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C.M.A.Nos.2732 of 2014 & 744 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2732 of 2014
and

Civil Miscellaneous Appeal No.744 of 2015
and

Miscellaneous Petition Nos.1 of 2014 & 1 of 2015

C.M.A.No.2732 of 2014:

The New India Assurance Company Ltd.,
Thiruvannamalai

... Appellant / 3rd respondent

Vs.

1. Palani

2. Minor Anandakumar ... Respondents / Petitioners
[minor represented by his father, Palani, the 1st respondent herein]

3. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumabakonam.

4. Senthilkumar ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 20.06.2012 made in M.A.C.T.O.P.No.123 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Thirupattur, Vellore District.



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For Appellant : Mr. P. G. Padmanabhan
For R1 & R2 : Mr. P. A. Sudesh Kumar
For R3 : Mr. M. Murali Vinodh,
Senior Counsel, TNSTC
For R4 : No appearance

C.M.A.No.744 of 2015:

The Managing Director,
TNSTC (Kumbakonam) Limited
Kumbakonam.

... Appellant / 1st respondent

Vs.

1. Palani
2. Minor Ananda Kumar
[minor represented by his father,
Palani, the 1st respondent herein]
3. Senthil Kumar
4. The Branch Manager,
New India Assurance Company Ltd.,
Thiruvannamalai (given up)

... Respondents / Petitioners

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 20.06.2012 made in M.A.C.T.O.P.No.123 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Thirupattur, Vellore District.

For Appellant : Mr. P. G. Padmanabhan
For R1 & R2 : Mr. P. A. Sudesh Kumar
For R3 : Mr. Murali Vinodh, Senior Counsel
TNSTC
For R4 : No appearance



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JUDGMENT

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These Civil Miscellaneous Appeals filed by the Insurance Company, challenging the liability fixed for payment of compensation awarded by the Tribunal as per the award passed in M.A.C.T.O.P.No.123 of 2011, dated 20.06.2012, by the Motor Accidents Claims Tribunal, III Additional District Judge, Thirupattur, Vellore District.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. The case of the claimants are as follows:

On 09.03.2009 at mid night 12.30 hours, the deceased Sakthivel was driving the lorry bearing Registration No.TN 23 AY 2413 on Pondicherry-Tindivanam Road, while the vehicle reached near Kundhamoor, a bus bearing Registration No.TN 49 N 1814 belongs to the Tamil Nadu State Transport Corporation, driven by its driver, came in a high speed with rashly and negligently hit on the lorry, resulted in causing injuries to both the lorry driver as well as the cleaner of the lorry and some of them, who was travelled inside the bus also injured. Due to the accident, the driver of the lorry namely, Sakthivel succumbed injuries and died on



the way to Hospital. Hence, the claimants, who are the dependants of the deceased Sakthivel, filed Claim Petition claiming compensation of Rs.10,00,000/-.

4. The Tamil Nadu State Transport Corporation filed counter and contended that the rash and negligent act of the lorry driver, caused the accident and at the time of accident, the Transport Corporation bus driven towards Chennai from Nagapattinam by adhering all safety norms but the lorry driver, driven the lorry with high speed, resulted in accident and also contended that the Corporation bus was also got damaged and hence, the owner of the lorry as well as the insurer of the lorry is liable to pay the compensation and prays to dismiss the Claim Petition.

5. The second respondent-owner of the lorry has not contested the claim and was remained ex-parte.

6. The third respondent-Insurance Company of the Lorry filed counter and contended that the deceased Sakthivel has driven his mini lorry on the left hand side of the road, by adhering traffic rules, but the driver of the bus, who came in the opposite direction in a rash and negligent manner,



hit on the lorry resulting, causing injuries to various persons, including the deceased Sakthivel and that the deceased Sakthivel was also not having valid driving licence to drive heavy vehicle and the same has to be considered as violation of policy condition. Hence, the Insurance Company shall not liable to pay compensation to the claimants for the death of the deceased Sakthivel.

7. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 was examined and Exs.P1 to P7 were marked. On the side of the respondents, R.W.1 and R.W.2 was examined and no documents marked.

8. The Tribunal after considering the evidence placed on record has held that the driver of the bus and the deceased Sakthivel, who drove the mini lorry are equally responsible for the accident and accordingly, fixed liability of each, to pay compensation i.e., 50% liability on the Insurance Company and 50% liability on the Transport Corporation and also awarded a sum of Rs.7,25,136/- as a compensation.

9. Aggrieved over the liability fixed on the Insurance Company as well as the Transport Corporation, these appeals have been filed.



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10. The learned counsel for the Insurance Company has submitted that the Tribunal has held that the deceased Sakthivel is also liable to the extent of 50% for the accident and after holding the same, the Tribunal has directed the Insurance Company to indemnify the owner of the vehicle to pay the compensation. Since the driver, who was driven the lorry is also tortfeasor, the owner of the vehicle need not compensate him and since the owner himself has to be treated as a tortfeasor, vicariously, the direction given by the Tribunal to pay compensation by the Insurance Company is liable to be set aside.

