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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.105 & 106 of 2017

M/s. National Insurance co. ltd.,
Having its office at
First Floor,
Karthikeya Complex,
403 – B – 10, Mettur Main Road,
Bhavani.

... Appellants in both the appeals
Vs

1. Arputhasamy
2. Devendran
3. S.Kumar
4. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division – II,
Having Office at
Chennimalai Road,
Erode.

5. Sri Amirtha Coir Production and Exports,
No.104/2, Mysore Road,
Bharathi Nagar,
Thalawadi, Sathyamangalam.

... Respondents in CMA.No.105 of 2017

1. Gomathi
2. Devendran
3. S.Kumar
4. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division – II,
Having Office at
Chennimalai Road,
Erode.



5. Sri Amirtha Coir Production and Exports,
No.104/2, Mysore Road,
Bharathi Nagar,
Thalawadi, Sathyamangalam.

... Respondents in CMA.No.106 of 2017

Common Prayer: Civil Miscellaneous Appeal filed against the Judgment and decree dated 18.02.2015 in MCOP Nos.129 & 144 of 2013 passed by the Motor Accidents Claims Tribunal/Subordinate Judge, Perundurai.

For appellant : Mr.J.Chandran in both the appeal

For respondent : Mr.K.J.Sivakumar R4 in both the appeals

RR1,2,5 – No appearance

R3 - NRN

COMMON JUDGMENT

The appeals have been filed by the Insurance company seeking quantum of compensation in the Judgment and decree dated 18.02.2015 in MCOP Nos.129 & 144 of 2013 passed by the Motor Accidents Claims Tribunal/Subordinate Judge, Perundurai.

2. Since the issue involved in the matters are one and the same, the same are disposed of by way of this common order.

3. It is the case of the claimants that on 08.07.2012, at about 2.30 pm. When the claimants/first respondent herein in both the cases, were travelling in separate two wheelers, at that time, a bus bearing registration No.TN 33 N 2584 driven by its driver and a van driven by its driver, which was



insured with the appellant, came in opposite direction, in a rash and negligent manner and dashed against the two wheeler, due to which, the claimants sustained grievous multiple injuries and admitted in Hospital and taken treatment and one Balakrishnan, who is the husband of the claimant, died, have filed separate claim petitions before the Tribunal claiming compensation.

3. In order to prove their claim, the claimants have examined 4 witnesses viz., P.W.1 to P.W.4 and marked 29 documents viz., Ex.P1 to Ex.P29. On the side of the insurance company, three witnesses were examined and four documents were adduced. After analyzing the evidences, the Tribunal has awarded a sum of Rs.36,786/- and Rs.1,59,391/- to the claimants as compensation for injuries payable by the Insurance Company and owner of the bus and owner of the van.

4. Questioning the negligence and liability, the appellant/insurance company has come forward with these appeals before this Court.

5. The learned counsel for the appellant/insurance company submitted that the accident had happened due to rash and negligent driving of the rider of the two wheeler. The driver of the bus was not responsible for the



accident and therefore, the appellant, who is the insurer of the bus, was not liable to compensate the claimant. The Tribunal, considering the fact that while the Mahindra Van bearing Reg. No.TN 36 T 6226 proceeding from west to east on the left hand side, the bus which was came from behind on the same direction, while driving the bus in a high speed recklessly endangering human life and hit the back side of the van, is consequence of impact by the bus, the van hit the motor cycle, causing the death of driver Balakrishnan and also against the claimants, who is the rider and pillion rider of the motor cycle, ought to have held, but for the rash and negligent driving of the Transport Corporation bus, the accident would not have occurred at all. Further, the driver of the Mahindra van is not having valid driving license at the time of the accident and hence, the appellant is not liable to pay compensation. Therefore, this Court may interfere with the award and set aside the same.

6. Per contra, the learned counsel appearing for the 4th respondent submitted that the driver of the Mahindra van was driving the van in a rash and negligent manner and hit against the two wheeler. On the basis of the evidence adduced, the Tribunal has awarded compensation, which is just and fair and the same does not warrant any interference.



7. Heard the learned counsel for the appellant as well as the respondents and also perused the materials available on record before this Court.

8. The factum of the accident is not disputed by the parties and the appeals have been filed on the ground of negligence and liability. On perusal of the award, it is found that the accident had occurred on 08.07.2012, the first respondent in CMA.No.105 of 2017 was driving his motor cycle and one deceased Balakrishnan was driving his motor cycle along with his wife Gomathi, who is the first respondent in CMA.No.106 of 2017. The government bus which was driven by its driver/second respondent and the van which was driven by its driver/third respondent, were coming from the opposite side. As per the evidence of PW1 & PW2, who are the eyewitness of the accident, the Mahendra Van overtook the bus from the left side. The transport corporation bus also not reduced its speed. Both the vehicle. Without decreasing the speed, hit the two wheelers. Therefore, negligence is on the part of the both the drivers of the bus and mahindra van. Therefore, the Tribunal has fixed negligence on the part of the driver of the van and bus. Hence, the appellant, who is its insurer, is liable to pay compensation. The finding of the Tribunal is perfectly in order and does not require any interference.



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9. In view of the above, this Court do not find any error in the award passed by the Tribunal. There is no merit in the appeal.

10. In the result, the Civil Miscellaneous Appeals are dismissed and the award passed by the Tribunal is confirmed. The appellant insurance company is directed to deposit the entire amount awarded by the Tribunal along with interest at 7.5%, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants shall withdraw the compensation as awarded by the Tribunal along with interest and costs, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

13.10.2023

Index : Yes/no

Internet : Yes/no

To

The Motor Accidents Claims Tribunal/Subordinate Judge, Perundurai.



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7

M.DHANDAPANI.,J.

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