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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.04.2022

PRONOUNCED ON : 29.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.NOS.1500 & 1501 OF 2017

AND

C.M.P.NOS.8020 & 8021 OF 2017

C.M.A.No.1500 of 2017

The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.75, krishnan Street, Near Anna Statue,
Tiruvannamalai Town.

... Appellant/2nd Respondent

Vs.

1. Krishnaveni

2. Minor Sathya

3. Minor Uma

Minors 2 & 3 are represented by
Guardian and mother Krishnaveni

... Respondents 1 to 3/Petitioners

4. Selvaraj

... IV Respondent/I Respondent

5. Muthulakshmi

... V Respondent/III Respondent

6. The Manager,

National Insurance Co. Ltd.,
No.19, Officers Line,
First Floor, Vellore.

... 6th Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.03.2016 passed by the tribunal in the M.C.O.P.No.321 of 2013 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Tiruvannamalai.



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For Appellant : Mr.M.Krishnamoorthy
For Respondents : Ms.A.Subadra for
Ms.M.Malar for R1
Mr.S.Arunkumar for R4
R3 & R2 - Exparte

C.M.A.No.1501 of 2017

The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.75, krishnan Street, Near Anna Statue,
Tiruvannamalai Town.

... Appellant/2nd Respondent

Vs.

1. Devendran

... I Respondent/Petitioner

2. Selvaraj

... II Respondent/I Respondent

3. Muthulakshmi

...III Respondent/ III Respondent

4. The Manager,
National Insurance Co. Ltd.,
No.19, Officers Line,
First Floor, Vellore.

... IV Respondent/IV Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.03.2016 passed by the tribunal in the M.C.O.P.No.23 of 2014 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Tiruvannamalai.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : M/s.A.Subadra for
M/s.M.Malar for R1
Mr.S.Arunkumar for R4
R3 & R2 - Exparte

COMMON JUDGMENT

The 2nd respondent in M.C.O.P.No.321 of 2013 on the file of the Chief Judicial Magistrate Court at Tiruvannamalai / Motor Accident Claims Tribunal had filed C.M.A.No.1500 of 2017.



2.The 2nd respondent in M.C.O.P.No.23 of 2014 on the file of the Chief Judicial Magistrate Court at Tiruvannamalai / Motor Accident Claims Tribunal had filed C.M.A.No.1501 of 2017.

3.Both the appellants are the Oriental Insurance Company Limited and they are the insurer of the lorry bearing registration number TNR-4069. In both the claim petitions, awards had been granted by separate orders dated 31.03.2016. Since the claim petitions had arisen out of the same accident, and since common arguments were advanced on the appeals, a common judgment is passed in the appeals.

4.On 26.11.2008 at around 9 p.m., deceased Palani was driving a motor cycle bearing registration number TN-60-B-8460 in Tiruvannamalai - Kanchipuram Road to go to Adi Annamalai Srilankan Refugee Camp. He was having as his pillion riders, Jayakumar and Devendran. It was claimed that at that point of time, a lorry bearing registration number TNR-4069 had come in a rash and negligent manner from behind and had dashed against the motor cycle and owing to that accident, the driver of the motor cycle, Palani died and one of the pillion riders, Devendran suffered injuries. Claiming compensation for the death of Palani, his legal representatives namely, his wife and two minor daughters had filed M.C.O.P.No.321 of 2013. Claiming compensation for the injuries suffered, Devendran filed M.C.O.P.No.23 of 2014.

5.The Tribunal, by two separate awards, both dated 31.03.2016 had granted a total compensation of Rs.7,38,000/- to the legal representatives of the deceased Palani in M.C.O.P.No.321 of 2013 and granted a compensation of Rs.97,000/- to Devendran in M.C.O.P.No.23 of 2014. It was further directed that the insurer of the offending lorry bearing registration number TNR-4069 should bear the entire compensation.

6.Questioning that particular finding, these appeals had been filed.

7.Heard arguments advanced by Mr.M.Krishnamoorthy, learned counsel for the appellant and Ms.A.Subadra for Ms.M.Malar, learned counsel for the claimants and Mr.S.Arunkumar, learned counsel for the Insurance Company of the motor cycle bearing registration TN-60-B-8460 / National Insurance Company Limited.

8.Mr.M.Krishnamoorthy, learned counsel for the appellant argued that there must be some apportionment made for the negligence of the driver of the two wheeler / Palani in carrying two pillion riders. In effect, the focus of the appeal was limited to the direction that the appellant should bear 100% of



the compensation granted in both the claim petitions.

