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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4629 of 2019
and CMP.No.26212 of 2019

National Insurance Company Limited,
Represented by its Branch Manager,
No.38F, Bye Pass Road,
Dharmapuri - 636 701.

...Appellant/2nd Respondent

Vs.

1. Madhu
W/O. LATE. MANI

2. Pappathi
D/O. LATE MANI

3. Rani
D/O. LATE MANI

4. Saratha @ Shalini
D/O. LATE MANI

5. Minor. Sathish,
S/O. LATE. MANI

...Respondents 1 to 5/Petitioner

(Minor Petitioner represented by
his next friend / mother / 1st
respondent Madhu)

6. The Correspondent,
Sri Vidhya Mandir Matri Higher Secondary School,
Palacode Town, Palacode Taluk,
Dharmapuri District.

...6th Respondent/1st Respondent

(R6 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.04.2019 made in M.C.O.P.No.89 of 2015, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Dharmapuri.



For Appellant : Mr.S.Vadivel

For Respondents : Mr.M.Manohar
(For R1 to R5)

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J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company to set aside the judgment and decree dated 22.04.2019 made in M.C.O.P.No.89 of 2015, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Dharmapuri.

2.The appellant is the 2nd respondent in M.C.O.P. No.89 of 2015, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Dharmapuri. The respondents 1 to 5/claimants filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Mani who died in the accident that took place on 23.06.2014.

3.According to the respondents 1 to 5, on the date of accident, when the deceased Mani was riding his TVS 50 bearing Registration No.TN-29-A-3442 from Seeriyannahalli to Palacode town, slowly and carefully on the left side of the road, observing all the traffic rules, near Poomarathupallam Sakthi's house in Belrampatti to Palacode road, a Sri Vidhya Mandhir School Bus bearing Registration No.TN-38-5792 belonging to the 6th respondent was parked in the middle of the road, where there was no Bus Stop, without following cautioning measures and using indicator light as per the road rules. Due to the negligent parking of the Bus, the deceased Mani who was riding the TVS 50 dashed on the back side of the Bus, sustained grievous injuries over head, multiple injuries all over the body and died in the Hospital on 24.06.2014. The accident occurred only due to negligent parking of the Bus belonging to the 6th respondent. Hence, the respondents 1 to 5 filed the claim petition claiming compensation against the 6th respondent as owner and appellant as insurer of the offending vehicle respectively.

4.The 6th respondent, owner of the 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 5 in the claim petition. According to the appellant, on the date of accident, the Bus belonging to the 6th respondent was parked in the extreme right side of the road to pickup the students. The deceased Mani rode the TVS 50 at high speed in a Zig Zag manner,



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dashed behind the parked Bus and caused the accident. The accident occurred at 8.30 a.m., only due to rash and negligent riding by the deceased Mani and he is the tort-feasor. The Police registered a case against the deceased Mani and the same was closed as charges abated. Hence, the respondents 1 to 5 are not entitled to claim any compensation. In any event, the respondents 1 to 5 have to prove their legal heirship, age, avocation and income of the deceased Mani to claim compensation. The total compensation claimed by the respondents 1 to 5 is excessive. The claim petition is bad for non-joinder of owner and insurer of the TVS 50. At the time of accident, the TVS 50 was not insured and the deceased Mani did not possess valid driving license and hence, prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one Suresh, eye-witness as P.W.2 and marked 19 documents as Exs.P1 to P19. The appellant examined the Special Sub Inspector of Police of Marandahalli Police Station as R.W.1 and marked 2 documents as Exs.R1 & R2.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligence of the driver of the Bus belonging to the 6th respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.11,66,875/- as compensation to the respondents 1 to 5.

