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C.M.A. No.435 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.435 of 2018

and

C.M.P. No.3825 of 2018

United India Insurance Co. Ltd.,
104 A, Ranga Building,
Peramanur Main Road,
Salem – 636 007

... Appellant

Vs.

1. Anjalai
2. Minor.Durgadevi
3. Minor. Premalatha
(2nd and 3rd minors are rep. by their next Friend/
Guardian/Mother Anjalai 1st respondent)
4. Lakshmi
5. Soni Varghese

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Order 44 Rule 1 of Civil Procedure Code, to set aside the Judgment and decree passed in M.C.O.P. No.1946 of 2015 on 20.09.2017 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Salem.

For Appellant : Mr.J.Chandran

For Respondents : R1-R4 -No Appearance

R5-Notice Dispensed with by
order dated 12.06.2023



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C.M.A. No.435 of 2017



J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance Company to set aside the Judgment and decree passed in M.C.O.P. No.1946 of 2015 on 20.09.2017 on the file of the Motor Accident Claims Tribunal (I Additional District Court), Salem.

2. The respondents 1 to 4 are the claimants. The 5th respondent is the owner and the appellant is the insurer of the offending Lorry involved in the accident.

3. The case of the claimants is that on 12.11.2012, the deceased was riding his motor cycle bearing Regn. No.TN-77-A-5658 (TVS XL Heavy Duty) on the extreme left side of Salem to Chennai National Highway by following all the traffic rules and regulations and at about 14.30 hours, when the deceased was proceeding near Bharathi Sego Factory, Sarvaipudur, a Tarras Lorry bearing Regn. No.KL-05-X8531 was parked on the road without any indicator and thereby, the deceased hit at the back side of the Lorry due to which, the deceased sustained injuries and died on the spot.



4. The claimants who are the wife, minor daughters and mother of the deceased, filed a petition in M.C.O.P. No.1946 of 2015 on 20.09.2017 on the file of the Motor Accident Claims Tribunal (I Additional District Court), Salem, claiming compensation of Rs.25,00,000/- against the owner and insurer of the offending Lorry.

5. In order to substantiate the claim, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 4 documents were marked as Ex.P.1 to Ex.P.4. On the side the respondents, 3 witnesses were examined as R.W.1 to R.W.3 and 2 documents were marked as Ex.R1 and Ex.R2.

6. Before the Tribunal, the 7th respondent herein/1st respondent remained ex-parte.

7. The Tribunal, on hearing the arguments of both sides and considering the materials, awarded compensation of Rs.9,06,000/- with cost and interest at 7.5% from the date of claim petition till the date of realization and directed the Insurance Company to pay the compensation to the claimants.



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8. Challenging the Award passed by the Tribunal, the Insurance Company has filed the present appeal.

9. The learned counsel for the appellant/Insurance Company submitted that the insured vehicle namely Lorry was admittedly parked at the left side of the road near the Sego factory. But due to rash and negligent riding, the deceased dashed behind the lorry which was parked on the left side of the road and succumbed to the injuries. The accident had occurred only due to the rash and negligent riding of the rider of the two wheeler namely the deceased. The driver of the Lorry was examined as R.W.3 and he clearly stated that he had parked the Lorry in the mud portion of the road. The deceased only rode his two wheeler in a rash and negligent manner and dashed behind his Lorry and sustained injuries. A case was also registered against the deceased, whereas, the Tribunal has failed to consider the same and fastened the liability on the driver of the Lorry stating that the lorry was not parked at the ear marked place. The Tribunal ought to have fixed contributory negligence since the deceased only dashed behind the Lorry which was parked on the road. If the deceased had ridden the two wheeler



with cautious manner, he could have avoided the accident. The Tribunal failed to consider the same and fixed the entire liability on the driver of the Lorry which warrants interference.

10. Though notice was served and names also printed, non appeared on behalf of the respondents 1 to 4.

11. Heard the learned counsel for the appellant and perused the materials available on record.

12. Admittedly, the accident had occurred since the two wheeler of the deceased dashed behind the Lorry which was parked on the road side. The contention of the learned counsel for the appellant/Insurance Company is that the Lorry was parked at the left side of the road that too 10 feet inside on the mud road and the deceased without observing that the Lorry was parked on the road side, came in a rash and negligent manner and dashed behind the Lorry and sustained injuries and therefore, neither the driver nor the owner or the insurer of the Lorry is liable to pay any compensation, whereas, the Investigating Officer, who was examined as R.W.1, has not stated that the



Lorry was parked only on the mud portion by observing all the motor traffic rules.

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13. Further, when the driver of the Lorry was examined as R.W.3, he has not stated that he had followed all the Road Traffic Rules. But he had admitted that there are earmarked places for parking the vehicles in the High Ways which shows that, at the time of accident, the Lorry was not parked in the ear marked place. He also admitted that after parking the Lorry near Sago Factory, he went inside the factory and the Lorry was parked for more than one hour.

14. In the High Ways, there are earmarked places for parking the vehicles at a reasonable distance. Even the driver of the Lorry and the Investigating Officer have admitted that at the time of accident, the Lorry was not parked at the earmarked place and there is no evidence to show that the driver of the Lorry had put parking indicator. Even the rough sketch and observation mahazar do not show that the lorry was parked on the mud portion of the road. Under these circumstance, the Tribunal, by considering the evidence of R.W.1 and R.W.3, fixed the liability on the insurer of the



Lorry/the appellant herein. However, the evidence clearly shows that at the time of accident, the Lorry was not in a moving condition and it was only in a parking condition that too in the day time at about 14.30 hrs. Therefore, if the deceased was cautious, he could have avoided the accident to some extent. However, the fact remains that the Lorry was parked for hours together that is also a reason for the accident as no prudent man would expect that a Lorry would be parked on the High Ways without any indicator. Therefore, this Court finds that the accident had occurred due to the negligent act of the driver of the Lorry and also rash and negligent riding of the rider of two wheeler and they both have contributed their negligence to the accident.

15. Therefore, this Court set aside the liability fixed by the Tribunal on the appellant/Insurance Company.

16. This Court finds that the rider of the two wheeler has contributed his negligence upto 25% and the driver of the Lorry has contributed his negligence up to 75% to the accident. Accordingly, the appellant/Insurance Company is liable to pay 75% of the compensation Awarded by the Tribunal. Since the deceased is a tort-feasor for some extent,



the claimants, who are the dependants are not entitled to the 25% of the award passed by the Tribunal.

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17. Accordingly, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to the costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To

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- 1.The Motor Accident Claims Tribunal/
I Additional District Court, Salem.
- 2.The Section Officer,
VR Section, High Court, Madras.



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P.VELMURUGAN. J.

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