



CMA(MD) Nos.149 and 150/2015, 297 of 2016 and 1118/2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CMA(MD) Nos.149 and 150/2015, 297 of 2016 and 1118/2016

CMA No.149/2015

S.Thangaiah

...Appellant/1st petitioner

Vs.

1.P.Ananth

2.United India Insurance Company Ltd
No.2 Dr.Sankaran Road
Namakkal.

3.C.Joyce Margret

4.K.A.Sundraraj

...Respondents

CMA No.150/2015

S.Thangaiah

...Appellant/1st petitioner

Vs.

1.P.Ananth

2.United India Insurance Company Ltd
No.2 Dr.Sankaran Road
Namakkal.



CMA(MD) Nos.149 and 150/2015, 297 of 2016 and 1118/2016

3.C.Joyce Margret

4.K.A.Sundraraj

...Respondents

CMA No.297/2016

1.C.Joyce Margret

2.K.A.Sundraraj

...Appellants

Vs.

1.P.Ananth

2.United India Insurance Company Ltd
No.2 Dr.Sankaran Road
Namakkal.

...Respondents

CMA No.1118/2016

S.Thangaiah

...Appellant/1st petitioner

Vs.

1.P.Ananth

2.United India Insurance Company Ltd
No.2 Dr.Sankaran Road, Namakkal.

3.C.Joyce Margret

4.K.A.Sundraraj

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the award made in MCOP No.121/2012, 127/2012 165/2012 and 184/2012 dated 15.09.2014 on the file of the Motor Accident Claims Tribunal Principal District Court, Thoothukudi.



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For Appellant in
CMA Nos.149, 150/2015 and 1118/2016
Mr.M.P.Senthil

For Respondents in
CMA Nos.149, 150/2015 and 1118/2016
: Mr.A.Ilango for R2
No appearance for R1, R3 & R4

For Appellant in
CMA No.297/2016 : No appearance
For respondent : Mr.A.Ilango for R2
CMA No.297/2016 No appearance for R1

COMMON JUDGMENT

(Judgment of the Court was delivered by N. ANAND VENKATESH,J.)

All the above appeals have been filed by the claimants against the common award passed by the Motor Accident Claims Tribunal (MACT), Principal District Court, Tuticorin, made in MCOP Nos.121/2012, 127/2012, 165/2012 and 184/2012 dated 15.09.2014 dismissing all the petitions and rejecting the claim made for compensation by the appellants.

2.One Rajaiah was travelling in a Maruti Alto Car along with his wife and two children in Madurai – Rajapalayam Main Road on 20.05.2011 at about 5.00 a.m. and he was travelling from North to south towards



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Rajapalayam. The lorry belonging to the first respondent was driven by one

Mani and he was driving the vehicle towards Madurai from South to North.

The case of the claimants is that the lorry was driven in a rash and negligent manner and there was a head on collision resulting in the entire family losing their lives.

3. The claimants in MCOP No.184/2012 is the father of Rajaiah, who was the Driver of the car. MCOP No.121/2012 and 127/2012 were filed by the paternal grandfather of the children. MCOP No.165/2012 was filed by the parents of Wini @ Elizabeth Winfred, W/o.Rajaiah.

4. The defence taken by the Insurance Company is that the accident took place only due to the negligence of the car driver and hence, there is no scope for granting any compensation to the claimants. The further defence taken by the Insurance company is that the claimants are not dependants of the deceased and hence, they are not entitled for any compensation. They also took a stand that there was no effective driving license for the car driver and there was no insurance policy covering the car.



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5. The claimants examined P.W.1 to P.W.4 and marked Ex.P1 to Ex.P20.

The Insurance company examined R.W.1 and marked Ex.R1 to Ex.R3. The Court below, on considering the facts and circumstances of the case and on assessment of the evidence available on record, came to a conclusion that the accident took place purely due to the negligence on the part of the car driver and accordingly dismissed all the claim petitions. Aggrieved by the same, these appeals have been filed before this Court.

6. Heard the learned counsel for the appellants/claimants and the learned counsel for the respondent Insurance Company.

7. The claimants, in order to prove the negligence on the part of the lorry driver, examined P.W.2, who is said to be an eyewitness to the incident. P.W.2 has stated in his evidence that he was going in his two wheeler in the Madurai – Rajapalayam Main Road on 20.05.2011 and the lorry driver was driving the lorry in a rash and negligent manner on the wrong side of the road and he only caused the accident and escaped from the accident spot. During cross-examination, this witness was not even able to provide the vehicle number of the TVS-50 that he was driving. In spite of witnessing this



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incident, this witness did not even complain about this to anyone and he states in his cross-examination that the lorry was coming from south to north, which means that the lorry was coming in the right direction and was moving towards Madurai. Hence, the Court below rightly disbelieved the evidence of P.W.2.

8. In the present case, there are three documents, which are to be taken into consideration to render a finding on the issue of negligence. Those documents are Ex.P1 – FIR, registered in Crime No.154/2011, Ex.R2- Observation Mahazar and Ex.R3 – Rough sketch and Ex.P8 – report of the Motor Vehicle Inspector.

9. Immediately after the accident, the lorry driver left the accident spot and he lodged the complaint before the Peraiyur police station on 20.05.2011 at about 6.30 a.m., which is 1½ hours after the accident took place. In the complaint, the lorry driver has stated that the Maruti Alto car was driven in a rash and negligent manner and on seeing the car approaching the lorry, the lorry driver stopped the vehicle and the car came and dashed the lorry and all the occupants of the car died on the spot. This complaint was taken on file in



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Crime No.154/2011. It is not necessary for this Court to act upon the allegations made in the complaint since the lorry driver was not examined as a witness in this case. This document is relied upon only to take note of the fact that the criminal law was set in motion within 1½ hours from the time when the accident took place.

