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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.3269 & 3270 of 2017 and
C.M.P.Nos.20430 & 20431 of 2017

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Coimbatore.

.. Appellant in both
C.M.A.'s/2nd Respondent

Vs.

M.Devarajan

.. First Respondent in C.M.A.
No.3269 of 2017/Petitioner

K.Logendiran

..First Respondent in C.M.A.
No.3270 of 2017/Petitioner

P.Govindaraj

..Second Respondent in both
C.M.A.'s/1st Respondent

Prayer in both C.M.A.'s: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.04.2016 made in M.C.O.P.Nos.770 & 771 of 2010 on the file of the Motor Accident Claims Tribunal, The Subordinate Court, Sathyamangalam.

For Appellant : Mr.Sundaravathanam
(in both C.M.A.'s)
For Respondents : Mr.M.Lokesh (R1)
(in both C.M.A.'s)

C O M M O N J U D G M E N T

C.M.A.No.3269 of 2017 has been filed by the Transport Corporation challenging the quantum of compensation awarded as well as the fastening of the liability on them by the Motor Accident Claims Tribunal, Subordinate Court, Sathyamangalam in M.C.O.P.No.770 of 2010 on 07.04.2016.

2. C.M.A.No.3270 of 2017 has been filed by the Transport Corporation challenging the quantum of compensation awarded as



well as the fastening of the liability on them by the Motor Accident Claims Tribunal, Subordinate Court, Sathyamangalam in M.C.O.P.No.771 of 2010 on 07.04.2016.

3. The claimant in M.C.O.P.No.770 of 2010 is the rider of the two wheeler, and the claimant in M.C.O.P.No.771 of 2010 is the pillion rider.

4.The learned counsel for the appellant corporation submitted that though both quantum and liability have been challenged in these Appeals, he restricts his claim only with regard to liability.

5. The claimants, aged 39 years and 35 years respectively met with an accident on 29.03.2010 at 22.00 hours, due to which they sustained injuries. Hence, the rider of the two wheeler filed M.C.O.P.No.770 of 2010 and the pillon rider filed M.C.O.P.No.771 of 2010, seeking compensation for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) each.

6. The Claims Tribunal, on considering oral and documentary evidence, fixed the contributory negligence of 50% on the owner of the two wheeler as well as the driver of the Transport Corporation bus and by fixing the compensation of Rs. 1,20,698/-, after deducting the contributory negligence, awarded a sum of Rs.60,349/- as compensation to the claimant in M.C.O.P.No.770 of 2010 and awarded a sum of Rs.1,80,928/- as compensation to the claimant in M.C.O.P.No.771 of 2010 and no contributory negligence was fixed on the pillion rider.

7. The learned counsel for the appellant submitted that the Court below failed to consider, the evidence of P.W.1 and P.W.2, which has not been corroborated by any other independent witness. He further submitted that there are two vehicles involved, one belonging to the Transport Corporation and the other is the two wheeler. The accident occurred only due to the rash and negligent driving of the rider of the two wheeler who came in the opposite direction and dashed against the front right side of the bus. It is further stated that Claims Tribunal, after coming to the conclusion that both the driver of the Transport Corporation bus and the rider of the two wheeler are responsible as tort-feasors for the accident and has passed an order fixing contributory negligence of 50:50. It is further stated that the claims tribunal, after deducting 50% towards contributory negligence, had awarded compensation to the rider, however, it has failed to deduct the same, with respect to the compensation awarded to the pillion rider. He further stated at least 20% of contributory negligence ought to be fixed on the pillion rider.



8. The learned counsel for the claimants submitted that in the present case the Court below had fixed contributory negligence in the ratio of 50:50, on the rider of the two wheeler as well as the driver of the bus and rightly deducted 50% of the compensation awarded to the rider of the vehicle, however directed the driver of the bus as well as the Transport Corporation to pay 50% of the compensation, but the said deduction was rightly not made to the pillion rider as he is not the cause for the accident. Hence, no interference is required in the award passed by the tribunal.

