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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.3642 OF 2013

AND

M.P.NO.1 OF 2013

The Branch Manager
National Insurance Co. Ltd.,
Branch Office, First Floor,
No.27-33-31, Gudavallavari
Vijayawada, Krishna District,
Andhra Pradesh 520 002.

... Appellant/3rd Respondent

-VS-

1.V.Tamil Selvi
2.M.Pugalendhi
3.M.Sagunthala
4.M.Parthasarathi
(4th Respondent is a insane person
represented by next friend, mother
1st Respondent)

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

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 08.01.2013 in M.C.O.P.No.594 of 2010 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Krishnagiri.

For Appellant : M/s.Sree Vidhya

For Respondents : M/s.S.Velumurugan for R1 to R3
R4 Notice Served
M/s.D.Raghu for R5
R6 Exparte



JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 08.01.2013 in M.C.O.P.No.594 of 2010 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Krishnagiri.

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 are that on 12.07.2009 the deceased was travelling in the first respondent's bus as Duty Conductor from Bangalore to Salem. When the bus was driven by its driver at about one hour namely at 01.00 A.M on 13.07.2009, when it was proceeding in Krishnagiri to Salem National Highways Road towards Salem near Kaveripattinam Pothapuram Plyover Bridge, the driver of the first respondent's bus was driven in a rash and negligent manner and dashed behind the parked lorry, belonging to the second respondent. Due to which, the deceased sustained fatal injuries on his vital organs and died on the spot. The deceased was 54 years at the time of accident and he was drawing a salary of Rs.16,283/- per month. Hence, the claim petition.

4. Resisting the same, the third respondent filed the counter stating that the lorry belonged to the second respondent was parked with due signals. Unfortunately the driver of the first respondent's bus without noticing the signal of the lorry and dashed behind the lorry. Therefore, the third respondent is no way liable to pay any compensation.

5. On the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P11 were marked. On the side of the respondents R.W.1 was examined and Ex.R1 and Ex.R2 were marked. On perusal of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal found that a sum of Rs.10,21,080/- (Rupees Ten Lakhs Twenty One Thousand and Eighty only) as compensation payable by the first, second and third respondents are liable to pay equally. Aggrieved by the same, the appellant filed the present Civil Miscellaneous Appeal.



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6. The learned counsel appearing for the third respondent would submit that only on the rash and negligent driving of the first respondent, the accident was took place. Even according to the claimants, the driver of the bus was driven in a rash and negligent manner and dashed behind the lorry which was parked on the road with signal indications that the lorry was parked without any movements. The FIR was also registered as against the driver of the first respondent's bus and he was charge sheeted. To substantiate the same, the Sub Inspector of Police of Kaveripattinam Police Station was examined as R.W.1. He deposed that though FIR was registered as against the driver of the first respondent as well as the driver of the second respondent, finally charge sheeted only as against the driver of the first respondent. Therefore, the third respondent is not liable to pay any compensation and the entire liability has to be fastened on the first respondent's bus to pay compensation to the claimants.

7. Heard Mrs.Sree Vidhya, learned counsel appearing for the appellant and Mr.S.Velumurugan, learned counsel appearing for the respondents 1 to 3 and Mr.D.Raghu, learned counsel appearing for the fifth respondent.

8. On perusal of the records revealed that the lorry belongs to the second respondent was parked on the four lane road at Pothapuram Plyover Bridge, Krishnagiri to Salem National Highways Road near Kaveripattinam. It is a four lane road and there is a specific bey for parking lorries. The second respondent has no right to park his lorry on the main road, since on the said road there is always heavy traffic. Even, if the parking lamp blinking in a lorry, the lamp and reflector covered with all mud and dust and it cannot be viewed by any vehicle. Therefore, it is very dangerous to park the vehicle on the main road without any signal. If the lorry got any repair or any mechanical fault, there is no other way, it can be parked. There is no evidence to say that the lorry belongs to the second respondent was got repair and therefore, parked on the road.

9. At that juncture, the driver of the first respondent's bus hit the lorry which was parked on the road. Due to which the deceased sustained grievous injuries and died. Though the jurisdiction Police charge sheeted as against the driver of the



bus, since no charge sheet can be filed on the lorry which was parked on the road without any driver. It does not mean that the entire liability can be fastened on the first respondent's bus. Therefore, the Tribunal rightly awarded the compensation and fixed contributed negligence on the part of the second respondent's lorry as well as the first respondent's bus. Therefore, this Court finds no infirmity or irregularity in the order passed by the Court below.

10. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(L.A)

// True Copy //

Sub Assistant Registrar

rna

To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

Copy To

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

+1cc to Mr.R.Ravichandran, Advocate, S.R.No.24536

+1cc to Mr.D.Raghu, Advocate, S.R.No.24420

C.M.A.No.3642 of 2013
and M.P.No.1 of 2013

SRA(CO)
RLP(29/10/2021)