



C.M.A.No.2237 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2237 of 2019

and

C.M.P.No.9522 of 2019

M/s.Cholamandalam MS General Insurance Company Limited,
Having its Office at,
Dare House, 2nd Floor,
N.S.C. Bose Road,
Chennai – 600 001.

... Appellant

Vs.

1.Dharani

2.Elumalai

3.Rajavelu

4.Govindaraj

5.M/s.Oriental Insurance Company Limited,
Having its Office at,
Subha Govindam Building,
2nd Floor, Imperial Road,
Cuddalore District.

... Respondents



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Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.9 of 2017, dated 24.09.2018 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Court (Fast Track Court), Arani, Thiruvannamalai District.

For Appellant : Mr.E.Rajadurai
for M/s.N.Vijayaraghavan

For Respondents : No appearance [R1 & R2]
Notice Dispensed with [R3 & R4]
Mr.K.Vinod [R5]

JUDGEMENT

Aggrieved by the award passed by the Motor Accidents Claims Tribunal, Additional District & Sessions Court (Fast Track Court), Arani, Thiruvannamalai District in M.C.O.P.No.9 of 2017, dated 24.09.2018, the insurance company has filed the present appeal.

2. When the matter is taken for hearing today, the learned counsel appearing for the appellant submitted that the respondents 3 and 4 remained *ex-parte* before the Tribunal and he has also made an



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endorsement to that effect. Hence, he submitted that their appearance may be dispensed with and accordingly, the notice to the respondents 3 and 4 is dispensed with.

3. The facts in brief are as follows :-

On 07.08.2009 at about 7.00 a.m., when the deceased was travelling in the private bus bearing Reg.No.TN 31 E 6991 belonging to the first respondent and insured with the third respondent, the said bus was driven in a rash and negligent manner by its driver and dashed against the lorry, which was going in a slow manner, bearing Reg.No.TN 28 K 1796, belonging to the second respondent and insured with the fourth respondent, as a result of which, the drivers of both the vehicles died and the deceased, who was a passenger in the bus, sustained grievous injuries and died and many other passengers were also injured in the said accident. The accident had happened due to the rash and negligent driving by the driver of the bus, owned by the first respondent and insured with the third respondent. Therefore, the claimants have filed a claim petition claiming a sum of Rs.10,00,000/- from the respondents 1 and 3 to be paid jointly and severally. The second respondent is the



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owner of the lorry, which was insured with the fourth respondent/appellant herein and they are also entitled to compensate the claimants.

4. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 11 documents viz., Ex.P.1 to Ex.P.11. On the side of the respondents, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 4 documents viz., Ex.R.1 to Ex.R.4. On considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.5,44,000/- under various heads as compensation by directing the fourth respondent to pay the said compensation to the claimants. Aggrieved by the same, the present appeal has been preferred by the insurance company.

5. The learned counsel appearing for the appellant submitted that, when the Tribunal has given a categorical finding that the accident had happened due to the rash and negligent driving by the driver of the bus belonging to the third respondent and insured with the fifth respondent and FIR has also been lodged against the driver of the bus and



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investigation also revealed that, it was only the driver, who had driven the bus negligently against whom charge sheet was filed and P.W.2, the eye-witness had also deposed on the same lines. Ignoring the evidence of R.W.2 and also the claims of connected victims numbering 58 marked as Ex.P.3 on the file of Additional District Judge, Trichy, the Tribunal has grossly erred in fixing the liability on the appellant to pay the compensation on the sole ground that the cleaner of the lorry has not been examined, is perverse, illegal and arbitrary and the same deserves to be set aside.

6. Per contra, the learned counsel appearing on behalf of the fifth respondent submitted that the Tribunal has properly appreciated all the evidence and in the absence of cleaner of the lorry insured with the appellant having not been examined, the Tribunal has rightly fastened the liability on the appellant to pay the compensation, which does not require any interference.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the fifth respondent. Though



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name of learned counsel for the first respondent has been printed in the cause list, however, no one appeared on behalf of the first respondent. Considering the pendency of the appeal, this Court is inclined to dispose of this appeal based on the materials available on record.

8. The factum and manner of the accident is not in dispute. The passengers, who had travelled in the bus belonging to the third respondent and insured with the fifth respondent, has suffered grievous injuries and many of whom have filed claim petitions, in all numbering 58, which has been marked as Ex.P.3 on the file of Additional District Judge, Trichy, including the claimants, who have filed the claim petition in respect of the death of the deceased.

9. The main grievance of the appellant herein is that, though the Tribunal has fixed the rash and negligent driving on the driver of the bus, however, has erroneously directed the appellant to pay the compensation, which needs to be interfered. To appreciate the aforesaid contention, a perusal of the material available on records, more especially, the deposition of P.W.2, who is an eye-witness to the occurrence reveals that



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the bus was driven in a rash and negligent manner and resultantly had caused the accident. The FIR/Ex.P.1 which has been lodged by the police and the investigation conducted on the said FIR also reveals that the driver of the bus had driven the same rashly and negligently and against whom a charge sheet was filed and his negligence had resulted in the accident. When the evidence on record, more particularly, Ex.P.1/FIR has been substantiated on all material particulars through the ocular testimony of P.W.2, who is an eye-witness to the occurrence, the reliance placed on the rough sketch by the Tribunal to fasten the liability on the appellant is wholly erroneous. Neither the third respondent, who is the owner of the bus nor the fifth respondent, who is the insurer of the said bus, had produced any material contra to the above evidence to point out that the lorry had also contributed to the accident. In the absence of any negligence much less contributory negligence on the part of the lorry insured with the appellant, the fixation of liability on the appellant to pay the compensation by the Tribunal is wholly erroneous. The Tribunal ought to have fixed the liability on the insurer of the lorry, namely the fifth respondent, who should have been directed to pay the compensation. Therefore, the order passed by the Tribunal is grossly



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perverse, unreasonable and arbitrary and for the reasons aforesaid, the said finding deserves to be set aside.

10. In the result, the appeal is allowed and the award passed by the Tribunal in M.C.O.P.No.9 of 2017 dated 24.09.2018 is set aside insofar as directing the appellant to pay the compensation to the claimants is concerned and this Court fixes the liability on the fifth respondent, namely the insurer of the bus belonging to the third respondent and the respondents 3 and 5 are jointly and severally labile to pay the compensation awarded by the Tribunal to the claimants. Accordingly, the fifth respondent is directed to deposit the compensation awarded by the Tribunal to the credit of M.C.O.P.No.9 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and 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 judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter. Any amount deposited by the appellant, the appellant is



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permitted to withdraw the same by making appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accidents Claims Tribunal, Additional District & Sessions Court (Fast Track Court), Arani, Thiruvannamalai District.

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



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M.DHANDAPANI, J.,

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