11. Similarly, the learned counsel for the Transport Corporation has contended that the Tribunal has not properly appreciated the evidence adduced on the side of the Transport Corporation and that the accident itself has taken place in the mid night and the Tribunal has failed to fix the liability on the driver of the lorry on his entirety hence, prays to set aside the finding that the Transport Corporation is liable to pay compensation.



12. Countenancing the arguments advanced by the Insurance

Company as well as the Transport Corporation, the counsel for the claimants contended that, the finding of the Tribunal that the deceased is also responsible for the accident is not sustainable, since there is a clear evidence adduced on the side of the claimants, by examining the cleaner of the lorry as well as one eye witness. Their evidence is very clear that the negligent act of the bus driver alone is responsible for the accident and prays to set aside the finding and to fix the liability only on the driver of the bus.

13. I have considered the rival submissions on both sides and also perused the materials placed on record.

14. The accident was occurred on 09.03.2009 at mid night on the Highways between Pondicherry - Tindivanam. The evidence of P.W.2, who is the cleaner of the lorry to the effect that, while their lorry was driven on the left hand side of the road along with driver Sakthivel/deceased, by adhering traffic rules, a bus came in the opposite direction in a high speed and hit on the lorry. To disprove the evidence adduced on the side of the claimants, the Transport Corporation has examined its driver and recorded that on 08.03.2009, he was driving the passenger bus carefully by adhering



into traffic rules from Nagapattinam - Chennai, while the bus was reached near Kundhamoor at about 12.30 midnight, the lorry driver came in the opposite direction in the middle of the road and hit on the right side of the bus, which resulted in causing injuries to the passengers as well as the driver of the lorry. It is also admitted that the occurrence had only taken place in the midnight in the Highways.

15. The Rough Sketch prepared by the police or Motor Vehicle Inspection Report regarding the accident was not produced before the Tribunal or before this Court. Similarly, P.W.3, the passenger of the bus has deposed that, he was travelling from Pondicherry-Tindivanam in the Transport Corporation bus as a passenger, while the bus was near Kundhamoor, the Transport bus was driven in a very high speed and negligently hit on the lorry, which was came in the opposite direction. He has also stated that he was not injured in the accident.

16. Admittedly, the occurrence was taken place in the mid night, there is no clinching evidence placed on record to prove the manner in which the accident had taken place. Eventhough, both sides have adduced oral evidence, the evidence of the cleaner, who is the injured in this



case, shows that their vehicle was driven by following traffic rules on the left side of the road and according to him, a bus came in a high speed, rash and negligently hit on the vehicle, which resulted, caused damages in front side of the vehicle.

17. Similarly, it is the evidence of the bus driver that, he drove the vehicle carefully by following traffic rules and according to him, in the accident, front right side of the bus was damaged. Both side evidence only probalised that it is the case of head on collusion in the middle of the road in the midnight. Accordingly, I am of the view that, the Tribunal has taken a probable view based on the evidence adduced before the Tribunal. This Court finds that the finding of the Tribunal alone to be probable and it cannot be held that either the driver of the lorry or the driver of the bus independently responsible for the accident.

18. Accordingly, I am of the view that the award of the Tribunal fixing liability is proper and it requires no modification and the same is liable to be dismissed. As far as the appeal filed by the Insurance Company is concerned, since the driver of the lorry himself is a tortfeasor and he is not entitled to claim any compensation from the owner of the



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vehicle for the tortious act committed by him and the liability to pay the compensation by the Insurance Company is not sustainable. Accordingly, the claim against the Insurance Company to the extent of 50% is set aside and the award of compensation for payment of 50% by the Transport Corporation is confirmed.

19. In the result,

(1) C.M.A.No.2732 of 2014 is allowed. The Tamil State Transport Corporation is directed to deposit the total compensation awarded by the Tribunal at Rs.7,25,136/- [Rupees Seven Lakhs Twenty Five Thousand One Hundred and Thirty Six only] to the claimants along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. On such deposit, the claimants are entitled to withdraw the same with accrued interest as per the apportionment fixed by the Tribunal. The share of the minor claimant is directed to be deposited in any one of the Nationalised Bank till the minor attains majority. On such deposit, the father of the minor claimant viz., Palani, the first respondent herein is directed to withdraw the accrued interest once in three months for the welfare of the minor claimant. In other aspects the award of the Tribunal shall stand confirmed.



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(2) C.M.A.No.744 of 2015 filed by the State Transport

Corporation is dismissed.

(3) There shall be no order as to costs in these appeals.

(4) Consequently, the connected miscellaneous petitions stands closed.

27.07.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The III Additional District Judge,
Motor Accidents Claims Tribunal,
Thirupathur,
Vellore District.

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



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K.RAJASEKAR,J.

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