IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.968 of 2018
and
C.M.P.No.7880 of 2018

Tata AIG General Insurance Company Ltd.,
Peeninsula Business Park, Tower-A
15th Floor, Ganapatrao Marg,
Mumbai-13 ... Appellant

Vs.

1. Manjula

2. Minor K. Divya Dharshini

3. Minor K.Ramu

4. Mangammal
(Minor respondents 2 and 3 represented by their N.F.Guardian/mother and Guardian, the 1st respondent Manjula)

5. Karambir

6. MAGMA General Insurance Co. Ltd.
Magma House, 24 Park Street, Kolkata-700 016.

7. D.Vaseer Basha ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 15.02.2017 made in M.C.O.P.No.403 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court), Krishnagiri.

For Appellant	:	Mr.K.Vinod
For Respondents	:	Mr.S.Arun Kumar for R6 M/s.Nirmaleswar for R1 to R4 R5- Notice Refused R7-No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Award and decree dated 15.02.2017 made in M.C.O.P.No.403 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court), Krishnagiri.

2. The respondents 1 to 4 are the claimants. The respondents 5 and 6 are the owner and insurer of the opposite vehicle, namely Truck bearing

Regn. No.HR-39-C-2043. The 7th respondent and the appellant herein are the owner and insurer of the Lorry bearing Regn. No.TN-23-BR- 3112 which was driven by the deceased at the time of accident.

3. The case of the claimants is that, on 29.05.2014, the deceased Krishnamoorthy was proceeding by driving the lorry bearing Regn. No.TN-23-BR-3112 slowly and cautiously on the extreme left side of Gujarat to Maharashtra NH Road by observing the traffic rules and regulations, after unloading the fishes at Gujarat. At about 3.00 p.m., when the deceased was proceeding near Yeola on the Gujarat to Maharashtra NH Road, a Truck bearing Regn.No. HR 39 C 2043, which came in the opposite direction in a rash and negligent manner, at a high speed by overtaking another vehicle, suddenly dashed against the lorry in which the deceased was proceeding. Due to the impact, both the vehicles got capsized and the drivers of both the vehicles sustained fatal injuries and succumbed to the injuries on the spot.

4. The dependants of the deceased Krishnamoorthy namely, wife, minor children and mother had filed a claim petition in M.C.O.P.No.403 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court),

Krishnagiri, claiming compensation of Rs.50,00,000/- for the death of the deceased stating that the deceased was working as a driver by profession and was driving heavy goods vehicles and was earning Rs.25,000/- per month. Due to the sudden death of the deceased in the accident, the claimants have not only lost the love and affection of the deceased, but they also suffered loss of income. The claimants were solely depending on the deceased and that the deceased was the only bread-winner of their family.

5. In order to substantiate the claim before the Tribunal, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 7 documents were marked as Ex.P.1 to Ex.P.7.

6. Before the Tribunal, the 1st respondent remained ex-parte. On the side of the respondents 2 to 4, no oral or documentary evidence were let in.

7. The Tribunal, after hearing the arguments of both sides and considering the materials, awarded compensation of Rs.16,76,000/- and held that the respondents 5 and 6 herein who are the owner and insurer of the opposite vehicle namely Truck, are jointly and severally liable to pay a sum of Rs.12,57,000/- as compensation to the claimants towards 75% of the

negligence attributed by the driver of the Truck, with proportionate interest and cost. The 6th respondent herein as the insurer of the Truck is liable to pay the sum of Rs.12,57,000/- to the claimants with proportionate interest and costs. The Tribunal further held that the 7th respondent herein who is the owner of the Lorry driven by the deceased is liable to pay Rs.4,19,000/- as compensation to the claimants with proportionate interest and cost towards 25% of the negligence attributed by the driver of the Lorry namely the deceased. The appellant herein, as the insurer of the Lorry was directed to pay the sum of Rs.4,19,000/- to the claimants with proportionate interest and cost at the first instance with liberty to recover the same from the 7th respondent herein who is the owner of the said Lorry.

8. Though the Tribunal found that the deceased has also contributed his negligence upto 25% to the accident, directed the insurer of the Lorry to pay 25% of the compensation amount i.e. Rs.4,19,000/- to the claimants as compensation. Hence, challenging the same, the insurer of the Lorry which was driven by the deceased, has filed by the present appeal against the claimants and other respondents.

9. The contention of the learned counsel for the appellant/Insurance

Company is that, once the Tribunal found that the deceased was also a tort-feasor and he has also contributed 25% negligence to the accident, the appellant/Insurance Company should have been exonerated from the liability, whereas, the Tribunal has erroneously given direction to the appellant/Insurance to pay 25% of the compensation amount to the claimants, which is against the proposition of law laid down by the Hon'ble Supreme Court and also the statutory provisions. The tort-feasor is not covered under the insurance policy. If the driver of the offending vehicle is a tort-feasor, the Insurance Company need not pay any compensation to the beneficiary. Hence, the liability fixed by the Tribunal on the appellant/Insurance Company is liable to be set aside.

10. The learned counsel for the 6th respondent who is the insurer of the one of the offending vehicles namely Truck, submitted that they have deposited the entire amount to the proportionate of 75% of the compensation as directed by the Tribunal.

11. The learned counsel for the claimants/respondents 1 to 4 herein, contended that the evidence clearly shows that only the driver of the Truck

which came in the opposite direction is responsible for the accident. However, the Tribunal wrongly fixed that the deceased was also a tort-feasor and he has contributed his negligence upto 25% which is erroneous. Therefore, there is no perversity in the liability fixed against the appellant/ insurance company and there is no merit in the appeal.

12. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4 and 6 and perused the entire materials available on record.

13. The accident is not in dispute. The manner of accident is also not in dispute. Even the quantum of compensation is not challenged. What is challenged in this appeal by the insurer of the Lorry is, since the Tribunal has given the findings that the deceased has also contributed his negligence upto 25%, being a tort-feasor to the accident, the deceased is not entitled for any compensation and therefore, the appellant/Insurance Company is not liable to pay any compensation to the claimants, whereas, the Tribunal has erroneously directed the appellant/Insurance Company to pay 25% of the compensation amount i.e. Rs.4,19,000/- to the claimants at the first instance with liberty to

recover the same from the owner of the said Lorry at later point of time.

14. As pointed out by the learned counsel for the appellant/Insurance Company, though the deceased is a third party to the Truck, he is not a third party to the Lorry. Since the deceased has also contributed his negligence to the accident, the appellant/Insurance Company is not liable to pay any compensation to the tort-feasor.

15. Therefore, the findings of the Tribunal regarding fixation of liability against the appellant/Insurance Company, is set aside. Since the deceased has also contributed his negligence upto 25% to the accident, the claimants are not entitled for the said 25% of compensation. However, they are entitled for 75% of the compensation amount as fixed by the Tribunal against the insurer of the Truck/6th respondent herein.

16. The appellant/Insurance Company is permitted to withdraw the deposit amount if any, with accrued interest.

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

31.07.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Motor Accident Claims Tribunal (Special District Court),
Krishnagiri.

2.The Section Officer,
VR Section,
High Court,
Madras.

P.VELMURUGAN. J.

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C.M.A. No.968 of 2018

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