THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.Nos.2572, 2576 & 2577 of 2018 and 92, 101 & 102 of 2019
and
C.M.P.Nos.19534, 19538 & 19540 of 2018 and 423, 446 & 454 of 2019

C.M.A.No.2572 of 2018

Rishi Matriculation School,
Rep. by its Correspondent/Head master,
Seekrajapuram Mottur, Seekrajapuram Post,
M.B.T.Road, (via) Thiuvalam, Vellore District. ... Appellant

Vs.

1.Minor. Varsha
Rep. by mother/Guardian Manjula

2.The Manager,
Tamil Nadu Industrial Investment Corporation,
Having office at TNHB Building, II Avenue,
Anna Nagar, Chennai – 40.

3.Paranthaman ... Respondents

Prayer in C.M.A.2572 of 2018 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against decree and order passed in M.C.O.P.No.375 of 2007 dated 02.08.2018 on the file of Motor

Accident Claims Tribunal, (I-Additional District & Sessions Judge, Vellore District).

C.M.A.Nos.2572, 2576 & 2577 of 2018

For Appellant	:	M/s.R.T.Sundari
For Respondents	:	Mr.A.R.Pradeep [R1] Mr.K.Mahesh [R2]

C.M.A.Nos.92, 101 & 102 of 2019

For Appellant	:	Mr.K.Mahesh
For Respondents	:	Mr.A.R.Pradeep [R1] M/s.R.T.Sundari [R2]

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COMMON JUDGEMENT

In all, six appeals have been filed against the award dated 02.08.2018 passed by the Motor Accident Claims Tribunal, (I-Additional District & Sessions Judge, Vellore District) and of the said appeals, while three of the appeals have been filed by the school, who is the owner of the vehicle, the other three have been filed by the financier, who had financed the vehicle. The appeals have been targeted against the award in and by which the Tribunal had directed the owner of the vehicle to pay a part of the compensation, while the rest of the compensation has been directed to be paid by the financier.

2. The brief facts necessary to dispose of the above appeals are as follows :-

(i) It is the case of the claimants that on 13.5.2005 at about 9 a.m., while the deceased was taking his daughters, Varsha and Keethi, who are the injured claimants, in his TVS Moped vehicle bearing Regn. No.TN-01-F-1097 to the school, the school van, belonging to the 1st respondent, bearing Regn. No.TB-21-T-8740, driven by its driver in a rash and negligent manner, hit against the two wheeler due to which the children, viz., Varsha and Keerthi suffered fracture and other injuries, the rider of the vehicle suffered grievous injuries and inspite of the treatment given, succumbed to the said injuries. Therefore, claiming compensation with regard to the injuries suffered as also the death of the deceased, the three claim petitions were preferred by the claimants.

3. Before the Tribunal, the claimants examined three witnesses as P.W.s 1 to 3 and marked Exs.P-1 to P-18, on the side of the respondents, R.W.s 1 and 2 were examined and Exs.R-1 to R-14 were marked. The Tribunal, based on oral and documentary evidence passed award directing

the owner of the vehicle, viz., the school to pay a part of the compensation, further directed the second respondent, viz., the insurer to pay the balance portion of the compensation as spelt out in the award and aggrieved by the said award, the present appeals have been directed as aforestated.

4. The learned counsel appearing for the owner of the vehicle, viz., the school, in C.M.A.Nos.2572, 2576 and 2577/2018 submitted that the accident had happened due to the negligent driving by the rider of the two wheeler. It is the submission of the learned counsel that the rider's visibility was curtailed in view of the incessant rain and the blocking of the view by the umbrella by the person sitting in the front of the vehicle, which resulted in the accident and it was not due to the fault of the driver of the van. Hence, the school is not liable to pay any compensation and the award of the Tribunal to the said effect requires to be set aside.

5. The learned counsel appearing for the financier, viz., the appellant in C.M.A.Nos.92, 101 and 102 of 2019 submitted that the appellant is a financier and cannot be mulcted with any liability to pay the

compensation. It is the further submission of the learned counsel that the van, which had been put to auction, was auction purchased by the third respondent in the claim petition and was used by the school and the documents towards name transfer had been provided to the auction purchaser on 6.6.2005 itself and that the accident had happened on 13.10.2005 and, therefore, no liability can be fastened on the appellant/financier. However, the material fact was not properly appreciated by the Tribunal resulting in an erroneous award, which requires to be interfered.

6. Per contra, the learned counsel appearing for the claimants that the Tribunal has properly appreciated the materials available on record and had passed the award, premising its finding that it is the duty of the financier to see to it that the vehicle carries an insurance when the same is auction sold to third parties and further, the auction purchaser is duty bound to have the vehicle insured and neither having performed their legal obligations, the award of the Tribunal does not suffer any perversity and the same requires to be sustained.

7. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The accident is not in dispute and the involvement of the vehicle of the deceased and the offending vehicle is also not disputed. However, the question put forth before this Court borders on negligence and liability. Therefore, this Court would take the issue of negligence and liability one by one on the basis of the findings rendered by the Tribunal to find out whether a just and reasonable finding has been given.

9. On the question of negligence, the case of the school, viz., the owner of the van is that the van was driven slowly, as there was incessant rain and that the two wheeler driven by the deceased, carrying the two injured minor children was driven negligently and due to reduced visibility, the two wheeler had dashed against the van, leading to the accident. The Tribunal has held that the negligence is on the driver of the van, which has led to the accident.

