



C.M.A.No.436 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.436 of 2018

and

C.M.P.No.3826 of 2018

HDFC ERGO General Insurance Co.Ltd.,
Empire Arcade Building,
Opposite to New Bus Stand,
Salem.

... Appellant

vs.

1.Appavu

2.Tamil Nadu State Transport Corporation Ltd.,
Represented by its Managing Director,
12, Ramakrishna Road, Salem – 636 007.

3.Dhakshnamurthy

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 02.08.2017 made in MCOP.No.616 of 2015 on the file of the Motor Accident Claims Tribunal (III Additional District Judge) Salem.

For Appellant : Mr.T.K.Prem Kumar



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For Respondents : Mr.H.Manojin for R1
Mr.Nithin for R2
No appearance for R3

J U D G M E N T

Challenging the award dated 02.08.2017 made in MCOP.No.616 of 2015 on the file of the Motor Accident Claims Tribunal (III Additional District Judge) Salem, the Insurance Company has preferred this appeal.

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

3. The facts in a nutshell are as follows :

The claimant is the father of the deceased Satheeswari. On 23.02.2015 the deceased along with her father and other family members were travelling in a Tamil Nadu State Transport Corporation Limited Bus bearing Registration No.TN-30-N-0518 from Kallakurichi to Salem on National Highways. While so, at about 1.30 a.m., when they were nearing Ammaiyagaram, the driver of the bus, who drove the bus in a rash and negligent manner, hit against a lorry bearing Registration No.TN-32-Y-4059, which was stationed on the left side of the road, due to which, the



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deceased and one another lady sustained grievous injuries. Immediately, both were taken to Government Hospital, Attur. Thereafter, the deceased was shifted to Salem Government Hospital for further treatment and then referred to Kovai Medical College and Hospital for better treatment, but when the deceased was taken by 108 Ambulance, near Sankari, the condition was serious and hence, she was immediately admitted in the Sankari Government Hospital, but she succumbed to injuries, resulting in registration of criminal case against the driver of the bus. The legal heir of the deceased filed M.C.O.P.No.616 of 2015 seeking compensation of Rs.15,00,000/-.

4. The second respondent, who is the owner of the lorry bearing Registration No.TN-32-Y-4059 remained *ex-parte* before the Tribunal.

5. The said claim was resisted by the first respondent/Transport Corporation by filing a counter statement by disputing the manner of accident as stated by the claimant in the claim petition. It is further alleged



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that the amount of compensation claimed by the claimant is excessive and thus prayed for dismissal of Claim Petition.

6. The third respondent/Insurance Company denied the manner of accident, age and other claims made in the claim petition by filing a counter before the Tribunal. It is their specific case that the driver of the bus, was solely responsible for the accident. Since there was no negligence on the part of the driver of the lorry, the Insurance Company is not liable to pay compensation and thus prayed for dismissal of Claim Petition.

7. Before the Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.9. On the side of the Transport Corporation, R.W.1 and R.W.2 were examined and no documentary evidence was marked.

8. After enquiry, the Tribunal passed an Award granting compensation of Rs.4,54,000/- with 7.5% interest per annum from the date of claim petition till the date of deposit and directed the Insurance Company



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to pay compensation indemnifying the owner of the lorry. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

<i>Sl.No.</i>	<i>Heads under which the compensation is awarded</i>	<i>Amounts awarded (in Rs.)</i>
1	Loss of future income	3,84,000
2	Funeral Expenses	15,000
3	Pain and Sufferings	50,000
4	Transportation	5,000
	Total	4,54,000

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

9. The learned counsel for the appellant/Insurance Company submitted that F.I.R has been registered against the driver of the TNSTC bus, as he had ridden the Bus at the time of accident in a rash and negligent manner, dashed against the lorry, due to which the deceased succumbed to injuries. In the claim petition and proof affidavit, the claimant himself categorically stated that the accident is the result of the rash and negligent driving of the driver of TNSTC bus, who hit on the rear side of the stationed



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lorry and hence, the driver of the bus is the tort-feasor. He further submitted that the Tribunal failed to take note of the evidence of R.W.2/driver of the lorry, who had stated that there was tyre blow out in the lorry and that after taking necessary precautionary methods, he had stationed the lorry on the extreme left side of the road near Ammaiyagaram, it was also informed to the police patrol and the police patrol were warning the other motorist and also taken steps to change the tyre. Therefore, the driver of bus has solely contributed towards negligence, but the Tribunal failed to consider the negligence on the part of the driver of the bus, fixed the entire liability on the driver of lorry and directed the Insurance Company to indemnify the owner of the lorry.

