



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.01.2021
Date of Judgment	23.02.2021

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CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)Nos.827 and 828 of 2016

and

CMP(MD)Nos.7863 and 7864 of 2016

(1)CMA(MD)No.827 of 2016:-

The Oriental Insurance Company Limited,
D.D.J Centre,
1st Floor,
Opposite to Vadaseri Bus Stand,
Nagercoil, Kanyakumari District.

: Appellant/2nd Respondent

Vs.

1.Shanmugasundari
2.Minor Jijin Jeniffer
3.Minor Jackulin Stella
4.Minor Jennish Raja

: R1 to R4/Petitioners 1 to 4

(Minors 2 to 4 respondents
rep. by their mother, guardian
and next friend 1st Respondent
Shanmugasundari)

5.Vairaprakash

: R5/1st Respondent

(R5 Exparte before the Lower Court)

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 12.03.2012 made in MCOP No.752 of 2011 on the file of Motor Accident Claims Tribunal-cum-Additional District Judge, (Fast Track Court No.2), Tirunelveli.

(1)CMA(MD)No.828 of 2016:-

The Oriental Insurance Company Limited,
D.D.J Centre,
1st Floor,
Opposite to Vadaseri Bus Stand,
Nagercoil, Kanyakumari District.

: Appellant/2nd Respondent



1.Vijilarani
2.P.Vairaprakash
(R2 Exparte before Lower Court)

: 1st Respondent/Petitioner
: 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 12.03.2012 made in MCOP No.753 of 2011 on the file of Motor Accident Claims Tribunal-cum-Additional District Judge, (Fast Track Court No.2), Tirunelveli.

For Appellant : Mr.K.Bhaskaran
(In both appeals)

For R1 to R4 : Mr.S.Rajasekar
(CMA(MD)No.827/2016)

For 1st Respondent
(CMA(MD)No.828/2016) : No appearance
For 5th Respondent
(CMA(MD)No.827/2016)

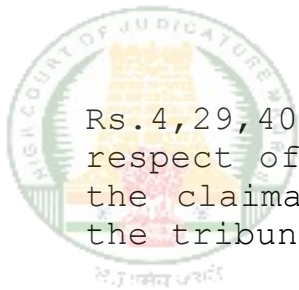
For 2nd Respondent : Ex-parte
(CMA(MD)No.828/2016)

COMMON JUDGMENT

Challenge made in these appeals to the award, dated 12.03.2012 made in MCOP Nos.752 and 753 of 2011 on the file of Motor Accident Claims Tribunal-cum-Additional District Judge, (Fast Track Court No.2), Tirunelveli.

2.The brief facts of the case are that on 04.05.2011 at about 13.20 hours, near Krishnankoil Filter House at Vettooranimadam to Vadaseri Road, the deceased Edwin with his sister Vijala Rani as a pillion rider, riding a motor cycle TVS-XL TN-74-Q-2070 and at the time, the lorry TME-6505, which was proceeding in front of the motor cycle, suddenly stopped and due to it, the motor cycle dashed against the lorry and Edwin and his sister sustained injuries and subsequently, Edwin died. Claim petition in MCOP No.752 of 2011 was filed by the legal heirs of the deceased Edwin, seeking compensation of Rs.10,00,000/-. The injured claimant filed a claim petition in MCOP No.753 of 2011 seeking compensation of Rs.5,00,000/- on the ground that the driver of the Lorry was responsible for the accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Lorry was responsible for the accident and awarded compensation of



Rs.4,29,400/- in respect of MCOP No.752 of 2011 and Rs.25,000/- in respect of MCOP No.753 of 2011 together with interest @ 8% p.a to the claimants in both the cases. Challenging the common award of the tribunal, the Insurance Company is before this court.

