



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.Nos.95 and 96 of 2019

1. R.Kumar, S/o Rajagopal
2. P.K.Radhakrishan, S/o Kuppusamy

.. Appellants in both the appeals

Vs.

Palani, S/o Chakrapani

.. Respondent in C.M.A.95 of 2019

- 1.Kumudhavalli, W/o Senthamaraikannan
2. Manikandan, S/o Senthamaraikannan
3. Inbaraj, S/o Senthamaraikannan

.. Respondents in C.M.A.96 of 2019

Civil Miscellaneous Appeal No.95 of 2019 is file under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 23.12.2016 passed in M.C.O.P.No.56 of 2013 on the file of the Motor Accidents Claims Tribunal-cum-2nd Additional District Court, Chidambaram.

Civil Miscellaneous Appeal No.96 of 2019 is file under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 23.12.2016 passed in M.C.O.P.No.58 of 2013 on the file of the Motor Accidents Claims Tribunal-cum-2nd Additional District Court, Chidambaram.

Page No.1/12



WEB COPY



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

For appellants : Mr.N.C.Ashok Kumar

For respondents: Mr.T.Saravanan

COMMON JUDGMENT

These appeals are filed challenging the very same accident that took place on 07.02.2012.

2. Brief facts leading to the filing of these appeals are as follows:

M.C.O.P.No.56 of 2013:

(a) On 07.12.2012 at about 3.30 p.m. in Chidambaram - Kurinchipadi Village Main Road, near-by Murattuvaai, the claimant-Palani, along with his in-law (sammandhi in Tamil) (being the deceased Senthamaraikannan) were travelling in the said claimant's motor cycle bearing Registration No.TN-31-CY-0646 (TVS-XL-super). The claimant-Palani drove the vehicle and the deceased Senthamaraikannan was riding pillion in that two-wheeler. They were proceeding to Sandhai (i.e. a type of market) from South to North on the Western side of the road, with due diligence and caution.

Page No.2/12



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

(b) At that time, a bus was approaching from North to South and the first appellant herein (R.Kumar) who was in possession and enjoyment of the motor cycle bearing Registration No.TN-31-AC-9607 (Hero Honda passion Pro) was riding the vehicle in a rash and negligent manner and in proximity behind the bus and he tried to over-take the bus, but dashed against the claimant-Palani's motor cycle.

(c) The first appellant (R.Kumar) came along with the two other persons in his motor-cycle and they were in intoxicated and inebriated state. The first appellant came on the wrong side of the Road, i.e. to his right side (Western side of the road), leading the way to the occurrence. As a result, both the claimant-Palani and the deceased Senthamaraikannan were thrown out of their vehicle, as a result of which, they fell down.

(d) The deceased Senthamaraikannan was lying in a pool of blood, as the blood was gushing out from nose, mouth and ears. The claimant-Palani, even without a tinge of conscience, left both the deceased/Senthamaraikannan and the claimant-Palani in lurch and went away. The first appellant-Kumar had not even taken care to hospitalise the claimant-Palani and the deceased Senthamaraikannan.

(e) The respondent-Palani was very casual and did not even had



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

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taken care to help the victims. The claimant-Palani sustained fracture on his left fore-arm, apart from other injuries. The deceased-Senthamaraikannan, who was riding pillion, also sustained severe cranial injuries and was unconscious. Both of them were rushed to RMMCH at Annamalai Nagar. The claimant-Palani was admitted as an in-patient and the deceased was given first-aid treatment and thereafter, sent to PIMS at Pondicherry for further treatment, and the said Senthamaraikannan died on the next day, i.e. on 08.12.2012 at about 8 am.

M.C.O.P.No.58 of 2013:

(f) On 07.12.2012 at about 3.30 p.m. in Chidambaram-Kurinchipaadi Main Road, near-by Murattuvaai, the deceased Senthamaraikannan was travelling in TN-31-CY-0646 (Tvs-XL Super Motor Cycle) as a pillion rider, having been driven by the said Palani. They were proceeding to Sandhai (i.e. market) from South to North on the Western side of the Road with due diligence and caution. At that time, a bus was approaching from North to South. The first appellant-R.Kumar was riding motor cycle TN-31-AC-9607 Hero Honda passion from North to South.

(g) Along with the first appellant-R.Kumar, two other persons were seated in the said Honda Passion vehicle. The trio (first appellant and 2



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

others) were in intoxicated and inebriated state. The first appellant-R.Kumar drove the vehicle in a bid to over-take the bus, had hit against the motor cycle (TN-31-CY-0646 - TVS XL Super) in which the deceased was riding pillion. The first appellant-R.Kumar drove the vehicle in a rash and negligent manner and was driving on the wrong side, i.e. to his right to the Western side of the road, leading to the occurrence.

(h) In the impact, the respondent-Palani (injured) and the deceased Senthamaraikannan (the deceased) were thrown out from their motor-cycle, resulting in their falling down. The deceased Senthamaraikannan had sustained severe head injuries. The first appellant-R.Kumar left the deceased and the injured-Palani in lurch and fled away and did not even care to hospitalise the victims.

3. Both these C.M.As. arise out of the same accident and therefore, the Tribunal took both the M.C.O.Ps. together. A joint trial was conducted and common Award was passed by the Tribunal. Challenging the findings of the Tribunal, these C.M.As. were filed.

