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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.Nos.2372 & 2373 of 2012

CMA.No.2372 of 2012

Royal Sundaram Alliance Insurance Co.Ltd.,
Branch Office, Sundaram Towers, 46, Whites
Road, Chennai 600 014, Chennai District

... Appellant/3rd Respondent

Versus

1.P.Krishnan @ Dayalan
2.S.Bethuraj
3.N.Sailakshmi

...Respondent/Petitioner

(2nd and 3rd respondents herein remained
exparte before the tribunal. Hence, summons
to them may be dispensed with)

...2 & 3 Respondents/1 & 2 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, against the decree and judgment dated
17.02.2012 made in MCOP.No.317 of 2009 on the file of Motor
Accident Claims Tribunal (Sub Court), Dharapuram.

For Appellant : M/s.Elveera Ravindran

For Respondents: No Appearance

CMA.No.2373 of 2012

Royal Sundaram Alliance Insurance Co.Ltd.,
Branch Office, Sundaram Towers, 46, Whites
Road, Chennai 600 014, Chennai District

... Appellant/3rd Respondent

Versus

1.T.Karthick
2.S.Bethuraj
3.N.Sailakshmi

...Respondent/Petitioner



(2nd and 3rd respondents herein remained
exparte before the tribunal. Hence, summons
to them may be dispensed with)

...2 & 3 Respondents/1 & 2 Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, against the decree and judgment dated
17.02.2012 made in MCOP.No.319 of 2009 on the file of Motor
Accident Claims Tribunal (Sub Court), Dharapuram.

For Appellant : M/s.Elveera Ravindran

For Respondents: No Appearance

J U D G M E N T

This appeals have been laid as against the decree and
judgment dated 17.02.2012 made in MCOP.Nos.317 & 319 of 2009 on
the file of Motor Accident Claims Tribunal (Sub Court),
Dharapuram.

2. For the sake of convenience, the parties are referred
to hereunder according to their litigative status before the
Tribunal.

3. The case of the claimants is that on 08.02.2009, one
Velliangiri was riding motor cycle, in which the claimants were
driving as pillion rider. When they were proceeding towards
north on the left extreme of Kovundhapadi to Andhiur main road
near Aappakudal, the first respondent drove lorry in a rash and
negligent manner with high speed and lost his control and dashed
against the motorcycle, due to which the claimants were thrown
off from the motorcycle and fell down, due to which they
sustained grievous injuries all over their body. The claimant in
MCOP.No.317 of 2009 sustained fracture over his head, face and
bleeding injuries all over his body. The claimant in MCOP.No.319
of 2009 had fracture on his head and injuries on his left
shoulder. They were immediately taken to private hospital at
Erode for treatment and admitted as inpatient for ten days.
Thereafter, they were advised to continue the treatment as out
patient. The first claimant was working as tailor and aged about
25 years. He was earning Rs.6,000/- per month and due to
accident, he sustained permanent disability and claimed
Rs.4,00,000/- as compensation. The second claimant was running a
tea shop at his native place and aged about 25 years and he was
earning Rs.6,000/- per month. Therefore, he also claimed
Rs.4,00,000/- as compensation.



4. Resisting the same, the third respondent filed counter stating that the rider of the motor cycle drove the motorcycle in a rash and negligent manner along with three persons as pillion rider, that too without driving licence. Therefore, he lost his control and hit against the front side of the lorry and fell down from the motor cycle. Therefore, the accident took place only due to the rash and negligent driving of the rider of the motorcycle. Though initially case was registered as against the driver of the lorry, after completion of investigation, charge sheet was laid as against the rider of the motorcycle. Therefore, the third respondent is not at all liable to pay compensation as claimed by the claimants and sought for dismissal of the claim petitions.

5. In both the claim petitions, joint trial was conducted. On the side of the claimants, they examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.24. On the side of the respondents, they examined R.W.1 to R.W.3 and marked Ex.R.1 and Ex.R.2. On the basis of the evidence available on records and also considering the submissions made by the learned counsel appearing on either side, the Tribunal fixed liability against the respondents and awarded compensation at Rs.97,000/- in MCOP.No.317 of 2009 and Rs.1,01,500/- in MCOP.No.319 of 2009. Aggrieved by the same, the third respondent filed these appeals, thereby questioning the liability.

6. The learned counsel appearing for the appellant submitted that the Tribunal failed to note that the claimants were the pillion riders of the motorcycle, which was driven by one Velliangiri along with other pillion rider. Only due to rash and negligent driving of the rider of the motor cycle, the accident took place. When the rider of the motorcycle drove the motorcycle with three pillion riders, automatically he lost his control and hit the left hand side of the front of the lorry. and fell down, due to which they sustained injuries and as such the third respondent is not at all liable to pay any compensation. Both the claimants were examined as PW1 and 2 and they categorically deposed that the accident took place only due to the rash and negligent driving of the rider of the motor cycle. Charge sheet was also laid as against the rider of the motor cycle and as such the Tribunal ought not to have fixed liability against the respondents.

7. Heard M/s.Elveera Ravindran, learned counsel appearing for the appellant. Though notice was served, no one appeared on behalf of the respondent concerned before this Court in person or through pleader.



