



C.M.A(MD)No.55 of 2019

THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
04.04.2022	06.05.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.55 of 2019

1.A.S.Parveen

2.Minor. S.Mohammed Abdul Azeem

(Minor second appellant represented by mother and next friend 1st appellant.)

... Appellant

Vs

1.S.Ramesh

2.IFFCO TOKIA General Insurance Company Limited,
Represented through its authorized signatory,
Having office at 82, Preetham Plaza,
1st floor,
Chandrakhandhi Nagar,
Ponmeni Bye Pass Road,
Madurai-625 010.

3.J.Mariam Beevi

4.K.Dharmaraj

... Respondents



C.M.A(MD)No.55 of 2019

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicle Act, 1998, to allow the appeal and modify the judgment and decree in M.C.O.P.No.9 of 2014 dated 20.12.2017 on the file of Motor Accident Claims Tribunal VI Additional District Court, Madurai.

For Appellant : Mr.Jeyaprakash
For Respondents : Mr.V.Sakthivel for R2
R1, R3 and R4 No appearance

JUDGMENT

The claim petitioners are the appellants herein seeking modification of the award passed in M.C.O.P.No.9 of 2014 dated 20.12.2017 on the file of Motor Accident Claims Tribunal - VI Additional District Court, Madurai.

2.For the sake of convenience, the parties are referred to as as per their ranking before the Tribunal.

3.The claim petitioners are the legal heirs of the deceased Sardar. The factum of the accident is not denied by the second respondent and



C.M.A(MD)No.55 of 2019

the fourth respondent herein. The respondents 3 and 4 are the parents of the deceased. During the trial process, the fourth respondent/father of the deceased died and his wife/third respondent continued the proceedings. However, she remained ex-parte. The fifth respondent is the owner of the Tractor involved in the accident.

4. The brief case of the appellants/claimants, is as follows:

The first respondent is the owner cum driver of the car, who drove it in a rash and negligent manner and is liable for the rash and negligent act done by him. So he is liable to compensate the loss of the petitioners. The second respondent who is the Insurance Company with which the vehicle belonging to the first respondent has been duly insured is also liable to indemnify the loss of the petitioners. The 5th respondent is the owner cum driver of the Tractor, who drove it in a rash and negligent manner and is liable for the rash and negligent act done by him. So he is liable to compensate the loss of the petitioners. Hence, all the respondents are jointly and severally liable to pay compensation to the petitioners.



C.M.A(MD)No.55 of 2019

5. The Insurance Company has filed a counter affidavit before the trial Court, wherein it is stated that the owner of the Tractor bearing Registration No.TN-65-E-5711 was himself driving the Tractor from the opposite direction at a high and uncontrollable speed and while negotiating a curve, the Tractor came to the wrong side of the road and dashed against the car. On the complaint given by the first respondent, the police has registered the case against the driver of the Tractor and after investigation, a charge sheet has also been filed only against the driver of the tractor.

6. Before the Tribunal, on the side of the petitioners, one witness/P.W.1 was examined and 23 documents were marked as Ex.P1 to Ex.P23. On the side of the respondent, one witness was examined as R.W.1 and one document was marked as Ex.R1.

7. Pending trial, the owner of the Tractor was also impleaded as a respondent and thereafter, he remained ex-parte. At the time of the accident, the driver is not having any valid Insurance Policy. After trial, on consideration of the oral and documentary evidence and also taking note of Ex.R1, the Tribunal has rendered a categorical finding that due to the composite negligence of the driver of the car, the deceased travelled



C.M.A(MD)No.55 of 2019

in the said car, which was insured with the second respondent therein and the driver of the Tractor/owner and accordingly, fixed the contributory negligence at 50% each and awarded a compensation of Rs.38,40,000/- and in the apportionment of Rs.7,68,000/- given to the mother/third respondent herein, against the said findings, the claimants preferred this appeal.

8. The learned counsel for the appellants relied upon the judgment reported in **2015(1) TN MAC 801 (SC)** in the case of ***Khenyei Vs.New India Assurance Company Limited and others*** and while dealing with the composite negligence and the contributory negligence, the Hon'ble Supreme Court has held as follows:

(i) In the case of composite Negligence, plaintiff/claimant is entitled to sue both or any one of the joint Tort-feasors and to recover the entire Compensation as liability of Joint Tort-feasors is joint and several.

(ii) In the case of Composite Negligence, apportionment of Compensation between two Tort-feasors Vis-a-vis the plaintiff/Claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the Joint Tort-feasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of Composite



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Negligence of the drivers. However, determination of the extent of negligence between the Joint Tort-feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent is has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in main case one Joint Tort-feasor can recover the amount from the other in the Execution proceedings.

(iv)It would not be appropriate for the Court/Tribunal to determine the extent of Composite Negligence of the drivers of two vehicles in the absence of impleadment of other Joint Tort-feasors. In such a case, impleaded Joint Tort-feasor should be left, in case he so desires, to sue the other Joint Tort-feasor in independent proceedings after passing of the Decree or award.

and he also relied upon the judgment in **2015 (2) TN MAC 577 (SC)** in the case of **Kamlesh and others Vs. Attar Singh and others**. The learned counsel for the appellant placing reliance upon the above decision, could contented that since the joint tort-feasors are before the Court, the Tribunal ought to have directed the Insurance Company to pay the entire



C.M.A(MD)No.55 of 2019

compensation with liberty to the second respondent/Insurance Company of the car to recover the same from the owner of the tractor.

