



C.M.A.No.4380 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.4380 of 2019

1. Mrs.Seethalakshmi
2. Yuvashini (minor)
3. Vinoth (minor)
(Petitioners 2 and 3 are rep. by their mother and
next friend Mrs.Seethalakshmi)

4.Mrs.Pushpam
5. Ramu

... Appellants

Vs.

1.R.Ganesan

2. National Insurance Co. Limited
Motor Third Party Cell
No.751, Anna Salai, 3rd Floor
Chennai – 2

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to enhance the amount awarded in M.C.O.P.No.6738 of 2015 dated 05.04.2018 on the file of the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.G.Anandan for R2

R1-sd-No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellants herein against the Judgment and decree passed in M.C.O.P.No.6738 of 2015 dated 05.04.2018 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai, questioning the liability.

2. The claim petition was filed under Section 166 of Motor Vehicle Act for the death of one Selvaraj who died in a motor accident that occurred on 18.06.2015.

3. The Tribunal, after hearing the arguments on both sides and upon considering the oral and documentary evidence, calculated the total award amount as Rs.18,84,400/- by fixing 50% negligence on the part of the driver of the 1st respondent's lorry and 50% liability on the part of the deceased and granted a sum of Rs.9,42,200/- to the appellants /claimants, with interest at 7.5% per annum from the date of numbering of the petition i.e. 26.08.2015 till the date of realisation.



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4. The learned counsel appearing for the appellants would vehemently argue that the deceased who was the rider of the two wheeler, hit on the lorry which was parked without parking light and as the lorry was parked without any parking light, the 1st respondent is liable to pay the entire compensation. To strengthen his arguments, he relied upon the below said judgments;

(i) ***Oriental Insurance Co. Ltd. Vs. Chandra and others reported in 2013 (2) TN MAC 105 (DB)*** wherein, the deceased was travelling in a car along with his friends. The bus was proceeding in the same direction was stopped all of a sudden on Tar road. The car rammed into the bus. The deceased succumbed to injuries in the hospital. Based on the evidence of eyewitnesses, liability was passed on the driver of the bus. After analyzing both the witnesses, it was held that the tribunal rightly held that the bus driver was negligent and it was upheld by this Court.

(ii) ***Oriental Insurance Co. Ltd. Vs.V. Bhuvaneswari and others reported in 2019 (1) TN MAC 72 (DB)*** wherein, according to claimants, the deceased was driving a motorcycle bearing Regn.No.TN-07-AQ-8011 from Thiruvannamiyur to Thiruporur on the Rajiv Gandhi Salai, North to South direction near Fruit Garden Signal



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Semmanchery, dashed against a Van bearing Regn. No.TN-07-AY-7881, which was parked in the main road abetting 2nd and 3rd lanes, without any indicator lights and died instantaneously on account of the fatal injuries sustained by him. Resisting the claim, the insurance company filed a counter statement denying the manner of accident and all particulars. The tribunal passed an award fastening the liability on the van for an amount of Rs.21,51,208/-. This Court held that as to the contributory negligence in an appeal filed by the insurance company, there is no material to show that the parked van was having blinking lights and admittedly, the accident took place on the late evening hours of 20.04.2010 and therefore, the contention of the insurance company was rejected.

(iii) ***In Archit Saini and another Vs. Oriental Insurance Co. Ltd. and others reported in 2018 (1) TN MAC 544 (SC)*** wherein, the case of the claimants is that the deceased who was driving his car on highway during night hours at 10.30 p.m., dashed against Tanker Lorry parked on middled of the road without any parking light or indicator. Relying the evidence of eyewitness/P.W.7 that car struck against back of Tanker as the car driver could not spot parked Tanker in middle of road due to flash lights of oncoming vehicles. The Tribunal considering the Site Map/Ex.P.45 along with charge sheet filed against Tanker



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Lorry Driver, held that accident took place due to parking of offending vehicle/Tanker in middle of road in negligent manner. Whereas, the High Court, in appeal, holding that in view of the evidence of P.W.7, Tanker was visible from the distance of 70 ft. and same was not parked in middle of road as per site map, concluded that it was a case of contributory negligence to extent of 50:50. The Hon'ble Apex Court reversed the findings of the High Court and held that the Tribunal applied correct test in analysis of evidence and High Court's finding of Contributory negligence was set aside by the Hon'ble Apex Court.

5. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company would vehemently contend that the Tribunal, after analyzing the oral and documentary evidence, has correctly fixed 50% contributory negligence on the rider of the motorcycle as he was at fault. Therefore, he prayed for dismissal of the appeal.

6. Heard the rival submissions of the learned counsels of both sides and perused the entire materials available on record.

7. The case of the claimants is that on 18.06.2015 at about 7.30 p.m., while the deceased Selvaraj was riding the motorcycle bearing Reg. No.TN-



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22-U-4891 along the Karattampatti Edhumalai Road along with his co-brother/P.W.2 was proceeding behind him in a motorcycle bearing Reg. No.TN-45-T-3299 within 30 feet distance along the same road and at the point of MRP Farm House, a lorry bearing Reg.No.TN48-Y-1819 was stationed without any parking light and hence, the deceased Selvaraj hit on the lorry and due to the impact, he sustained severe injuries on the head and body and on the way to hospital, he succumbed to injuries. The said details were resisted by the insurance company by filing counter that deceased only rode his motorcycle in a rash and negligent manner and hit against the 1st respondent's stationed vehicle. Since the deceased is the tortfeasor, the claim petition is liable to be dismissed.

8. As mentioned supra, the eyewitness/P.W.2 narrated the manner in which the accident occurred. It appears that on the side of the 2nd respondent/insurance company, the Sub Inspector of Police, Pulivalam Police Station was examined as R.W.1 and it appears that the charge sheet was filed against the rider of two wheeler and the case was closed as charge abated.

9. It is evident that the two wheeler of the deceased hit against the



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back side of the lorry which was stationed on the road side. It is an admitted fact that the accident occurred at about 7.15 p.m. and it is the evidence of the eyewitness/P.W.2 that the lorry was stationed without parking lights. On the side of the 2nd respondent/insurance company, no eyewitness was examined to prove otherwise. When a vehicle is stationed along the road, the law is that the driver should put on the parking lights.

10. It is made clear on the side of claimants that the lorry was stationed without any parking lights. Therefore, it is evident that had the driver of the lorry parked the vehicle with parking lights, the accident could have been averted. Therefore, relying upon the evidence of P.W.2, ocular witness, the contributory negligence to the tune of 10% is fixed on the rider of the two wheeler/deceased and 90% negligence is fixed on the part of the driver of the 1st respondent's lorry.

11. Accordingly, the appellants/claimants are entitled to 90% of the compensation amount of Rs.18,84,400/- awarded by the Tribunal i.e. the claimants are entitled to **Rs.16,95,960/-** with interest at 7.5% per annum from the date of numbering of the petition i.e. 26.08.2015 to till the date of realisation.



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WEB COPY 12. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from
Rs.9,42,200/- to Rs.16,95,960/-

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.16,95,960/-** (less the amount already deposited if any) together with interest at 7.5% per annum from the date of numbering of the petition i.e. 26.08.2015 to till the date of realisation in M.C.O.P.No.6738 of 2015 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellants / claimants are at liberty to withdraw the same on filing of cheque petition. The claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

06.07.2023



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Index : Yes/No

Speaking / Non-speaking order
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To:

1. The Motor Accident Claims Tribunal
(Chief Judge, Court of Small Causes) Chennai,
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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