9.It is however the contention of both Ms.A.Subadra and Mr.S.Arunkumar that there should be no apportionment of payment of compensation and that the Tribunal had correctly granted compensation to be paid by the appellant Insurance Company herein.

10.As briefly stated, on 26.11.2008 at around 9.00 p.m., the deceased Palani was driving the motor cycle bearing registration number TN-60-B-8460 in Tiruvannamalai - Kanchipuram road. He was proceeding to Adi Annamalai Srilankan Refugee Camp. He also had two pillion riders namely, Jayakumar and Devendran. It is claimed that at that point of time, a lorry bearing registration number TNR-4069 had dashed against the motor cycle from behind and owing to such accident Palani died and Devendran suffered injuries namely, fracture of left frontal bone, injuries on the head and fracture on the left orbital bone.

11.In the claim petition filed by the legal representatives of Palani, it had been stated that Palani was aged 35 years and was working as a Painter and was earning a sum of Rs.10,000/- per month.

12.In the claim petition filed by Devendran, he claimed that he was aged 28 years and was working as a Coolie and that he was earning a sum of Rs.9,000/- per month.

13.With respect to the said accident, the Tiruvannamalai Taluk Police Station had registred Crime No.837 of 2008 under Sections 279, 337, 338 and 304(1) of I.P.C. The name of the accused was given as Palani, the driver of the motor cycle. The complaint had been given by the driver of the lorry. In the complaint, it had been stated that he had parked the lorry when the two wheeler had dashed against it from behind on the right side owing to which, the accident had occurred. It was his claim that the accident occurred owing to the rash and negligent manner in which the two wheeler had been driven by Palani

14.A counter had been filed to the claim petitions, disputing the manner in which the accident was said to have occurred and further claiming that it was only due to the rash and negligent manner in which the two wheeler was driven that the accident occurred. The Insurance Company had denied their liability to pay compensation.

15.The Tribunal then, invited the parties to adduce evidence. Separate trial was conducted in both the claim petitions.



16. With respect to M.C.O.P.No.321 of 2013 / claim petition filed by the legal representatives of the deceased Palani, four witnesses were examined on behalf of the claimants. P.W.1 was his widow, P.W.2 was an independent witness, P.W.3 was Jayakumar, one of the pillion riders. Devendran, the other injured was examined as P.W.4. On the side of the claimants, Exs.P1 to P5 were marked. Ex.P1 was the copy of the First Information Report. Ex.P2 was the copy of the accident register. Ex.P3 was the copy of the post mortem report. Exs.P4 and P5 were the Motor Vehicles Inspector's Report, with respect to two wheeler and the lorry.

17. On the side of the respondents, three witnesses were examined. R.W.1 was the Sub-Inspector of Police and R.W.2 and R.W.3 were Assistants in the Insurance Office and they marked two documents. Ex.R1, which was the Investigation Report of the 2nd respondent / Oriental Insurance Company Limited and Ex.R2 was the Investigation Report of the 4th respondent / National Insurance Company Limited.

18. With respect to the trial in M.C.O.P.No.23 of 2014, the injured Devendran was examined as P.W.1 and one Ravindran, a Doctor was examined as P.W.2. The claimant marked Exs.P1 to P6. The Disability Certificate was marked as Ex.P6. On the side of the respondents, the same witnesses in M.C.O.P.No.321 of 2013 were examined as RW.1 to R.W.3 and Ex.R1 was marked which was the Investigation Report of the 2nd respondent / Oriental Insurance Company Limited.

19. The Tribunal had given two separate judgments with respect to the claim petitions. But, the discussion with respect to the manner in which the accident occurred and the discussion as to who is to bear the compensation granted were common. It was only with respect to the quantum of compensation payable, did the Tribunal undertake independent and separate examination of the evidence presented.

20. With respect to the manner in which the accident had occurred, the Tribunal, after narrating the allegations of the claimants in both the petitions that the motor cycle was hit from behind by the lorry, had balanced that narration with the averment in the First Information Report, Ex.P1 that when the lorry was parked, the motor cycle came in a rash and negligent manner and dashed against the parked lorry causing the accident leading to the death of Palani and injuries caused to Devendran. These two differing versions were examined by the Tribunal. In this connection, the Tribunal also examined Exs.R1 and R2, the Investigation Report of the Insurance Companies. Even, between those two reports, conflicting statements were made. The



Insurance Company of the motor cycle claimed that the accident did not occur owing to the rash and negligent manner in which the motor cycle was driven and placed the blame for the accident on the manner in which the lorry was driven.

