



C.M.A. Nos. 3454, 3455, 3493 & 3467 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM

THE HONOURABLE MR. JUSTICE **A.A.NAKKIRAN**

C.M.A. Nos.3454, 3455, 3493 & 3494 of 2013
and M.P.Nos.1, 1, 1 & 1 of 2013

United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai – 2.

... Appellant in all appeals

Vs.

1. Ameer Sultan
2. N.Sudarsan

... Respondents in C.M.A.No.3454/2013

1. Khalander Kani
2. N.Sudarsan

... Respondents in C.M.A.No.3455/2013

1. T.Kaliammal
2. Minor. T.Muthumari
3. N.Sudarsan

... Respondents in C.M.A.No.3493/2013

1. Sangeetha
2. Arthi
3. Venkateswari
4. N.Sudarsan

... Respondents in C.M.A.No.3494/2013



C.M.A. Nos. 3454, 3455, 3493 & 3467 of 2013

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1989, against the judgment and decree dated 14.06.2012 made in M.C.O.P. Nos.4979, 4980, 2430 & 4971 of 2010 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar
(in all appeals)

For Respondents : No appearance
(in all appeals)

COMMON JUDGMENT

These appeals have been preferred by the insurance company against the judgment and decree dated 14.06.2012 made in M.C.O.P. Nos.4979, 4980, 2430 & 4971 of 2010 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

2. The facts of the case in nutshell:

On 19.06.2010 at about 3.30 hours while the deceased Thirunavukkarasu was travelling as conductor cum cleaner and the deceased Vadivelu @ Sundaravadivelu and the respondents Ameer Sultan and Khalander Kani were travelling as passengers in a bus bearing Reg.No.TN-25-



U-6666 from Karaikudi to Chennai, the driver of the bus drove the vehicle in a rash and negligent manner and dashed against the stationary lorry bearing Reg. No.RN-07-AP-7173 and caused the accident. As a result some passengers including Thirunavukkarasu and Vadivelu @ Sundaravadivelu died and some persons including Ameer Sultan and Khalander Kani sustained injuries. Claiming compensation for Rs.1,00,000/-, Rs.1,00,000/-, 10,00,000/- & Rs.11,00,000/-, the claimants have filed their respective claim petitions.

3. During joint trial, in order to prove the case of the claimants, they have examined three witnesses viz., P.W.1 to P.W.6 and marked 32 documents viz., Exs.P1 to P32. On the side of the respondents no witnesses were examined and no documents were marked. The Tribunal, after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident had occurred due to rash and negligent driving by the driver of the bus. The Tribunal had concluded that the insurer and the driver of the bus are jointly and severally liable to pay compensation to the claimants with interest at the rate of 7.5% per annum from the date of numbering the petition till the date of deposit and the second respondent therein / appellant to pay the entire compensation on behalf of first respondent.



4. Not being satisfied with the negligence entirely fixed upon the driver of the bus, the appellant / insurance company has come out with the present appeal.

5. The learned counsel for the appellant / insurance company of the bus submitted that the accident had occurred only on the negligence of the driver of the lorry in parking the lorry without any sufficient indication or caution symbol. However, the Tribunal erred in holding that the driver of the bus was solely responsible for the accident in spite of the fact that the accident had occurred due to the negligent act of the driver of the lorry. The learned counsel for the appellant contended that the Insurance Company and owner of the lorry are liable to pay compensation to the claimants. He further contended that the Tribunal ought to have dismissed the claim for non-joinder of necessary and correct parties viz., the owner and insurance company of the lorry. He further submitted that the claimants ought to claim only against the owner and insurer of the lorry and not against the appellant.

6. Despite notice being served on the respondents, none of them have appeared before this Court.



7. From the materials available on records it is seen that the bus belongs to the first respondent therein and the appellant is the insurer of the bus. There are no oral or documentary evidence on the side of the appellant to prove his case. In the absence of any evidence, both the owner and the insurer are liable to pay compensation to the claimants. Be that as it may, the first respondent has not proved that the lorry was parked with sufficient indication and caution symbol on the highway. Neither any of the witnesses proved the same. So this Court finds that there is negligence on the part of the driver of the lorry also. The Tribunal had failed to consider the negligence on the part of the driver of the lorry. Only relying on the testimony of P.W.3 and P.W.4, the Tribunal had reached an erroneous conclusion.

8. Neither the driver nor the insurer of the lorry has not been impleaded in the claim petition as well as in this appeal. Considering the circumstances of the case, this Court feels that negligence should be determined on both the drivers of the bus and lorry. Hence this Court determines 70% negligence upon the driver of the bus. Since the appellant is the insurer of the bus, the appellant is entitled to pay only 70% of the compensation awarded by the Tribunal. However, this Court finds no reason to interfere with the quantum of



C.M.A. Nos. 3454, 3455, 3493 & 3467 of 2013

compensation awarded by the Tribunal. Hence the same remains unaltered.

WEB COPY

9. In result, these Civil Miscellaneous Appeals are partly allowed. No costs. Connected miscellaneous petitions are closed.

25.04.2023

Internet: Yes

Index: Yes/no

Speaking/Non speaking order

bkn

To:

The Motor Accidents Claims Tribunal,

Pollachi.



WEB COPY



C.M.A. Nos. 3454, 3455, 3493 & 3467 of 2013

A.A.NAKKIRAN, J

bkn

C.M.A. Nos.3454, 3455, 3493 & 3494 of 2013

25.04.2023