9. Heard the learned counsel appearing on either side and perused the records.

10. The Claims Tribunal while passing the Judgment, has come to the conclusion that both the driver of the Transport corporation as well as rider of the two wheeler have contributed for the accident and therefore it has fixed contributory negligence of 50:50. Accordingly it has fastened the liability against the driver of the bus as well as the Transport Corporation. For the rider of the two wheeler, the Court below awarded a sum of Rs.1,20,698/- as compensation and since 50% contributory negligence fixed against the rider of the vehicle, it has deducted 50% of the compensation the balance of Rs.60,349/- was directed to be paid by the Appellant-Transport Corporation, as well as the driver, along with interest. As far as award passed with respect to pillion rider, this Court finds infirmity in the order passed by the Tribunal. The Court below while determining the compensation to the pillion rider at Rs.1,80,928/-, had not chosen to fix the 50% liability on the owner of the two wheeler against the contributory negligence of 50% fixed against the rider of the two wheeler. When the Court fixed the contributory negligence of 50:50 they should have fastened the 50% against the owner of the two wheeler, but the Court below failed to do so.

11. In the case of The Oriental Insurance Co Ltd., Vs. Ganesan and others reported in (2015) 1 TANMAC 801 the Hon'ble Apex Court held that when the contributory negligence was fixed, the claimant can recover it from the owner of the respective vehicles.

12. In the present case, as far as fastening liability to the extent of 50% on the owner of the two wheeler in M.C.O.P.No.770 of 2010 and deducting 50% of the compensation amounts to a sum of Rs.60,349/- is concerned, this Court does not find any illegality on the part of the Tribunal. Hence, award passed in M.C.O.P.No.770 of 2010 stands confirmed. Accordingly, C.M.A.No.3269 of 2017 is liable to be dismissed.



13. In the present case, the pillion rider filed M.C.O.P.No.771 of 2010. The contributory negligence of 50% fixed against the rider of the two wheeler. Apparently, the contributory negligence was fixed by the Tribunal against the rider of the two wheeler and the driver of the bus in the ratio of 50:50. The Transport Corporation is liable to pay the compensation of the pillion rider. The question is how the pillion rider will recover it, whether the pillion rider is entitle to recover 50% each from the owner of the two wheeler and the Transport Corporation? The answer to the question is probably not due to the reason that in the present case rider of the two wheeler and the driver of the bus are the joint tortfeasors, in the case of joint tortfeasors the law has been settled that the claimant can recover from all the parties or from any one of the parties. In case if the claimant was directed to recover from any one of the parties, the said party is liable to pay the entire award amount and thereafter such party is entitled to recover 50% of the amount from the owner of the other co-tortfeasor vehicle. In the present case, the Tribunal has directed the Transport Corporation to pay the compensation a sum of Rs.1,80,928/-. However, no order was passed to recover from the owner of the two wheeler as the negligence was fixed by the Tribunal in the ratio 50:50. The Tribunal should have permitted the Transport Corporation to pay and recover to the extent of 50% from the owner of the two wheeler, which the Tribunal has failed to do so. Thus, the judgment in M.C.O.P.No.771 of 2010 is liable to be modified.

14. Accordingly, the Judgment passed by the Court below in M.C.O.P.No.771/2010 is modified to the extent of permitting the Transport Corporation to pay the entire compensation of Rs.1,80,928/- awarded by the Claims Tribunal, thereafter recover 50% from the owner of the two wheeler bearing Registration No. TN 43 C 3165 and in all other aspects the Award passed by the Claims Tribunal is confirmed.

15. In the result, C.M.A.No.3269 of 2017 is dismissed and C.M.A.No.3270 of 2017 is partly allowed. The appellant transport corporation is directed to pay the entire compensation awarded by the Claims Tribunal, with respect to both M.C.O.P's along with interest and costs, less the amount if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.770 and 771 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Sathyamangalam. On such deposit, the Tribunal is directed to transfer the entire amount to the claimants by way of RTGS within a period of three weeks from the date of deposit or the receipt of Bank details from the claimant or application for withdrawal from the claimant, which ever is later. However, in respect of C.M.A.No.3270 of 2017, in



respect of M.C.O.P.No.771 of 2010, the Transport Corporation is entitled to recover 50% of the compensation awarded by the Tribunal from the owner of the two wheeler bearing Registration No. TN 43 C 3165. No costs. Consequently, connected M.P.'s are closed.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Motor Accident Claims Tribunal,
The Subordinate Court, Sathyamangalam
2. The Section Officer,
VR Section,
High Court,
Madras.

+1CC to Mr.Ma.P.Thangavel, Advocate, Sr.No.23548

C.M.A.Nos.3269 and 3270 of 2017

KV (CO)
K.RK. (13.09.2021)