4. Learned counsel for the appellants submitted that the claimant



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

(Pazhani) did not possess valid driving licence at the time of accident and without even having licence, even without the insurance to the vehicle, they had driven the vehicle and dashed against the appellant's vehicle. Even otherwise, both the rider of the vehicles (both being two-wheelers) contributed their negligence resulting in causing the accident. Learned counsel further contended that the Tribunal failed to consider that the claimant-Palani had ridden the vehicle without even having valid driving licence, coupled with the non-insurance, and thereby, the Tribunal fixed the liability on the offenders. He further contended that R.W.1 (Radhakrishnan) was examined who has clearly spoken about the accident, and from his evidence, it is clear that only due to the rash and negligent driving of the riders of the two-wheelers, the accident had occurred. Therefore, the findings rendered by the Tribunal regarding the liability of 90% is liable to be set aside.

5. Learned counsel for the claimants submitted that the rider of the vehicle TVS-XL super, had ridden the vehicle in a proper manner and only the vehicle ridden by the other rider was in a rash and negligent manner and dashed on the side oof the two-wheeler and even the Motor Vehicle



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

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Inspector's report shows that the damage was caused to the victims, which clearly shows that the offending vehicle is a bike and the rider of the bike rode the vehicle in a rash and negligent manner and hit against the claimant's vehicle and sustained injury and pillion-rider succumbed to injuries, i.e. Senthamaraikannan died and the legal heirs of the deceased-Senthamaraikannan, had filed the claim petition in M.C.O.P.No.58 of 2013. Learned counsel for the claimants further contended that the Tribunal had rightly fixed the compensation and hence, there are no merits in both the appeals and prayed for dismissal of the same.

6. Admittedly, the claimant-Palani rode the two-wheeler TVS-XL-Super and the the appellant rode the bike (Hero Honda) on 07.12.2012 at about 3.30 p.m. and both the vehicles were involved in the accident due to rash and negligent driving. Since both the vehicles were two-wheelers, one being TVS XL super and the other being Honda Passion, the riders should have been very cautious and should have avoided the accident. Due to the negligence of riders of both the two-wheelers, the accident had occurred and had they been more cautious, the accident could have been averted.



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

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7. The Tribunal considered the oral and documentary evidence in proper perspective and especially, both the riders of the vehicles were examined as P.W.1 and R.W.1 respectively, but whereas, the Tribunal rightly observed that both the riders have contributed to the accident and only the ratio fixed by the Tribunal is that the first appellant contributed 90% of negligence and the claimant-Palani had contributed 10% negligence. Though the Tribunal held that the damages had been contributed by both of them, but the Motor Vehicle Inspector's report and the nature of the vehicle, it was observed that both the vehicles have contributed 50% each and one of the rider did not possess any licence and even though there is no evidence to show that because the claimant was not able to control the vehicle and due to lack of driving knowledge for riding the vehicle, and therefore, in the above circumstances, since both the two-wheelers are coming one against the other in the front side, i.e. the riders are negligent. However, from the materials available on record like the evidence of P.W.1 (Kumudhavalli) and R.W.1 (Radhakrishnan), apart from Motor Vehicle Inspector's Report (Exs.P-4 and P-9) and also taking into consideration the fact that rider of the bike (Hero Honda Passion) has



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

contributed 75% of the negligence and the rider of the TVS XL Super has contributed 25% negligence, and since the claimants have not filed any appeal before this Court, for fixing 10% of the negligence.

8. However, considering the fact that this Court being the first appellate Court, as a final Court of fact finding independently assessing the evidence with the available records, comes to the conclusion that the appellants (riders of the two-wheelers) had contributed 75% and the claimant-Palani had contributed 25% to the accident, and that since the deceased was only a pillion-rider of the two-wheeler TN-31-CY-0646, and since the said Senthamaraikannan is only a third party and he is not in any way connected with the accident, and therefore, both the appellants are liable to pay the compensation towards 75% fixed by the Tribunal, to be paid to the dependants of the deceased Senthamaraikannan and the owner of the two-wheeler TN-31-CY-0646 is liable to pay 25% of the compensation for his negligence.

9. Therefore, the claimant-Palani is to pay 25% of the compensation and the appellants in both these appeals, are liable to pay 75% of the



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

compensation as awarded by the Tribunal, now being fixed by this Court as observed in the above paragraph.

10. As far as the quantum of compensation awarded by the Tribunal, the same had not been disputed, and there is no Insurance coverage.... and therefore, both the owners of the two-wheelers are liable to pay the compensation.

11. With the above modification, both the appeals are partly allowed. There shall be no order as to costs.

12. The time limit for payment of compensation as directed above, is eight weeks from the date of receipt of a copy of this judgment. The proportion of allocation of shares as adopted by the Tribunal, shall stand confirmed. In other respects, the impugned common Award of the Tribunal shall stand unaltered.

21.09.2023

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Page No.10/12



WEB COPY



Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

To

1. The Motor Accidents Claims Tribunal
2nd Additional District Court, Chidambaram.
2. The Section Officer, V.R. Section, High Court, Madras.



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Judgment dated 21.09.2023 in
C.M.A.Nos.95 and 96 of 2019

P.VELMURUGAN, J

CS

C.M.A.Nos.95 and 96 of 2019

21.09.2023

Page No.12/12