8. According to the claimants, on 08.02.2009, when they were sitting as pillion riders in the motorcycle driven by one Velliangiri, the first respondent had driven his lorry in a rash and negligent manner and hit the motorcycle, due to which they fell down and sustained injuries. Therefore, FIR was registered as against the first respondent in Cr.No.27 of 2009 for the offences under Sections 279 and 337 of IPC. Admittedly, the claimants along with one person were sitting in the bike as pillion riders and one Velliangiri had driven the motor cycle. Though they were riding the motorcycle on the extreme left hand side of the road with slow speed, when the motor cycle carried four persons, automatically the rider of the motorcycle would lose his control. It is needless to say that four persons travel in a motor cycle is illegal and contrary to provisions under Motor Vehicles Act. However, the lorry driven by the first respondent hit the motorcycle and due to which the claimants and others fell down and sustained injuries. That apart, though FIR was registered as against the first respondent and after completion of investigation in Cr.No.27 of 2009, the Inspector of Police, Appakudal Police Station filed charge sheet as against the rider of the motor cycle which is marked as Ex.R2. Though the trial is pending, the Tribunal ought not to have fixed the entire liability on the first respondent for committed the accident. In this regard, the learned counsel for the appellant cited the judgment in the case of Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Division-I) Ltd Vs. Abdul Salam and others reported in 2004 (2) TN MAC 59 (DB), wherein it is held as follows:

10. We are concerned as to whether such action of the individuals is permissible under law. The motor cycle and any other two wheelers are meant only for two persons, the rider and a pillion rider. If more than two persons are travelling in a motor cycle or any other two wheeler, undoubtedly such action of the individual would become illegal and unauthorised. It is an awful sight when we come across three persons travelling in a motor cycle. They are sitting in such a cramped manner that the rider of the motor cycle almost sitting on the petrol tank or at the front edge of the seat. When he was sitting in such a position, naturally because of the restricted movement of his legs, he cannot have the complete control over the brake. The movements of his hands also so restricted. When that be so, this court is of the opinion that definitely the rider of the two wheeler cannot have full control over the vehicle.

11. Apart from that, when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the



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rider of the motor cycle to loose his control over the vehicle. Even though such travelling of three persons in a motor cycle is contrary to the statute, still the enforcement wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing, such travelling of three persons in the two wheelers has become a regular sight. Even though the highway patrolling is available but it is a rare sight to see a highway patrolling vehicle. The travelling of three persons has become rampant in the mofussils and in the City; especially among the youngsters like the college students. When that be the case, the enforcing authority is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the Rules and Regulations of the statute in the minds of those who are using the vehicles.

9. He also cited the judgment in the case of Ganeshan @ Ganesh Vs. Vilasini reported in 2019 (1) TN MAC 733, wherein it is held as follows:

10(b).The Division Bench has taken a judicial note of the fact that when three persons travel in a two-wheeler, the rider of the two- wheeler will not have control over the handle bar and the brake. The rider of the motorcycle is almost sitting on the petrol tank when three persons travel in the motorcycle. This Court also held that law enforcing agency must prevent the practise of three persons travelling in the two- wheeler. Even though the said judgment was delivered in 2003, even in 2019 in most of the two-wheelers three persons travel and law enforcing agency has not taken any steps to prevent such statutory violation. This Court held that upon three persons travel in two-wheeler, the rider will not have control over handle bar and brake, whereas in the present case, four persons traveled in the two-wheeler and definitely the rider of the motorcycle would not have had control over the handle bar and brake. Hence, there is no error in the award of the Tribunal warranting interference by this Court.

The Hon'ble Division Bench of this Court and this Court held that when three persons travel in a motorcycle which is meant for two persons, the conduct of the persons who travelled in such manner are liable for contributory negligence, especially when their action is contrary to the statute.

10. In the case on hand, admittedly, the claimants along with two other persons travelled in a motor cycle and met with



an accident. As rightly pointed out by the learned counsel for the appellant, when four persons travel in a motor cycle, the rider of the motorcycle will lose his control and it leads to accident. That apart, the claimants as well as other riders are in the age group of 25, they never follow the rules as contemplated under the Motor Vehicles Act. Therefore, the conduct of the claimants who travelled in such manner are liable for contributory negligence. Without considering the same, the Tribunal fixed entire liability on the respondents. Therefore, the above judgments cited by the appellant are squarely applicable to the case on hand and the claimants are liable for contributory negligence. Though the third respondent challenged the liability alone, as far as the quantum of compensation is concerned, the compensation awarded by the Tribunal are not meager and nothing warrants by this Court to enhance the same.

11. The claimants are liable for 25% of the contributory negligence and consequently, 25% of the compensation is deducted towards contributory negligence. As such, the claimant in MCOP.No.317 of 2009 is entitled to Rs.72,750/- and the claimant in MCOP.No.319 of 2009 is entitled to Rs.76,125/-.

12. Accordingly, the Civil Miscellaneous Appeals are partly allowed as follows:-

CMA.No.2372 of 2012

(i) The award passed by the Tribunal is modified from Rs.97,000/- to Rs.72,750/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The appellant / insurance company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest and costs within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the first respondent herein / claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(v) There shall be no order as to costs.

CMA.No.2373 of 2012

(i) The award passed by the Tribunal is modified from Rs.1,01,500/- to Rs.76,125/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The appellant / insurance company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest and costs within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the first respondent herein /



claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(v) There shall be no order as to costs.

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Sd/-

Deputy Registrar(Admn III)

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Dharapuram.

2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+2ccs to M/s.Elveera Ravindran, Advocate SR.No.22918, 22919

C.M.A.Nos.2372 & 2373 of 2012

RLD(CO)
GMY(09/11/2021)