



C.M.A.Nos164,165 & 276 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.Nos.164, 165 & 276 of 2017

Bharti AXA General Insurance Co., Ltd.,
1st Floor, Ferns Icon,
Survery No.28, Doddanakundi Village,
K.R.Puram, Hobli,
Bangalore-37

...Appellant in all CMAs'

Vs.

1.Manjula

2.Thangammal

3.Mahendran

..Respondents in CMA No.164 of 2017

1.Manjula

2.Minor Srisanth

3.Thangammal

4.Mahendran

..Respondents in CMA No.165 of 2017



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1.Thanjammal

2.Muniammal

3.Vijay

4.Sowmiya

5.Mangai

6.Mahendran

..Respondents in CMA No.276 of 2017

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 24.02.2016 made in M.C.O.P.Nos.1980, 1981 & 1982 of 2014 on the file of the Motor Accident Claims Tribunal, (Special District Judge) Dharmapuri.

In all CMAs'

For Appellant : M/s.K.Poomali

In CMA.No.164 of 2017

For Respondents : Mr.M.Selvan for R1 & R2

In CMA.No.165 of 2017

For Respondents : Mr.M.Selvan for R1 & R3

In CMA.No.276 of 2017

For Respondents : Mr.M.Selvan for R1 & R3

COMMON JUDGMENT



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This Civil Miscellaneous Appeals are filed by the respondent/ Insurance company in M.C.O.P.Nos.1980, 1981 & 1982 of 2014 challenging the award dated 24.02.2016 passed by the Motor Accident Claims Tribunal, (Special District Judge) Dharmapuri.

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

3. All the Civil Miscellaneous Appeals are arising out the same award, hence Appeals are taken up together for hearing and common judgement is hereby passed.

4. The common averments made in all the claim petitions are as follows:

On 24.04.2014 at about 05.30 pm, the deceased and injured were travelled as passengers in a Maruti Suzuki car bearing Regn.No.Ka-09-M-8578 driven by one Natraj on the Royakottai to Hosur main road. While they reached near Pilliyar Agragaram Muniappan Temple, a lorry



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bearing Regn.No.TN-27-9789 came in the opposite direction in rash and negligent manner, dashed on the Maruti car, which resulted in causing injuries to the passengers and (1) Murugesan, (2) Madhu and (3) minor Rithika were succumbed to injuries. Based on the complaint, a criminal case in Crime.No.232 of 2014 under Section 279, 337, 304(A) of IPC was registered against the driver of the car in which the deceased have travelled. The dependants of the respective deceased have filed claim petitions against the owner and insurance company of the lorry.

5. The first respondent owner of lorry in all the three claim petitions has not participated and remained ex-parte. The second respondent insurance company of lorry filed counter and contended that the accident was not occurred due to negligent act of the lorry driver. The driver of the Maruti car has driven the vehicle in a rash and negligent manner in high speed. Eventhough driver of lorry has taken precaution to avoid the accident by parking the lorry on the left side corner of the road, the accident has occurred. The FIR was also registered only against the driver of the Maruti Car and the driver of the car was not included as a party in the claim petitions. Hence, the second respondent is not liable



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to pay the compensation in this case. Based on the request made by claimants common evidence was recorded in MCOP.NO. 1980 of 2014.

6. Before the Tribunal P.W.1 and P.W.2 were examined and Exs.P1 to P9 were marked. On the side of the respondents R.W.1 and R.W.2 were examined and Exs.R1 and R2 were marked.

7. Based on the evidence placed on record, the Tribunal in Point No.1 has considered the negligent act on the part of the lorry driver and has held that the negligent act of the lorry driver is responsible for the accident. In Point No.2 the Tribunal has quantified the quantum of compensation and awarded the following compensation:

- i) In MCOP.No.1980 of 2014, Rs: 10,80,000/- has been awarded
- ii) In MCOP.No.1981 of 2014, Rs. 1186,000/-has been awarded
- iii) In MCOP.No.1982 of 2014 Rs.6,00,000/-has been awarded

Aggrieved over the finding of the Tribunal that the lorry driver is responsible for the accident and also challenging the quantum of compensation awarded in MCOP.NO.1982 of 2014 these Civil Miscellaneous Appeals are filed.



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8. Learned counsel for the insurance company has submitted that immediately after the occurrence, FIR was filed against the Driver of the car and subsequently criminal case was investigated and final report was filed against the driver of the car. On the side of the respondents, the lorry driver was examined as well as the officer of the Police department to show that the car driver alone is responsible for the accident and those witnesses and exhibits are not been properly appreciated by the Tribunal, and prays to set aside the award.

9. Per contra the learned counsel for the claimants would submit that there is ample evidence adduced by the eyewitness to prove the negligence act of the lorry driver. Originally FIR was registered based on the complaint given by the lorry driver, hence the same shall not be treated as conclusive proof to accept the case of the insurance company. Since the Tribunal has given the finding based on the evidence placed on record, the same need not be interfered with and prays to confirm the award.

