BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.12.2020
CORAM:
THE HONOURABLE MR. JUSTICE N.SESHASAYEE
C.M.A.(MD)No.923 of 2019

HDFC ERGO General Insurance Company Ltd.,
Rep through the third party
Insurance Claim Officer,
Madurai. .. Appellant/4th Respondent

vs.

1.Pappathi
2.Mahalakshmi
3.Minor Sivankumar
(Represented by his guardian,
mother Pappathi) ..Respondents/Petitioners 1-3

V.Guruvan-Died ..1st Respondent in MCOP No.92 of 2016

4.Sriram General Insurance Company Ltd.,
E, EPIP, Sitapura Industrial Area,
Jaipur Po, Rajasthan 302022,
Rep.through third party Claim Officer,
Jaipur. ..5th respondent/2nd respondent

5.Kumar
6.Karuppiah
7.Vellaiyammal ..Respondents 5-8/ Respondents 3, 5 & 6

PRAYER: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decreetal order dated 08.03.2019 made in M.C.O.P.No.92 of 2016 on the file of the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court) Theni and allow this Civil Miscellaneous Appeal.

For Appellant	: Mr.S.Srinivasa Raghavan
For R1 to R3 R6 and R7	: Mr.K.Suresh Kumar
For R4	: Mr.V.Sakthivel
For R5	: No Appearance

ORDER

The appellant herein is the Insurance Company of the alleged offending vehicle, which was arrayed as fourth respondent before the Tribunal.

2.1. The accident involved in this case appears one of the most unfortunate to come across, in which certain Palanimuthu had died. On 05.04.2016, Palanimuthu and few others were travelling in a pick-up van bearing Registration No.TN 58 AC 5507. It would be revealed from the evidence that the vehicle was moving from east to west. At about the site of accident, this vehicle capsized to its right and Palanimuthu and few others travelling with him were said to have been thrown away. Even as they were trying to be on their legs, another goods vehicle bearing registration No.TN 60 U 6832 came along the same direction and ran over the passengers of the pickup van, and killed Palanimuthu.

2.2.Promptly his widow and children approached the Tribunal seeking compensation both against the fourth respondent herein, who is the insurer of the vehicle, in which Palanimuthu travelled and against the appellant. The Tribunal held that the negligent of the driver of the goods vehicle insured with the appellant was responsible for the unfortunate accident and accordingly has proceeded to pass an award for Rs.20,67,080/- payable with interest at 7.5% p.a., and fastened the entire liability on the owner and the Insurance Company of the goods vehicle. Aggrieved by the said award, the Insurance Company of the goods vehicle has now approached this Court.

3.Mr.S.Srinivasa Raghavan, learned counsel for the appellant argued that:

(a) the nature of the accident is such that, but for the pickup van, in which the victim had travelled capsizing on the road, the accident itself could not have been happened. Therefore, in fitness of things, the Tribunal ought to have apportioned the liability reasonably as between the owner and the Insurance Company of the pickup van in which the victim travelled. He submitted that it is a case of composite negligence that has led to the accident;

(b) secondly, in awarding compensation for loss of love and affection, it was repeated twice over, and therefore, one of the entries must be deleted.

4. Heard the learned counsel for the claimant as well as the fourth respondent, Insurer of the pickup van.

5.1. The first submission of Mr.S.Srinivasa Raghavan is impressive, but on deeper consideration it defiles certain probabilities. The evidence available as to how the accident took place is candid and this Court necessarily has to rely on solitary testimony of P.W.2, Mahadevan. He is one of the passengers who has travelled with the victim in the pickup van. He would state that at the relevant time, when the accident took place, the pickup van was travelling from east to west, that the vehicle capsized to its right, which implies towards the north of the road, and even as the passengers of the pickup van attempted to raise and cross the road, the second accident has taken place.

5.2. In all dynamics of no accident can be explained though the accident can be re-created to an extent. This Court is concerned with the second accident and to ascertain who had the best opportunity to avoid the accident. The law of negligence is routed in two fundamental aspects:

(a) duty to care; and (b) who has had the last opportunity to avoid the accident. Every shade of every accident falls generally within these parameters.