10. The learned counsel for the second respondent/Transport Corporation submitted that on the date of accident, the offending lorry was stationed in the middle of the road without placing reflective tapes around the vehicle and parking blinkers were not switched on to warn the other vehicles and that the lorry was not visible. On seeing the lorry, the driver of the bus applied brake and brought the bus to halt. Since the lorry was



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occupying more than half of the road, the left side of the bus slightly dashed against the lorry. Therefore, the driver of the lorry is solely responsible for the accident. It is his further submission that the accident had occurred on a National Highway which was a four way lane. In four ways, there was a place earmarked for parking the lorries, whereas, in this case the lorry was parked in the middle of the road, without any signal. Due to the negligent act of the driver of the lorry, the accident had occurred. Therefore, the Tribunal after appreciating the entire materials has rightly fixed the liability on the driver of lorry.

11. Heard the learned counsel on both side and perused the materials available on record.

12. The accident is admitted. The offending vehicles lorry and TNSTC bus involved in the accident is also admitted. The offending lorry was insured with the appellant/Insurance Company is not in dispute. The only dispute now raised before this Court is regarding the liability fixed by the Tribunal.



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13. It is an admitted fact that the deceased died in the accident that had occurred on 23.02.2015 and the Tribunal held that the driver of the lorry was responsible for the accident, since the lorry was stationed from 6.00 p.m to till 1.30 a.m without taking any precautionary steps. On a perusal of the records, it is seen from the evidence of R.W.2/driver of the lorry that the lorry was stationed in the extreme left side of the road, the driver of the bus with rash and negligent manner dashed rear side of the lorry and due to that the accident had occurred. The claimant examined himself as P.W.1/eye witness and he has categorically stated that the accident is the result of the rash and negligent driving of the driver of TNSTC bus and hence, the manner of the accident and the negligence on the part of the driver of the bus was proved. Further, there is no materials to show that the driver of the lorry had not taken any precautionary steps and stationed the lorry from 6.00 p.m to till 1.30 a.m.

14. Admittedly, had the driver of the bus, drove the bus with due care and caution, he would have averted the accident. However, as contended by the learned counsel for the Transport Corporation, even



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though there might be a negligence on the part of the driver of the bus, had the driver of the lorry been vigilant and careful he could have avoided the accident. Hence, this Court is of the opinion that there was contributory negligence on the part of both the driver of the lorry and the bus and hence, the liability has to be fixed on both sides as 50% : 50%.

15. With regard to the quantum of compensation, the amounts awarded by the Tribunal are "just, fair and reasonable" and hence, they are confirmed.

16. In view of the above modification, this Civil Miscellaneous Appeal is partly allowed and the impugned Award passed in M.C.O.P.No.616 of 2015 on the file of the Motor Accident Claims Tribunal (III Additional District Judge) Salem, is hereby set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

17. Accordingly, the appellant/Insurance Company and the second respondent/Transport Corporation are directed to deposit the total compensation of Rs.4,54,000/-, which shall carry equal ratio 50% : 50%



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(Rs.2,27,000 : Rs.2,27,000) along with interest at the rate of 7.5% per annum and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any already deposited by the Insurance Company before the Tribunal. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimant, by following the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016 (reported in 2016 (2) LW 561 - The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimant is permitted to withdraw the entire amount of compensation, less the amount already withdrawn, if any.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accident Claims Tribunal,
III Additional District Judge,
Salem.

2. The Section Officer,
V.R. Section,
High Court, Madras.



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P.VELMURUGAN, J.

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