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C.M.A. No. 1365 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1365 of 2021

and C.M.P. No.7021 of 2021

The New India Assurance Co. Ltd.,
No.39, C Bye Pass Road,
Dharmapuri - 636 701.

... Appellant / 2nd Respondent

Vs.

1. Asmath Basha
2. Shakiroon ... 1 &2 Respondents / Petitioners
3. Tmt. M. Lakshmi ... 3rd Respondent / 1st Respondent
4. The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
No.12, Ramakrishnan road,
Salem. ... 4th Respondent / 3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 12.09.2019 made in M.C.O.P. No. 214 of 2016 on the file of the II Additional District Judge, Motor Accident Claims Tribunal, Tindivanam.



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For Appellant : Mr. C. Ramesh Babu
For R1 and R2 : M/s. I. Shakira
(for M/s. G. Mohammed Aseef)
For R3 : D/w
For R4 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the insurance company challenging the liability fixed on them and quantum of compensation awarded in M.C.O.P. No.214 of 2016, dated 12.09.2019 on the file of the II Additional District Judge, Motor Accident Claims Tribunal, Tindivanam.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 24.08.2012, at about 16:30 hours, the deceased Wasim Akram and others were travelling in an Auto bearing Registration No.TN-29-AB-8696, which was driven by its driver in a rash and negligent manner in Pennagram to Dharmapuri main road, near Sogathur Koot road, opposite



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of Pandurangan Complex shop, while over-taking a motorcycle, the auto had hit on a TNSTC bus bearing Registration No.TN-29-N-1755, which came in opposite direction from Dharmapuri to Hogenakkal and resulted in capsizing of Auto. Due to the accident, the deceased Wasim Akram sustained grievous head injury and died in the spot. A criminal case was registered in Cr.No.1387/2012 U/s.279, 337 and 304(A) of IPC on the file of S.H.O. Dharmapuri. For the loss of deceased Wasim Akram, the claimants who are the parents of the deceased filed claim petition seeking compensation for a sum of Rs.75,00,000/- under section 166(1) of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the Auto bearing Registration No.TN-29-AB-8696 has not contested the claim and remained ex-parte. The second respondent – insurance company is the insurer of the Auto has filed a counter and disputed the age, occupation and income of the deceased Wasim Akram and contended that the driver of the Auto has no valid driving licence at the time of accident, hence there is a violation of policy condition and the Auto driver has admitted more number of persons than the permitted limit. The insurance company also contended that the



accident was taken place only due to the rash and negligence on the part of the driver of the TNSSTC bus, which belongs to the third respondent herein, hence, the third respondent alone is liable to pay compensation to the claimants and prayed to dismiss the claim petition.

5. The third respondent – Transport Corporation has filed a counter and contended that the accident was taken place only due to the rash and negligence on the part of the Auto driver and a victim namely Santhoshkumar, who travelled in the Auto at the time of accident, has lodged a complaint and the police after investigation registered a case against the Auto driver, hence contended that this respondent is not liable to pay compensation to the claimants and prayed to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.5 were marked. On the side of the third respondent, R.W.1 was examined and Ex.R.1 was marked.

7. Based on the evidence placed on record, the Tribunal in point nos.1 and 2, has held that the rash and negligence on the part of the driver of



the Auto is responsible for the accident and there is no violation of policy conditions. In point nos.3 and 4, the Tribunal has quantified and granted compensation for a sum of Rs.10,12,800/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the part of the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimants.

8. Aggrieved over the award, the insurance company has filed this appeal challenging the liability fixed on them and quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the insurance company submits that the Tribunal has not properly appreciated the evidence of eye witness, who has stated that the bus alone is responsible for the accident and further submitted that more number of persons than the permitted capacity were allowed to travel in the Auto, which is a clear violation of policy conditions, hence prays to set aside the award of the Tribunal.

10. The learned counsel appearing for the claimants has submitted



that based on the evidence placed on record, the Tribunal has rightly held that the Auto driver is responsible for the accident and awarded a just compensation, hence prays to dismiss the appeal.

11. Heard the submissions made on both sides and perused the materials available on record:

12. P.W.2 – eyewitness to occurrence has stated that, while overtaking a motorcycle, the Auto has entered in the middle of the road and hit on the Transport Corporation bus and his evidence was also corroborated with the F.I.R. registered against the Auto driver, immediately after the accident. The R.W.1– Driver of bus, has stated that on 24.08.2012, he started the bus from Dharmapuri to Hogenakkal, while he reached near Sogathur Koot road, an Auto came in the opposite direction in high speed and entered in the middle of the road and to avoid the accident, he stopped the bus to give way for it, but the Auto hit on the bus and capsized. In the cross examination, he has reiterated the same. After appreciating the evidence of P.W.2 and R.W.1, the Tribunal has held the fact that the driver of the Auto has crossed the middle line of the road and hit on the bus, which



came in the opposite direction, thereby caused the accident.

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13. Before the Tribunal, no evidence was adduced to show that the driver of the third respondent also contributed to the negligence, and this Court finds no reason to interfere in the finding of the Tribunal that the Auto driver is responsible for the accident.

14. The next contention of the second respondent – insurance company is that the Auto driver has no valid driving licence at the time of accident, and also he transported more passengers than the permitted capacity. P.W.1 – first claimant has categorically denied the suggestion that six persons were travelled in the Auto, P.W.2, who is the eye witness to the occurrence has stated that two persons were travelled in the Auto and they died on the spot due to accident. Based on the above evidences, the Tribunal has taken a view that there is no breach of policy condition. The Insurance Company has not examined any witnesses on their side to prove the fact of violation of policy condition. They have also not examined any Officials from RTO to prove their contention that the Auto driver has no valid driving licence at the time of occurrence. The Tribunal has rightly rejected the contentions and this Court finds no infirmity in such findings



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and the appeal filed by the insurance company has no merits, hence the appeal is liable to be dismissed.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is hereby confirmed. Consequently, connected civil miscellaneous petition stands closed. No cost.

13.12.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The II Additional District Judge,
Motor Accident Claims Tribunal,
Tindivanam.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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