



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.457 of 2014

and

M.P.No.1 of 2014

The Divisional Manager,
United India Insurance Company Limited,
Motor Third Party Claim Office,
No.66-68, Gandhi Road,
Kancheepuram.

.. Appellant/2nd Respondent

Vs.

1.Thoppai

2.Selvakumar @ Sridhar ...1st Respondents/1 and 2,3 Petitioners

3.Devi @ Susila

4.A.M.Munusamy Mudaliar .. Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.04.2010 made in M.C.O.P.No.564 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kancheepuram.

For Appellant : Mr.S.Arun Kumar

For RR 1 to 3 : Mr.S.Sangaralingam

For R4 : Left

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed to set aside the award dated 13.04.2010 made in M.C.O.P.No.564 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kancheepuram.



2.The appellant is the 2nd respondent in M.C.O.P.No.564 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kancheepuram. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Padma @ Padmavathy, who died in the accident that took place on 30.11.2007.

3.According to respondents 1 to 3, while the said Padma @ Padmavathy was travelling in Government Bus bearing Registration No. TN 32 N 2034 along with others, the driver of the Bharathi Roadways bus bearing Registration No.AP 03 W 7575 belonging to 4th respondent, drove the same in a rash and negligent manner, dashed on the Government Bus and caused the accident. In the said accident, the said Padma @ Padmavathy sustained grievous injuries and subsequently died. Therefore, the respondents 1 to 3, being the husband, son and daughter of the deceased Padma @ Padmavathy filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation against the 4th respondent and appellant-Insurance Company, being the owner and insurer of the Bharathi Roadways bus respectively.

4.The 4th respondent-owner of the Bharathi Roadways bus remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 3. The appellant stated that the accident did not occur due to the negligence on the part of the driver of the Bharathi Roadways bus belonging to 4th respondent. The accident occurred due to head on collision of two buses, both the drivers died on the spot and hence, both the drivers are responsible for the accident and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 2nd respondent examined himself as P.W.1 and marked four documents as Exs.P1 to P4. On behalf of the appellant, one T.N.Gopalan was examined as R.W.1 and no document was marked.

7.The Tribunal considering the pleadings, oral and documentary evidence and also the connected claim petitions filed claiming compensation for the injuries sustained and death caused in the very same accident, held that accident has occurred only due to rash and negligent driving by the driver of the Bharathi Roadways bus belonging to 4th respondent and directed the appellant-Insurance Company, being the insurer of the Bharathi Roadways bus to pay a sum of Rs.4,01,000/- as compensation to the



respondents 1 to 3.

8.Challenging the said award dated 13.04.2010 made in M.C.O.P.No.564 of 2008, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company reiterated the averments in the counter statement and further contended that the Tribunal relying on the rough sketch, erroneously held that accident has occurred due to rash and negligent driving by the driver of the Bharathi Roadways bus belonging to 4th respondent. The rough sketch was not marked through the author of the document and it is not an authenticated document. The accident is head on collision and the Tribunal ought to have fixed negligence on drivers of both the buses and prayed for allowing the civil miscellaneous appeal.

10.The learned counsel appearing for the respondents 1 to 3 made submissions in support of the award of the Tribunal and prayed for dismissal of the civil miscellaneous appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials on record.

12.From the materials available on record, it is seen that it is the case of the respondents 1 to 3 that due to rash and negligent driving by the driver of Bharathi Roadways bus belonging to 4th respondent, the accident has occurred and in the accident, the said Padma @ Padmavathy sustained grievous injuries and died. To substantiate their case, they examined the 2nd respondent as P.W.1 and marked four documents as Exs.P1 to P4. From the award of the Tribunal, it is seen that more than 50 claim petitions were filed claiming compensation for the death and injuries caused in the very same accident. In the connected claim petitions, rough sketch was marked. All the claim petitions were not heard jointly, but they were heard simultaneously. In view of the same, the Tribunal considered the documents marked in the connected claim petitions, especially the rough sketch filed by the claimants. From the rough sketch, it is seen that the accident has occurred on the western side of north - south road. The Bharathi Roadways bus was going from north to south, while the Government bus was coming from south to north. The Bharathi Roadways bus was going on the eastern side and the Government bus was coming on the western side. The Bharathi Roadways bus, which was going from north to south, ought to have traveled only on the eastern side. The accident has occurred on the extreme western



side of the road. The Tribunal considering the pleadings, oral evidence, rough sketch and place of accident, held that accident has occurred only due to rash and negligent driving by the driver of the Bharathi Roadways bus belonging to 4th respondent. The learned counsel appearing for the appellant submitted that the Tribunal ought not to have relied on the rough sketch. From the materials on record, it is seen that the appellant has not let in any evidence to show that the accident has not occurred on the western side of the road. This Court by the judgment dated 07.09.2018 in C.M.A.Nos.1400 to 1403 of 2011 filed by the appellant herein against the award passed in connected claim petitions arising out of the same accident, considered the materials placed before the Tribunal and held that accident has occurred only due to rash and negligent driving by the driver of Bharathi Roadways bus belonging to 4th respondent. The appellant has not challenged the said judgment passed by this Court. In view of the above materials, the award of the Tribunal with regard to negligence is confirmed.

13.In the result, this Civil Miscellaneous Appeal is dismissed. The sum of Rs.4,01,000/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.564 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kancheepuram. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Kancheepuram.

2.The Section Officer,
VR Section,
High Court,
Madras.

+2cc to Mr.S.Sankaralingam, Advocate SR.No.58240
+1cc to Mr.S.Arunkumar, Advocate SR.No.58326

C.M.A.No.457 of 2014

PP(CO)
CB(14/12/2021)