10. I have considered the submissions made by both sides and perused the records.



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11. The P.W.2 eyewitness to the occurrence states that on 24.04.2014 at about 04.30 pm her husband Madhu, Murugesan and minor Rithika were proceeding to Bangalore in a Maruti Suzuki car bearing Regn.No.Ka-09-M-8578, which was driven by one Natraj and behind their car P.W.2 and her daughter and others were followed in another car bearing Regn.No.KA-51 P 1995. While they reached near Pilliyar Agram Muniappan Temple on the Rayakottai to Hosur Main Road, the car driver Natraj driven the same on the left side of the road, at that time a lorry bearing Regn.No.TN-27-9789 came in the opposite direction in high speed in negligent manner dashed against the car in which her husband was travelling. Immediately the car in which P.W.2 was travelled and rushed to the accident place and found the passengers sustained grievous injuries and died on the spot. The driver of the car Natraj also sustained injuries and was in unconscious condition. Immediately, they have arranged the vehicle and sent the driver Natraj to the Hosur, Hospital for treatment. She has stated that the driver of the lorry is responsible for the accident. However, taking advantage that the situation, the lorry driver has lodged the complaint. In the cross examination, she has reiterated that



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she has seen the accident, while travelling in another car behind her husband's car. She has also stated that the husband travelled in the car belongs to the driver Natraj. She has denied the suggestion that car driver driven the vehicle in a rash and negligent manner and in spite of lorry driver's effort to avoid the accident, the car has dashed on the lorry.

12. To support the case of the respondents, they examined the driver of the lorry as R.W.1. He has stated before the Tribunal that on the date of accident, he drove the lorry from Hosur to Salem and the place where accident had occurred was a sloppy area, at that time, the Maruti Suzuki car came in the opposite direction and lost control. On seeing the car which was out of control, the lorry driver stopped the vehicle on the left side of the road after entering into mud portion of the road, however car came in the wrong direction and hit on the lorry. He has also stated that car driver is responsible for the accident, and he has lodged the complaint. He has also denied the suggestion of the claimant that while over taking the another lorry accident had occurred.

13. To strengthen the evidence of R.W.1, insurance company also examined claimant R.W.2 who is the Special Inspector of Rayakottai

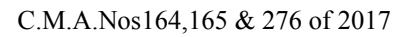


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Police Station and he has deposed that the criminal case was registered against the car driver was investigated and final report was also filed and case was taken on file as CC.No.56 2015 on the file of Judicial Magistrate Denkanikotai and the same was pending. The final report was also marked as Ex.X1.

14. It is elicited from the cross examination of R.W.2 that only one eye witness namely Periyasamy has stated that the driver of the Maruti car is responsible for the accident and all other witness examined by the police stated are not eyewitness to the occurrence. This Periyasamy was not listed as an eyewitness in the final report eventhough statement was record by him. The observation Magazar and rough sketch regarding accident was marked as Ex.R.2. On perusal of the same shows that the accident has occurred on the extreme right side of the road from Rayakottai to Hosur Highway. It is the evidence of the lorry driver that he was going towards the Salem, at that time the car came in the opposite direction, whereas the car which has to run on the left side of the road met with an accident on the right side corner of the road clearly shows that car driver crossed the entire road and hit on the lorry. This evidence marked



15. The claimants have not impleaded the car owner and the insurance company in this case and they have also not examined the driver of the car. The petitioner herein, need to prove their case only on the touchstone of preponderance of probability as held in ***Bimla Devi and Ors. vs. Himachal Road Transport Corporation and Ors.*** reported in II(2009) ACC 444(SC) and in this case evidence recorded on the side of respondents is more probable than the evidence adduced on the side of the petitioners. They ought to have examined the driver of the car to prove that the vehicle was not driven negligently by the lorry driver. The doctrine of *res ipsa loquitur* is also stands against the claimant.

16. Considering the number of victim in this case, this Court is of the view that matter requires fresh consideration by the Tribunal and the petitioners are directed to implead the owner of the car and the insurance



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company, if the vehicle is insured, adding additional evidence by examining the driver of car. Based on the the additional evidence, if any added, Tribunal is directed to pass final orders in this petition. With this observation, this Civil Miscellaneous Appeal is liable to be allowed.

17. Accordingly, this Civil Miscellaneous Appeal is allowed and the award dated 24.02.2016 passed by the Motor Accident Claims Tribunal, (Special District Judge), Dharmapuri, in MCOP.Nos.1980, 1981 & 1982 of 2014 is hereby set aside and the matter is remanded back to the Tribunal for fresh consideration. No costs.

08.09.2023

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Index : Yes/No

Neutral Citation : Yes/No

K.RAJASEKAR, J.

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To:

- 1.The Motor Accident Claims Tribunal,
(Special District Judge) Dharmapuri.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

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