8. Questioning the entire negligence fixed on the driver of the Bus and liability fastened on the appellant by the award dated 22.04.2019 made in M.C.O.P.No.89 of 2015, the appellant - Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to negligence of the deceased Mani. The FIR was registered only against the deceased Mani. The Police after investigation, filed final report as charges abated, as the deceased died. The Tribunal having relied on the FIR to confirm the accident, ought to have taken the contents of the FIR in its entirety, in view of the judgment of the Hon'ble Apex Court in 2007 (2) TN MAC 106 [Oriental Insurance Co. Ltd., Vs. Premlata Shukla and others] and fixed negligence on the deceased Mani. P.W.2 deposed that the Bus was parked in the middle of the road without any indicator. The accident has occurred at 8.30 a.m., i.e., in the broad day light. Had the deceased been careful, the accident would not have occurred at all. The appellant filed rough sketch and marked the same as Ex.R1. As per Ex.R1- rough sketch, the Bus was parked on the extreme South side of the road and not on the middle of the road. Admittedly, the deceased drove his TVS



50 in the same direction, hit behind the Bus and caused the accident. In view of the same, the Tribunal ought to have rejected the evidence of P.W.2. In any event, the Tribunal ought to have fixed the negligence equally on the deceased as well as the driver of the Bus and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 to 5 contended that the accident occurred only due to negligent parking of the Bus. They proved the same by examining P.W.2, eye-witness. The appellant has not let in any eye-witness or driver of the Bus to prove their case. The Tribunal has considered the materials placed before it and has rightly held that the accident has occurred only due to the negligent parking of the Bus. Instead of the contents of FIR, the Tribunal has to consider only the evidence let in before it. The Tribunal has rightly considered entire materials and fixed negligence on the driver of the Bus. There is no error in the said finding of the Tribunal and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 5 and perused the materials available on record.

12. It is the case of the respondents 1 to 5 that while the deceased Mani was riding the TVS 50, the driver of the School Bus belonging to the 6th respondent parked the Bus in the middle of the road without any indication. In view of the same, the deceased dashed on the backside of the Bus, sustained injuries and died. To substantiate their case, the 1st respondent examined herself as P.W.1, examined one Suresh as P.W.2 and marked FIR as Ex.P1. On the other hand, it is the case of the appellant that the Bus was not parked on the middle of the road and the same was parked in the extreme right side of the road after observing all the traffic rules, to pick up the students, but the deceased Mani drove the TVS 50 in an uncontrollable speed and dashed against the parked Bus. To substantiate their case, the appellant examined the Special Sub Inspector of Police as R.W.1 and marked rough sketch as Ex.R1 and final report as Ex.R2. The appellant did not examine the driver of the Bus. In the FIR, the deceased was shown as accused and final report was closed as charges abated. When the Bus was parked on the extreme right hand side of the road, the deceased Mani drove the TVS 50 in a rash and negligent manner and dashed on the backside of the Bus. Admittedly, the Bus was not parked in the middle of the road and was parked on the wrong side i.e., on the extreme right side of the road. The accident occurred at 8.30 a.m. in the day light. The evidence of P.W.2 that Bus was parked in the middle of the road is not corroborated. The deceased also rode the TVS 50 on



the wrong side and dashed on the Bus which was parked on the wrong side. The deceased ought to have been careful in driving the vehicle and avoided the accident. Both the deceased Mani as well as the driver of the Bus contributed to the accident. This Court is of the view that the entire negligence fixed on the driver of the Bus alone is not correct. Considering the above facts and the fact that the Bus is a heavy vehicle, 70% negligence is fixed on the driver of the Bus belonging to the 6th respondent and 30% negligence is fixed on the deceased Mani. Hence, the appellant is liable to pay only 70% of the compensation awarded by the Tribunal to the respondents 1 to 5.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.11,66,875/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit a sum of Rs.8,16,813/-, being 70% of the award amount, determined by the Tribunal, along with interest and costs, 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.89 of 2015. On such deposit, the respondents 1 to 4 are permitted to withdraw their share of the award amount, determined by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 5th respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st respondent, mother of the minor 5th respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 5th respondent. The appellant-Insurance Company is permitted to withdraw the excess amount, lying in the deposit to the credit of M.C.O.P. No.89 of 2015, if any already deposited by them. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special District Judge,
(Motor Accident Claims Tribunal),
Dharmapuri.



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

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+1cc to Mr.S.Vadivel, Advocate, Sr.17200

+1cc to Mr.M.Manohar, Advocate, Sr.17550

C.M.A.No.4629 of 2019
and
CMP.No.26212 of 2019

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NSK 26/10/2021