10. In the course of investigation, the spot mahazar and the sketch were prepared and they were marked as Ex.R2 and Ex.R3. On carefully going through the same, it can be seen that the lorry was proceeding on the left hand side of the road from South to North towards Madurai, whereas the car had almost come to the extreme right side and collided with the lorry. It is therefore evident that the car has deviated from its path and has almost come to the extreme right before colliding with the lorry.

11. The learned counsel for the appellants submitted that this sketch and observation mahazar were prepared much later after the incident and the Court below was not right in relying upon the same.



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12. We wanted to test the above submission made by the learned counsel for the appellants by having a look at the report of the Motor Vehicle Inspector marked as Ex.P8. Insofar as the car is concerned, it was found that the entire front portion right from the bumper to the driver seat was totally damaged, whereas insofar as the lorry is concerned, the bumper was dented from the centre to the left side. This observation made by the Motor Vehicles Inspector perfectly coincides with the spot mahazar and the sketch prepared by the police. Hence the contention of the learned counsel for the appellants, as if the spot mahazar and the sketch cannot be relied upon, is unsustainable. Ex.P2, Ex.R3 and Ex.P8 perfectly indicate that it was the car driver, who was negligent and due to such negligence, four precious lives were lost. R.W.1, who was examined on the side of the Insurance Company, had specifically stated that the lorry driver had a valid driving license and there was a subsisting insurance policy. He has also spoken about the investigation that was carried out by the insurance company and the report of the investigation officer revealed negligence only on the part of the car driver. Thus, the insurance company has proved that the negligence was not on the part of the lorry driver and the burden shifted to the claimants. The claimants ought to have called the lorry driver and examined him and they failed to do the same.



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13. The learned counsel for the appellants relied upon the judgment of the Apex Court in ***Kitrender Sarkar and others v. State of Assam*** reported in ***AIR 2009 SC 2513*** to contend that the FIR is not an encyclopaedia of the entire case. It is not necessary for this Court to deal with this contention since we are not relying upon the allegations made in the FIR to render a finding and this document is relied upon only to take note of the criminal law being set in motion.

14. The learned counsel for the appellants also brought to the notice of this Court the judgment of the Apex Court in ***Bimla Devi and others v. Himachal Road Transport Corporation and others*** reported in ***2009(1) TN MAC 700 (SC)*** to contend that the Tribunal must only take a holistic view and it is enough if the claimants established their case on the touchstone of preponderance of probability. There is absolutely no dispute on the proposition put forth by the learned counsel for the appellants. In motor accident cases, the standard of proof beyond reasonable doubts cannot be applied and it is only decided on the touchstone of preponderance of probability. Even to apply this test, there must be some evidence to establish the fact that there was negligence on the part of the lorry driver. The evidence



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available on record clearly shows that the negligence was only on the part of the car driver.

15. The learned counsel for the appellants also contended that even if the driver of the car is not entitled for compensation, since negligence is attributed to him, the other occupants of the car, who are gratuitous passengers, are entitled for compensation. In the alternative, the learned counsel for the appellants also contended that there was contributory negligence and hence some percentage of compensation is payable by the insurance company atleast to the claim made for the other occupants of the car.

16. It is clear from the evidence of P.W.1, who is the mother of Wini @ Elizabeth Winfred that the insurance policy for the car had already expired and there was no valid policy on the date of the accident. That is the reason why the insurance company pertaining to the car was not made as a party in the claim petition.



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17. There is difference between contributory negligence and composite negligence. Where a person is injured as a result of negligence on the part of two or more wrong doers, it results in the injury of the person on account of composite negligence of those wrong doers. In such a case, each wrong doer is jointly and severally liable to pay the damages/compensation. On the other hand, where a person suffers an injury partly due to his negligence and negligence on the part of another person, the same falls under the category of contributory negligence.

18. In the instant case, there is no question of contributory negligence since the entire negligence has been attributed to the car driver. Insofar as the compensation claimed by the occupants of the car, they are admittedly gratuitous passengers and the car driver himself was the reason for the accident and therefore, the concept of composite negligence also cannot be applied in this case. That principle could have been applied if there was some negligence on the part of the lorry driver also. Since in such an event, the occupants of the car had suffered a fatality due to the negligence of both the car driver and the lorry driver. Hence there is no scope for ordering compensation on the ground of contributory negligence or composite negligence.



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19. The only other issue is with regard to the entitlement of compensation claimed on behalf of the gratuitous passengers. The insurance company cannot be made to pay the compensation for gratuitous passengers unless comprehensive policy has been taken by paying additional premium. Despite the amendment made in the year 1994 to Section 147 of the Motor Vehicles Act, 1988, the words 'any person' will not include gratuitous passengers unless the additional premium is paid and there is comprehensive policy. In view of the same, the insurance company is not liable to pay any compensation to the gratuitous passengers.

20. In the light of the above discussion, this Court does not find any ground to interfere with the common award passed by the Motor Accident Claims Tribunal and accordingly, all these appeals stand dismissed. No costs.

[M.S.R.,J] [N.A.V.,J]
17.11.2022

Index : Yes
Internet : Yes
RR



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To

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