10. A perusal of the documents reveal that Ex.P-6, the MV report has held that there was no mechanical defect in both the vehicles. Ex.P-4 is the charge sheet with regard to the rash and negligent driving of the driver of the school van, which was registered based on the complaint given by one Ranganathan. In this backdrop, analysing the stand taken by the school that the visibility, which hindered the deceased in driving the vehicle, which was driven rash and negligently had been the cause of the accident, it is to be pointed that no sane person would be guided by such a stand taken by the school.

11. It is to be pointed out that while raining, the father of the minor children, taking his children to school, would be doubly careful in driving the vehicle, as he would not only be concerned with the rain pouring on his children, but would also be conscious of the pot holes, which would lead to a fall, thereby causing injuries to the children and in such circumstances, the father, who is since deceased, would definitely have driven his vehicle in a careful manner. But the van driver, who is sitting inside the van, would not be mindful of the predicament being faced by the motorists in the incessant rain and would only be concerned about his

reaching his destination on time, leading to his driving the vehicle in a rash manner to make up the lost time. The analysis above would be the only sane scenario, which would have happened resulting in the accident and only in that backdrop, the complaint had come to be lodged by one Ranganathan against the driver of the school van, which has been marked as Ex.P-4. Appreciating the above materials in proper perspective coupled with proper analysis of the ground realities, the Tribunal has rightly fastened the negligence on the owner of the van, which cannot be held to be erroneous or perverse and this Court is in agreement with the said finding and no interference is called for with the same.

12. Insofar as liability is concerned, as aforesaid, the Tribunal has fastened the same on both the owner of the vehicle, as also the financier of the vehicle, which is put in issue. In this regard, the date of change in the name of ownership is put in issue, as according to the financier, the letter of release of vehicle upon the same being auction purchased by the third respondent on 14.2.2005 has been intimated to the Regional Transport Authority and evidenced by Exs.R-2 to R-14. However, the third respondent, who had auction purchased the vehicle, submits that the

name change was effected only on 9.1.2006 and only on the said date, the ownership stood transferred to the third respondent and the accident having taken place on 13.10.2005, liability rests on the shoulder of the financier to pay the compensation.

13. There is no quarrel with regard to the facts narrated above. The Tribunal had gone into the aforesaid issue and had held that the onus is on both the school as well as the financier. The finding of the Tribunal is on the premise that a vehicle covered by a hire purchase agreement or lease or hypothecation, the person in possession is deemed to be the owner. However, in the case on hand, for non-payment of loan amount, the vehicle was seized and auction sold by the financier, the vehicle being hypothecated to the financier and the same is reflected in the records of the registering authority, the financier would not be absolved of its liability to meet out the commitment. The Tribunal has also gone on to hold that though such a situation exists on record, however, the third respondent, having purchased the vehicle in the auction sale and had been using the vehicle since 6.6.2005, cannot shriek its responsibility to pay the compensation, as the accident had happened while the vehicle was

used at the hands of the school. The findings arrived at by the Tribunal are backed by the requisite documentary evidence in the form of Exs.R-2 to R-14, which evidences that the vehicle was taken possession by the school on 6.6.2005 and had since been in the custody and usage of the school.

14. However, one aspect which needs to be stressed here is the fact that the vehicle, upon seizure, when found to be not with the requisite insurance, as mandated under the Motor Vehicles Act, it was a duty cast on the financier to see that the vehicle is properly insured before it is auction sold or see to it that it is insured before it is auction purchased and the financier cannot claim absolvence from its liability because the vehicle has been released from its hold. The Motor Vehicles Act stipulates that any vehicle, which is sold, is to have a valid insurance and even auction sale would be a sale within the meaning of sale provided for under the Motor Vehicles Act and, therefore, the liability of the financier is definitely made out.

15. Equally, the auction purchaser, viz., the third respondent,

before using the vehicle for the school, ought to have insured the vehicle and once the vehicle was released by the financier and put to use by the school, a liability is cast on the user of the vehicle against any untoward incident and in the absence of insurance, the duty falls on the user to compensate the loss sustained by the third party from the use of the vehicle.

16. The Tribunal, properly analysing the aforesaid facts, has cast the liability at 75 : 25 on the owner of the vehicle and financier and had awarded the compensation in the three claim petitions, which cannot be said to be erroneous or perverse and the same is confirmed.

17. Further, the compensation awarded in the claim petitions by no stretch could be termed to be excessive as the compensation is within the limits prescribed by the decisions of the Courts and, therefore, no interference is warranted with the award of the compensation as well.

18. Accordingly, the appeals are dismissed by confirming the awards passed by the Tribunal in the respective claim petitions. The

appellant in C.M.A.Nos.2572, 2576 and 2577 of 2018 is directed to deposit 75% of award amount and the appellant in C.M.A.Nos.92, 101 and 102 of 2019 is directed to deposit 25% of award amount to the credit of M.C.O.P.Nos.375, 399 and 400 of 2007 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this common judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeals. Consequently, the connected miscellaneous petitions are closed.

08.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accident Claims Tribunal,
(I-Additional District & Sessions Judge, Vellore District).

2.The Section Officer,
V.R.Section,
High Court, Madras.

M.DHANDAPANI, J.,

sp

C.M.A.Nos.2572, 2576 & 2577 of 2018 and 92, 101 & 102 of 2019

08.11.2023