumbakonam.

... Respondent No.5/
Respondent No.1

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Award made in M.C.O.P.No.732 of 2017 dated 25th day of July. 2018 on the file of Motor Accidents Claims Tribunal, Special District Judge, Thanjavur.

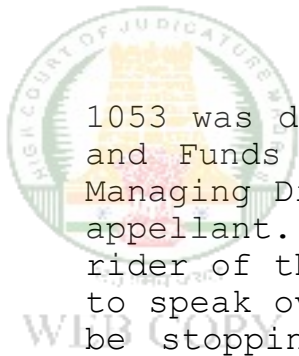
For Appellant : Mr.D.Sivaraman
For Respondents : Mr.N.Tamilmani for RR1 to 4
No appearance for R5

ORDER

The Insurance Company of the offending vehicle in MCOP.No.732 of 2017 on the file of Motor Accidents Claims Tribunal (Special District Judge), Thanjavur, has approached this Court challenging the finding of negligence on the part of the vehicle it has insured.

2.1. It is a case of two motor cycle involving in an accident.

On 07.09.2015 around 9.00 p.m., a motor cycle bearing no. TN 68 D
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1053 was driven by one Jagadeesan, an employee of M/s.Gokulam Chits and Funds and the motor cycle was registered in the name of the Managing Director of his employer. This vehicle was insured with the appellant. According to the Claimants/Respondents 1 to 4 herein, the rider of this motor cycle suddenly stopped in the middle of the road to speak over the cellphone without any sign or signal that he would be stopping. As a consequence, a certain Mahendran, who was to become the victim of the accident, came on his motor cycle bearing no TN 50 Y 0473 dashed against the aforesaid motor cycle bearing No.TN 68 D 1053. As a consequence of this impact, Mahendran was thrown off with multiple injuries, and he was taken to hospital where he succumbed to his injuries on 09.09.2015. Claiming a compensation of Rs.50,00,000/-, the widow and three children of Mahendran approached the Tribunal.

2.2.The fourth respondent/the owner of the offending motorcycle remained ex-parte before the Tribunal, and the claim petition was contested by the appellant herein. In its counter, it pleaded that the accident has occasioned due to the rash and negligent driving of the victim himself as he rammed on to the motor cycle that it has insured.

2.3. The contention of the appellant was negatived by the Tribunal on the ground that but for the offending motor cycle suddenly stopping in the middle of the road without any signal, the accident could not have taken place. However, it found that the victim himself did not possess a valid driving licence, and hence fixed contributory negligence on his part at 10% and arrived at a compensation of Rs.13,38,750/- payable with interest at 7.5% p.a.

3. This award is now in challenge. The learned counsel for the appellant vehemently argued that inasmuch the victim was responsible for the accident, no compensation is payable. He added that the FIR was registered only in the name of the victim of the accident. To fortify his contention, he relied on the Authority reported in **Nishan Singh and Others Vs. Oriental Insurance Co.Ltd.**, [2018(1) TN MAC 745(SC)].

4. Heard the learned counsel for the respondents 1 to 4. The learned submitted that the FIR was registered by the rider of the offending vehicle and that it is self-serving.

5. Every accident has its own complexion, and the dynamics of no accident can be demonstrated. The Court attempts to recreate the accident to the extent evidence in the case guides it. So far as the evidence goes, it points to the fact that Jagadeesan, the rider of the offending vehicle, has stopped the motorcycle abruptly in the middle of the road to chat over the cell phone. Given the age of the rider at 26 years at the relevant time, it is possible, if not conceivable that such acts of irrationality and lack of care could have happened. However, the fact that the victim has suffered such



serious injuries implies that he too should be travelling at a relatively excess speed. If the thumb rule as to who had the best opportunity to avoid the accident goes, the victim may also have to take a share of the blame. This Court therefore, fixes his contributory negligence at 20%.

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6. Having stated thus, if the heads of compensation as awarded by the Tribunal is considered, the Tribunal has not awarded anything for the loss of love and affection, and for the loss of parental care to three little children of the victim. Nor has it awarded anything on the head of pain and suffering which accrues to the estate of the victim, since the victim has died two days after the accident. If these heads are taken into account, there may not be any need to interfere with the amount awarded by the trial Court, for, any advantage the appellant may obtain due to the contributory negligence of the victim will be offset by the entitlement of the claimants to compensation on the aforesaid heads.

7. In conclusion, this Court does not find any merit in this appeal and the same is dismissed. The appellant is directed to deposit the entire Award amount with all accrued interest within a period of eight(8) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Tsg-2

To,

1.The Special District Judge,,
Motor Accidents Claims Tribunal,
Thanjavur.

2.The Section Officer,(2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.Sivaraman, Advocate Sr.No.26505

+1cc to Mr.N.Tamilmani, Advocate Sr.No.24441

C.M.A(MD) No.194 of 2019

18.12.2020

VB (25.01.2021) 3P 6C

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