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C.M.A.No.3606 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **K. RAJASEKAR**

C.M.A.No.3606 of 2021

The Manager,
National Insurance Company Limited,
1st floor, K.R.T. Building,
33, Bharathidasan Salai,
Promandade Road,
Contonment,
Tiruchirapalli - 620 001.

...Appellant

Vs.

1.Patchaiyammal
2.Minor. Kalki
3.Minor. Keerthiga
4.Azhagammal
5.Ganeshamoorthy

...Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 30.07.2021 in M.A.C.T.O.P.No.330 of 2019, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.N.B.Sureka

For Respondents 1 to 4 : Mr.M.Lokesh

For Respondent 5 : Mr.S.P.Yuvaraj



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award of the Tribunal in the judgment and decree dated 30.07.2021 passed in M.C.O.P.No.330 of 2019 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

2. The brief facts which gave rise to the filing of this civil miscellaneous appeal is as follows:-

In the claim petition, it is averred that on 03.04.2019 at about 8.00 a.m., the deceased was riding his two wheeler bearing Registration No.TN 46 V 9851 on the extreme left side of the Trichy to Chennai National Highway. At that point of time, the lorry bearing registration No.TN 69 P 2300 was going ahead of the two wheeler, driven by the deceased. All of a sudden, without showing any signal, the lorry turned from right to left. Because of sudden change in the track, the two wheeler dashed against the lorry on the rear side. The deceased sustained injuries on his head and hands. He was immediately rushed to the Government hospital, Trichy. After treatment, he succumbed to injury. The dependants of the deceased namely his wife and daughters filed this claim petition seeking compensation.



3. The insurance company filed a counter and both sides let in oral and documentary evidence. The learned Tribunal after trial, held the driver of the lorry responsible for the accident and awarded a sum of Rs.21,73,426/- as compensation to the claimants, vide its award dated 30.07.2021 in M.C.O.P.No.330 of 2019. Questioning the quantum of compensation, the insurance company has come forward with this appeal.

4. The learned counsel for the insurance company has raised three important grounds in this appeal:- i) the negligence on the part of the driver of the two wheeler namely the deceased was not properly examined by the Tribunal. According to him, it is the deceased who dashed against the lorry from behind and he himself was responsible for the accident ii) the next contention raised by the learned counsel is that the deceased did not properly follow the safety distance rule as contemplated under the Motor Vehicle Rule. The deceased was closely following the lorry and he himself dashed against the lorry from behind. Therefore, the learned counsel submitted that the negligence part should be re-fixed on the deceased and quantum of compensation should also to be reduced. iii) the third contention raised by the learned counsel is the presence of head injuries on the deceased shows that he was not wearing helmet, which is against the insurance policy rules.



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5. The learned counsel for the claimants submitted that the award does not need any interference and the Motor Vehicle Inspector report has clearly recorded that the front portion of the two wheeler was damaged and so also the rear part of the lorry. This fact shows that the driver of the lorry changed the track suddenly and this resulted in the accident. The claimants have also examined P.W.2 ocular witness to the accident. P.W.2 has clearly stated that he was also driving in the same route on his two wheeler and the lorry was going ahead of him. All of a sudden the lorry changed the track from right to left side which caught the driver coming from behind. The accident had happened wholly because of the mistake committed by the driver of the lorry. P.W.2 in his cross examination has clearly admitted that at the time of accident, the deceased was wearing his helmet.

6. Heard the learned counsel on either side and perused the materials available on records.

7.The learned counsel for the Insurance Company has brought to the notice of this Court, the judgment of *Nishan Singh and Ors. Vs. Oriental Insurance Company Ltd. and Ors. reported in MANU/SC/0463/2018*, which reads as under:



WEB COPY Regulation 23 of the Rules of the Road Regulations 1989, reads as under:

"23.Distance from vehicles in front:- The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from the other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.

The expression 'sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two or three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10-15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants.

11.The Tribunal also noted that there was no evidence on record to indicate that the driver of the truck suddenly applied his brake in the middle of the road. Further, the finding on issue No.1 recorded by the Tribunal is that there was no evidence regarding exact place of occurrence of accident and having taken survey. Therefore, the issue under consideration was answered against the appellants(claimants), namely, that the subject truck was not driven rashly and negligently by the truck driver nor had be brought the truck in the centre of the



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road at right side or applied sudden brake as being the cause of the accident. Being a concurrent finding of fact and a possible view, needs no interference."

8. The claimants have examined eyewitness to prove the manner of accident. P.W.2 in his evidence has categorically stated that the accident had occurred only due to the negligence on the part of the driver of the lorry, because of a sudden change on track from right to left side, the accident has happened. P.W.2 has also categorically stated in his cross examination that deceased was wearing helmet. His evidence is supported by the Rough sketch and other documents, the evidence adduced before the Tribunal only shows that the accident was occurred on left hand side of the road. It is the case of claimants that, the deceased was travelling in two wheeler on the left side of the road and lorry was coming in the next line of the left side and suddenly changed the line entered the left side of the road. The deceased was not riding behind the lorry. The RW-1, Sub Inspector of Police examined by respondent also corroborated the case of the claimant and the Tribunal has rightly held that, lorry driver changed the line suddenly from one line to another. In Nishan Singh's case, the claimant vehicle was following the offending vehicle from behind as since the injured vehicle has not maintained proper distant and



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dashed on the rear side, this fact could not be applied to the case in hand.

Hence, the Apex Court judgment of Nishan Singh cited supra is not applicable.

9. The accident has not occurred due to over speeding of the two wheeler driven by the deceased, but has occurred only because of the sudden change of track by the driver of the lorry without showing any signal either by hand or by using indicator. The appellant has not produced any piece of evidence to show that the deceased was at fault. The Tribunal has gone through the materials and has come to the right conclusion that the driver of the lorry is responsible for the accident. The compensation awarded by the Tribunal is also just and proper. This Court finds no reason to interfere with the award passed by the Tribunal.

10. In the result, the civil miscellaneous appeal stands dismissed. No order as to costs.

28.11.2023

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

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K.RAJASEKAR, J.

rjr

To

1. The Principal District Judge,
The Motor Accidents Claims Tribunal, Perambalur.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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