



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.13 of 2015

and

MP(MD)No.1 of 2015

WEB COPY

The National Insurance Company Limited,
Maruthi Complex,
2nd Floor, F-215 Conlur Main Road,
Salem.

: Appellant/2nd Respondent

Vs.

1.Ayisha Begum

: R1/Petitioner

2.Kavitha

3.Nawazkani

4.The Oriental Insurance Corporation Limited,
Rep. by its Branch Manager,
First Floor, Pali Towers,
No.1, Abdul Razack Street,
Saidapet, Chennai.

: R2 to R4/R1, R3 and R4

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 29.06.2011 made in MCOP No.123 of 2007, on the file of the Motor Accident Claims Tribunal (Principal District Court), Thanjavur.

For Appellant : Mr.S.Srinivasa Raghavan

For 1st Respondent : Mr.T.Amjadkhan

For R2 to R4 : No appearance

J U D G M E N T

(Thro'VC)

Challenge made in this appeal is to the award, dated 29.06.2011 made in MCOP No.123 of 2007, on the file of the Motor Accident Claims Tribunal (Principal District Court), Thanjavur.

2.The short facts of the case is that on 19.07.2006 at about 1.00 pm, on the Chennai-Tindivanam National Highways, opposite to Saram Primary Health Centre, when the deceased Jahir Hussain was returning from Chennai to Kumbakonam in Tempo Traveller Van TN-04-P-5515, the Lorry TN-49-P-9349 came in a rash and negligent manner and dashed against the Tempo Traveller Van, in which the deceased was travelling. In the accident, the deceased and two other persons



were sustained fatal injuries and succumbed to death instantaneously. The wife of the deceased filed a claim petition seeking compensation of Rs.50,00,000/- for the death of the deceased.

3. In the counter filed by the Appellant Insurance Company and the 4th respondent Insurance Company herein, they disputed the manner of accident and their liability to pay compensation.

4. Before the tribunal, on the side of the claimant, 1 witness was examined and marked 12 documents. On the side of the respondents Insurance Companies in the claim petition, no witness was examined and no document was marked.

5. 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.12,15,000/- together with interest @ 7% p.a. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. In this case, the dispute is with regard to negligence. The learned counsel appearing for the appellant Insurance Company/2nd respondent submitted that the accident in question took place as a result of collision of two vehicles and the deceased is the injured, who was travelling in the Tempo Traveller Van TN-04-P-5515 and there was no negligence on the part of the driver of the Lorry TN-27-P-9349 and the accident had taken place as a result of sole negligence on the part of the driver of the Tempo Traveller Van and it is a case of contributory negligence and the tribunal ought not to have fastened the entire liability on the owner of the Lorry and the Insurance Company of the lorry involved in the accident and prays that the Civil Miscellaneous Appeal has to be allowed.

8. On the other hand, the learned counsel appearing for the 1st respondent/claimant argued the case in support of the findings of the tribunal and further, argued that the interest awarded by the tribunal is on the lower side and prays that the Civil Miscellaneous Appeal has to be dismissed.

9. In this case, PW1 stated that the accident occurred due to the rash and negligent driving of the Lorry. But on the side of the appellant/2nd respondent, it is stated that the accident occurred due to the rash and negligent driving of the Tempo Traveller. Hence, it is necessary to be decided whether the accident took place due to the negligent on the part of the driver of the Lorry or on the part of the driver of the Tempo Traveller Van.



10.On perusal of Motor Vehicle Inspection Report Ex.P3, it reveals that both the vehicles were found damaged. Further perusal of the materials available on record, it reveals that the accident took place due to the composite negligence on the part of the drivers of both the vehicles. Hence, the trial court finding that the accident took place only due to the rash and negligent driving of the lorry driver is not correct.

11.In this case, it is pertinent to note that the driver of the Lorry has not chosen to give the complaint stating that the accident took place only due to the rash and negligent driving of the driver of the Tempo Traveller Van. Further, the driver of the Lorry has not sent any petition opposing registration of the criminal case against him. Hence, this court held that the accident occurred due to negligence on the part of drivers of both the vehicles. Therefore, this court fixed the negligence at 90% on the part of the driver of the Lorry and 10% on the part of the driver of the Tempo Traveller Van.

12.It is to be noted that the learned counsel appearing for the appellant Insurance Company has not disputed the quantum award by the tribunal and he has challenged this appeal on the basis of the negligence. Hence, this court, is fixed the negligence at the ratio of 90% on the side of the Lorry Driver and 10% on the part of the Tempo Traveller Van. In so far as the interest awarded by the tribunal, it is held that the interest is enhanced to 7.5% pa.

13.In the result, this Civil Miscellaneous Appeal is partly allowed. The negligence is fixed at 90% on the part of the Lorry Driver and 10% on the part of the Tempo Traveller Van. The appellant Insurance Company and the 4th respondent Insurance Company are directed to deposit their apportionment of negligence amount as fixed by this court before the tribunal together with interest at the rate of 7.5% p.a. from the date of claim petition, till the date of deposit. On such deposit, the 1st respondent/claimant is entitled to withdraw the entire amount without filing any formal petition before the tribunal. The excess amount if any, shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

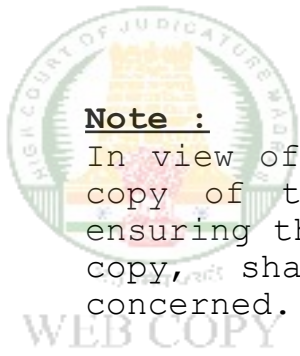
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The Motor Accident Claims Tribunal/
Principal District Judge,
Thanjavur.

2.The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-13684[F] dated 25/03/2021)

+1 CC to M/s.T.AMJADKHAN, Advocate (SR-13960[F] dated 26/03/2021)

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24.03.2021

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