9. Per contra, the learned counsel for the second respondent/Insurance Company relied upon the decision of the Hon'ble High Court of Kerala reported in **1998 ACJ 827** in the case of ***National Insurance Company Limited Vs.Yohannan and others***, wherein it is held that in case of composite negligence of the driver of the two vehicles, has to satisfy the amount payable by the driver/owner of each vehicle involved in the accident and also relied upon the judgment of Division Bench of Kerala High Court in **MACA.No.744 of 2005(D) dated 18.02.2010** in the case of ***United India Insurance Company Vs.Mariammal George***, wherein it is held as follows:

"In an act of tort other than a motor vehicle accident, even in the absence of a concert and common design there can be a coincidence which culminates in causing damage. In such cases the act or acts of more than one tortfeasor may not be separable. In such cases they can be termed as joint tortfeasors. In such case joint liability can be fixed. But in a case of motor accident where there is absolutely no concert or MACA.No.744/05 common design, the liability depends purely on the aspect of, negligence on the part of the driver,



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vicarious liability on the part of the owner and liability of the insurance company to indemnify on the basis of the contract of insurance. In such case the liability of parties of each vehicle cannot be shared each other. The owner of a vehicle can be held vicariously liable only to the extent of the negligence caused by his employee, who is the driver of his vehicle. The insurer of a vehicle can be fetched with liability only on the basis of the contract of insurance and that too only to indemnify the insured of that vehicle. Since the owner of the other vehicle is not the insured, who had entered into any contract of insurance such insurance company cannot be held liable to indemnify a person who is not at all insured by virtue of any contract of insurance."(Emphasis Supplied)

10. My learned brother Mr.Justice ABDUL QUDDHOSE in C.M.A.No.573 of 2011 dated 05.10.2018 has disagreed that once both the parties who are parties to the accident or persons are not impleaded, has refused to the order to pay and recovery as contended by the appellant herein.

11. On perusal of the records, it is seen that the accident had happened only due to the negligence of the respective vehicles drivers and they are arrayed as a party and the same was considered by the



C.M.A(MD)No.55 of 2019

Tribunal and thereafter, fixed the composite negligence of the each driver of the vehicle at 50%.

12. The judgment of the Hon'ble Division Bench of the Kerala High Court(cited Supra), is very appropriate and expressed correct view for the reasons as extracted supra and hence, the contention of the learned counsel for the appellant cannot be countenanced and the relevant paragraph of the said judgment is extracted hereunder:-

"Therefore a more appropriate view in the case of composite negligence is to apportion the percentage of negligence and to fix up the liability on each vehicle to the extent of negligence. In such cases it is not correct to say that the sufferer of the wrong, who is the victim of the accident, has got any choice to sue any one of the owner or insurer for the total damages for which they are liable beyond the extent MACA.744 of 2005 of negligence caused by the driver of such vehicle, when the drivers of both the vehicles are not 'joint tortfeasors' but only 'separate tortfeasors'. (emphasis Supplied)

13.The third respondent who is the mother of the deceased, remained exparte. At the time of accident, the second appellant is aged,



C.M.A(MD)No.55 of 2019

about 4 years and hence apportionment fixed by the Tribunal for the third respondent is hereby modified and the apportionment of award granted to the third respondent to the extent of R.7,68,300/- is modified into Rs.3,68,300/-(Three Lakhs Sixty Eight Thousand and Three Hundred only) and out of balance of Rs.4,00,000/- amount, a sum of Rs.2,00,000/- (Rupees Two Lakhs only) given to the first claimant/first appellant/wife of the deceased and a sum of Rs.2,00,000/-(Rupees Two Lakhs only) given to the second claim petitioner/second appellant/son of the deceased and in all other aspects is hereby confirmed.

14.In the result, this Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No costs.

(i)The second respondent/ IFFCO TOKIA General Insurance Company is directed to deposit the compensation amount as awarded by the tribunal, if not already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.9 of 2014, on the file of the Motor Accidents Claims Tribunal, VI Additional District Court, Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

10/13



C.M.A(MD)No.55 of 2019

(ii) On such deposit being made by the General Insurance Company Limited, the first appellant/first claimant is permitted to withdraw the entire compensation awarded to her.

(iii) The second appellant/second claimant is a minor and therefore, his share of compensation is ordered to be deposited in any one of the nationalized banks until he attains majority and the first appellant/first claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

06.05.2022

Index:Yes/No
Internet:Yes/No
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To

- 1.The Motor Accident Claims Tribunal,
VI Additional District Court,
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

11/13



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C.M.A(MD)No.55 of 2019



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C.M.A(MD)No.55 of 2019

RMT.TEEKAA RAMAN.,J.

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JUDGMENT MADE IN
C.M.A(MD)No.55 of 2019

06.05.2022