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21.The only aspect pointed out was that the motor cycle had two pillion riders. Unfortunately, the police who had registered the First Information Report had not filed their final report.

22.The Tribunal examined the evidence P.W.2 who was an eye witness. He very clearly stated that the lorry bearing registration number TNR-4069 had dashed from behind the motor cycle bearing registration number TN-60-B-8460. The two pillion riders who were also examined as witnesses also confirmed to that particular assertion.

23.It was also observed by the Tribunal that Exs.P4 and P5 namely, the inspection reports of the Motor Vehicles' Inspector of the two vehicles very clearly showed that the lorry had not suffered any damage on the back right hand side as stated by the lorry driver while giving information for registering the First Information Report. The Tribunal came to a definite conclusion that the accident occurred only because of the rash and negligent manner in which the lorry was driven and that it had dashed against the motor cycle which was moving in front. I would uphold that finding.

24.The further claim of the insurer of the lorry that Palani was under influence of alcohol was also found not correct by the Tribunal wherein, reliance was placed on the medical records where, presence of alcohol was not found in Palani. It was however, found that the pillion rider had consumed alcohol. The Tribunal stated that because of that, liability cannot be imposed on Palani and it cannot be determined that he drove the motor cycle in a rash and negligent manner.

25.The finding of the Tribunal on this aspect was very seriously assailed by the learned counsel for the appellant, Mr.M.Krishnamoorthy. The learned counsel pointed out that when three persons travelled in a two wheeler, it had been held that 20% contributory negligence should be granted to them. In this connection, a learned counsel had relied on a judgment in Oriental Insurance Co. Ltd., V. Johnson and others reported 2017 (1) TN MAC 484. In the said judgment, a learned Single Judge of this Court had considered the claim petitions made by drivers of the motor vehicles who carried two pillion riders and it had been observed as follows:-



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"6.As per the Rules, two persons alone can be travelled in the two wheeler and by allowing three persons in a motor cycle or any other two wheeler, undoubtedly such action of an individual would become illegal and unauthorised. The claimants had committed contributory negligence and accordingly 20% of contributory negligence is to be fixed on the claimants while passing the award of compensation.

7.The common practice of drivers carrying more than one person in two wheeler are to be deprecated and two wheeler is meant for a driver and a pillion rider alone and no more passengers. Further, it is the duty of the traffic regulating authorities to take strict action against such persons in this regard. The drivers, who are driving the two wheeler are not valuing their lives or valuing their lives so cheaply; that they are willing to take the risk of death or grievous injuries. If they die they leave a family which suffers or if they are hopelessly injured, they may become like vegetables and be a burden on the surviving family. Either way this risk is not worth taking. What is the duty of cyclists who turn casually, pedestrians who ignore pedestrian crossing and do gymnastics on the median. If such persons lost their lives or injured, are the four wheeler drivers always to blame? With the increase of motor vehicles, accidents have also increased. In consonance with the social philosophy behind the provisions, we have legal pronouncements which say that the liability of the insurer is not purely and simply a tortious liability. This is the spirit with which Section 163-A has been acted. But every user of the road from a pedestrian to a heavy vehicle driver owes a duty of care and caution. Recently the police of Union Territory of Puducherry rewarded persons followed traffic rules. Such efforts deserve to be congratulated. It is useful to site the following paragraphs in the case of Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Division I) Limited, Coimbatore vs. Abdul Salam reported in (2003) 1 M.L.J.489 passed in C.M.A.No.8 of 2003, dated 29.01.2003:-

"11.We are concerned as to whether such action of the individuals is permissible under law. The motor cycle and any other two wheelers are meant only for two persons, the rider and a pillion rider. If more than two persons are



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travelling in a motor cycle or any other two wheeler, undoubtedly such action of the individual would become illegal and unauthorised. It is an awful sight when we come across three persons travelling in a motor cycle. They are sitting in such a cramped manner that the rider of the motor cycle almost sitting on the petrol tank or at the front edge of the seat. When he was sitting in such a position, naturally because of the restricted movement of his legs, he cannot have the complete control over the brake. The movements of his hand also so restricted. When that be so, this Court is of the opinion that definitely the rider of the two wheeler cannot have full control over the vehicle.