4. Heard both sides and perused the materials available on record.

5. These appeals have been preferred by the appellant Insurance Company challenging the negligence alone.

6. The learned counsel appearing for the appellant/2nd respondent argued that it would be essential for the claimant(s) to establish that the deceased Edwin having occupied the shoes of the owner cannot be treated as third party and in order to establish the relationship between the deceased Edwin and the owner, the claimant(s) could have produced either the owner himself as witness and since, the relationship between the deceased Edwin and the owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, the deceased Edwin was riding the motor cycle on the fateful day, was an agent, employee or representative of the owner and hence, he was not a third party and the deceased was not a third party and the accident occurred due to negligence on the part of the deceased and he was not an employee under the owner of the vehicle and he himself a tort-feaser and in this case, in the FIR, it was stated that the accident occurred due to the rash and negligent driving of the deceased himself and hence, the Insurance Company is not liable to pay the compensation.

7. On the other hand, on the side of the respondent(s)/claimant (s), it is argued that at the time of accident, the deceased drove the two wheeler behind the lorry bearing No. TME 6505 belonged to the 1st respondent and the 1st respondent driver stopped his lorry without any warning signals and as a result of which, the deceased dashed against the lorry and the deceased and his sister, who was travelling as a pillion rider, fell down and hence, there was no negligence on the part of the deceased and the accident occurred only due to the negligence on the part of the driver of the 1st respondent and the Appellant Insurance Company/2nd respondent is liable to pay compensation to the claimant(s) and prays that these Civil Miscellaneous Appeals have to be dismissed.

8. In this case, in respect of the accident, the First Information Report was filed as against the deceased. FIR is not a conclusive proof. PW1 in the petition and evidence categorically stated that when the deceased drove his vehicle, the 1st respondent driver stopped his vehicle without any warning signals and as a result of which, the deceased dashed his vehicle



on the lorry and the deceased and she fell down and sustained injuries and then, her brother died. To prove that the accident was occurred due to the rash and negligent driving on the part of the deceased, on the side of the Insurance Company, an official of the Insurance Company was examined as RW1. RW1 stated that the accident occurred due to the rash and negligent driving of the deceased and hence, their Insurance Company is not liable to pay the compensation to the claimants.

9.It is to be noted here that RW1 is not an eye witness. The correct person to speak the accident is the driver of the lorry. But the driver of the lorry was not examined in this case. Hence, it is held that no contra evidence was let in to prove that the accident occurred due to the negligence on the part of the deceased. Further, no witness was examined on the side of the appellant Insurance Company/2nd respondent to prove that the lorry driver stopped his vehicle with proper warning and signals.

10.PW2 injured claimant categorically stated that the deceased drove his vehicle behind the lorry and the driver of the lorry stopped his vehicle without any warning signal, hence, the deceased dashed behind the lorry.

11.On careful perusal of the evidence of PW2 and the documentary evidence available on record, it shows that the accident occurred due to the negligence on the part of the deceased as well as the driver of the 1st respondent vehicle. Hence, the negligence is fixed at 30% on the part of the deceased and 70% on the part of the driver of the 1st respondent. But the tribunal wrongly placed the entire negligence on the part of the driver of the lorry, which is not correct. Hence, this court finds that it is a case of composite negligence and accordingly, fixed the negligence at 70% on the driver of the lorry and 30% on the part of the deceased, who is the rider of the two wheeler.

12.Inso far as the compensation awarded by the tribunal to the claimants in both the cases, this court finds that they are reasonable and accordingly, they are confirmed.

13.In the result, these Civil Miscellaneous Appeals are partly allowed. The negligence is fixed at 70% on the part of the driver of the Lorry and 30% on the part of the rider of the motor cycle. The appellant Insurance company is directed to pay the amount of their negligence fixed by this court to the claimants, within a period of six weeks from the date of receipt of a copy of this judgment, with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. On such deposit the major claimants are entitled to withdraw the modified amount as per the apportionment of the tribunal and the share of the minor claimants



is directed to be deposited in any one of the nationalized bank till they attained majority and the 1st claimant, being the mother of the minor claimants are permitted to withdraw the accrued interest for the welfare of the minors once in three months. No costs.* Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

er
To

1.The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Track Court II, Tirunelveli.

2.The Record Keeper-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to Mr.K.BHASKARAN, Advocate (SR-6897,6892[F] dated
24/02/2021)

+1 CC to Mr.T.LAJAPATHI ROY, Advocate (SR-7406[F] dated
25/02/2021)

C.M.A(MD)Nos.827 and 828 of 2016
and
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KM (12.03.2021) 5P 7C