6. Let the accident be visualized to the extent Ex.P2 (First Information Report) and testimony of P.W.2 would describe. As already stated, the pickup van capsized to its right throwing its passengers to the right side of the road. This can be gathered from the evidence. Almost, immediately, the second vehicle a Goods carrier insured with the appellant ran over them. It evidences two facts:

- The first vehicle, which had capsized must be at the far left end of the road, but for which the victim could not be at the northern side of the road; and
- Second goods vehicle came from the behind and not from the opposite direction. Therefore, its line of motion should have been to the right of the capsized vehicle, and that it should have been driven at a hectic speed at the point of accident at any rate.

7. Accidents on the road occasion, when the drivers and riders of the motor vehicles lose their sense of anticipation, and in the context of the present case, the driver of the offending vehicle appears to have been consumed by his failure to anticipate the events on the road. Therefore, the facts probablize that the offending vehicle at least should have been coming at a hectic speed, possibly uncontrollable, which has led to the second accident.

8. Where to look for the rebuttal within the evidence?. When the cases such as these were tried, the Courts must be provided with such material which evidence touches upon the nature of the road, nature of traffic on the road, length of the tire mark to assess the approximate speed of the vehicles involved, and the position of the vehicle and many other such factors. Unfortunately, the Insurance Company in most of the cases try to create an accident before the appellate Court, when their counsel invariably make easy their line of cross-examination before the Tribunal. Negligence is a question of fact, and it is assessed based on the rule of preponderance of probability. It is therefore imperative for the Insurance Company, which is under an obligation to defend the liability, to elicit such

necessary answers during cross examination, and if they are denied, then to prove the same. They at least ought to examine the driver of its insured vehicle. However, the Insurance Companies hardly seem to strain themselves before the Tribunal to defend the case of negligence. The leave it obtains under Section 170 of the Motor Vehicles Act is not for an empty purpose, and the Insurance Companies ought to realize that it gets an opportunity to step into the shoes of the insured. So far as this case is concerned, for want of any rebuttal evidence to dislodge the effect while the evidence probabilize, this Court necessarily has to reject the contentions of the learned counsel for the appellant viz-a-viz the role played by the pickup van for the occurrence of the accident.

9. The second of the point argued is not as complicated as the first one. Admittedly, the compensation awarded on the head of loss of love and affection is repeated twice over. In column No.4 of the award in paragraph No.14, Rs.1 lakh was awarded, whereas in Column No.5, Rs.80,000/- was awarded. This Court chooses higher of the both. Accordingly, Rs.80,000/- must be deducted from the award amount of Rs.20,67,080/-. Secondly, in column No.6 on the head of loss of love and affection for the parents, heading is given as loss of consortium, which apparently is wrong, and the same should be read as loss of love and affection for the parents. In effect, the total compensation amount payable after deducting one of the items indicated above is Rs.19,87,080/- and is payable with interest at 7.5%, and the award amount now determined shall be apportioned in the same ratio in which the Tribunal has apportioned the compensation. Except the minor claimant, other respondents viz., 1,2 6 & 7 are now permitted to withdraw the compensation amount due to them.

10. The learned counsel for the appellant submitted that the entire award amount has been deposited. In view of the modification herein made, the Insurance Company is entitled to withdraw Rs.80,000/- with proportionate interest accrued on the same.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the award passed in M.C.O.P.No.92 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Judge/Fast Track Court, Theni is modified to the extent indicated above. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Additional District Judge
Motor Accident Claims Tribunal,
Fast Track Court, Theni

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

+1cc to MR.V.SAKTHIVEL, ADVOCATE, SR NO.24463
+1cc to MR.S.SRINIVASA RAGAVAN, ADVOCATE, SR NO.24112
+1cc to Mr.K.SURESHKUMAR, ADVOCATE, SR NO.24115

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