12. Apart from that, when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to lose his control over the vehicle. Even though such travelling of three persons in a motor cycle is contrary to the statute, still the enforcement wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing, such travelling of three persons in the two wheelers have become a regular sight. Even though the highway patrolling is available but it is a rare sight to see a highway patrolling vehicle. The travelling of three persons has become rampant in the mofussils and in the city; especially among the youngsters like the college students. When that be the case, the enforcing authority is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the Rules and Regulations of the statute in the minds of those who are using the vehicles.

13. When three persons travelled in a motor cycle which is meant for two persons, this Court is of the view the conduct of the persons who travelled in such a manner are liable for contributory negligence; especially when their action is contrary to the statute."



26. In the instant case, it must be noted that the accident had occurred at 9.00 p.m. in the night. The First Information Report, which was given by the lorry driver was on the basis that the lorry was parked in the corner and the motor vehicle came from behind and dashed against the lorry. The Tribunal, as a fact finding Authority, did not consider that version probable and had rejected it. The other version was that the lorry had dashed against the motor cycle from behind. Witnesses spoke that the accident occurred in this manner. It should also be kept in mind that alcohol was deducted in the pillion riders. The Tribunal had held that this cannot imply that the driver would have driven the motor cycle in a rash and negligent manner. I would uphold that reasoning.

27. When a motor cycle driver accommodates two pillion riders, his seating would be a little uncomfortable. He would have to sit a little closure to the petrol tank and at the edge of the driver seat. This would imply that his legs over the brake pedal and the gear pedal would be hampered a little bit. This discomfort would not be the case if he had driven alone or had only one pillion rider. To that extent, the driver of the motor cycle must be found fault for accommodating two pillion riders particularly, when driving at the night and more particularly, when both the pillion riders were, to a little extent under the influence of alcohol. They would not have been seated firmly on the seat and there is every possibility that they would have moved in their seating causing more discomfort to the driver of the motor cycle. These are small factors but important factors and these are the factors which lead to an accident being caused. Slight discomfort of the driver in applying brakes or in shifting of gears because of the uncomfortable position of legs would be a reason for losing control of the motor cycle at that moment. A small mosquito bite pinch must be given to drivers who take two pillion riders in the night time knowing that the two pillion riders were under the influence of alcohol.

28. I would therefore impute negligence on the part of the driver of the motor cycle and would interfere with the award but, reduce the contribution to 10% and not to 20% as stated in the judgment referred.

29. Arguments were not advanced with respect to the quantum of compensation awarded. I would not interfere with the same. I am not entering into any discussion on the methodology in which such quantum was determined by the Tribunal. The quantum granted is retained but the appellant is directed to pay 90% of the award amount with accrued interest and costs.



30.It must be pointed out that this conclusion naturally indicates that the insurer of the motor cycle bearing registration number TN-60- B-8460, driven by Palani, should bear the 10% of the compensation determined in M.C.O.P.No.23 of 2014 filed by Devendran.

31.The degree of contributory negligence is fixed at 10% on the part of the claimants in M.C.O.P.No.321 of 2013.

32.Accordingly, these Civil Miscellaneous appeals are partly allowed. The appellant is directed to deposit 90% of the total award amount with accrued interest at 7.5% from the date of the two petitions within a period of eight weeks from the date of receipt of a copy of this judgment and proportionate costs. The 4th respondent in C.M.A.No.1501 of 2017, National Insurance Co. Ltd., is directed to deposit 10% of the compensation granted in M.C.O.P.No.23 of 2014 together with interest at 7.5% per annum from the date of filing of the petition within a period of eight weeks from the date of receipt of a copy of this judgment. The claimant in M.C.O.P.No.23 of 2014 is permitted to withdraw the same. If the appellant had deposited the entire amount then, they are permitted to withdraw the balance 10% amount in each of the two claim petitions. The apportionment directed in M.C.O.P.No.321 of 2013 is maintained. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

kkn

To

The Motor Accident Claims Tribunal,
The Chief Judicial Magistrate,
Tiruvannamalai.

Copy To

The Section Officer,
V.R.Section,High Court, Madras.

+1cc to M/s.S.Arunkumar, Advocate, S.R.No.30481

+1cc to M/s.M.Malar, Advocate, S.R.No.32186 (21/06/2022)

C.M.A.Nos.1500 & 1501 of 2017
and
C.M.P.Nos.8020 & 8021 of 2017

MG(CO)

RLP(18/05/2022)