BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2022

Pronounced on : 09.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.2022 of 2013

The New India Assurance Company Limited,
Rep., by its Branch Manager,
Having office at Pillars Gate,
Opposite to Anna Stadium,
Bangalore. ...Appellant/ 2nd Respondent

Vs

1.M.Shanthi ... 1st Respondent/1st Petitioner

2.Mohan ... 2nd Respondent/2nd Petitioner

3.Suganthi ... 3rd Respondent/3rd Petitioner

4.Latha @ Karthika ... 4th Respondent/4th Petitioner

5.Murugan ... 5th Respondent/1st Respondent

6.M/s.Rathi Meena Travels,
Having Office at 262,
M.M.Adigal Salai,
Pondicherry. ... 6th Respondent/3rd Respondent

7.The Oriental Insurance Company Ltd.,
Rep., by its Branch Manager,
Having Office at 2407/21, II Floor,
Sathiyamoorthy Road, Pudukkottai. ... 7th Respondent/4th Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and award dated 01.04.2011 made in M.C.O.P.No.684 of 2007 on the file of the Motor Accidents Claims Tribunal/Additional Subordinate Judge, Kumbakonam.

For Appellant	: Mr.D.Sivaraman
For R1 to R4	: Mr.N.Subramani
For R7	: Mr.C.Jawahar Ravindran
for R5 & R6	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.684 of 2007 on the file of the Motor Accidents Claims Tribunal/Additional Subordinate Judge, Kumbakonam. The appellant herein is the second respondent, respondents 1 to 4 are the claimants 1 to 4. The respondents 5,6,7 herein are the respondents 1,3 and 4.

2.Brief substance of the claim petition is as follows:

On 18.06.2007, when the deceased Vinoth was travelling in a bus bearing registration number PY 01 Z2244, a tempo van bearing registration number TN 51 X 2800 going ahead of the said bus, the van was driven by its driver in a rash and negligent manner and the van suddenly took a turn towards its right, without giving any signal. On seeing this unexpected turning, the driver of the bus tried to avoid hitting against the van, turned the vehicle to his right, even then, the front portion of the bus slightly touched the right front side of the van. Due to the impact, the driver of the bus became nervous and the bus got off the road and stopped at a distance of 150 feet after hitting against a coconut tree. The driver and other passengers sustained multiple injuries. The deceased sustained serious injury and he died on the spot. The deceased was working as a fitter doing centring work and was earning Rs.200/- per day. The petitioners are his dependants and they claim a sum of Rs.10 Lakhs as compensation.

3.Brief substance of the counter filed by the second respondent is as follows:

The vehicle was insured with the respondent and the policy was in force at the time of accident. The driver of the van was having valid driving licence. The respondent denied the manner of the accident as stated in the petition. The van driver drove the vehicle in a very slow and cautious manner. It was the bus which came behind the van, was driven in a rash and negligent manner came from behind the van and dashed against the van. The bus driver was the sole reason for the accident. Since the bus driver and the other passengers sustained severe injuries, the FIR was registered against the van driver. The FIR and the MV report clearly reveals that the driver of the bus dashed against the van from behind. The respondent denied the age, avocation and income of the deceased. The claim is excessive. This respondent is not liable to pay compensation.

4.Brief substance of the counter filed by the third respondent is as follows:

The third respondent was the owner of the bus. The vehicle was insured with the fourth respondent. The driver holds valid driving licence. The accident took place only due to the rash and negligent driving of the van driver. The driver of the bus drove the vehicle in a careful and cautious manner. The petitioners are to prove the manner of accident. The age, earning capacity of the decesaed are denied. The amount claimed is excessive. The criminal case was registered only against the van driver. If at all, the liability is fixed on this respondents, the same is to be satisfied by the fourth respondent as there was valid insurance.

5.Brief substance of the counter filed by the fourth respondent is as follows:

The bus was insured with the respondent at the time of accident. The driver was having valid and effective driving licence. The respondent denied the avocation and income of the deceased. As per the averments in the petition, the bus driver was not responsible for the accident. Only the van driver was responsible for the accident. The police filed charge sheet only against the van driver. This respondent denied the age, avocation and income of the deceased. The third petitioner was a married woman and she is living with her husband, she is not a dependant of the deceased. The parents of the deceased are having substantial income through their other sons. The claim is excessive.

6.Three witnesses were examined and fourteen documents were marked on the side of the petitioner. One witness was examined and one document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.6,50,000/- as compensation. 80% of the compensation amount is payable by the second respondent and 20% of the compensation is payable by the third respondent.

7.Against the award, the second respondent filed the appeal on the following grounds:

The Tribunal is wrong in fixing the liability on the appellant. The entire negligence was only on the driver of the bus who drove the vehicle in a rash and negligent manner and dashed against the van from behind. After hitting the van, the bus dashed against a tree. The manner of accident itself shows that the entire negligence is on the bus driver. The FIR was given by the bus driver and hence the complaint was registered against the van driver. Filing of a charge sheet is not a conclusive proof. The Tribunal ought to have fixed the negligence in an independent manner. Fixation of negligence between the van driver and the bus driver at the ratio of 80:20 is unreasonable. The Tribunal is wrong in fixing the monthly income as Rs. 5000/-. The Tribunal fixed the age of the deceased as 37 years without considering the fact that the age of the third claimant was 21 years and there is no possibility of the mother of the deceased to be less than 40 years. The Tribunal ought to have deducted 50% of the income, since the deceased was unmarried. Awarding Rs.40,000/- towards loss of love and affection is excessive. The entire award amount is excessive.

8.On the side of the appellant it is stated that it was the bus which tried to over take the van at the time of accident. Since the bus was driven in a rash and negligent manner, the bus was dragged for 150 feet and hit a tamarind tree. The Tribunal failed to consider that the bus hit the van from the behind which itself is sufficient enough to fix the negligence on the bus driver. The Tribunal failed to consider that after hitting the van, the bus was dragged for a distance of 150 feet before it came to a halt. That reveals that the bus was rash and that it came in a high speed.

9.On the side of the appellant it is stated that the atleast 50:50 contributory negligence is to be fixed. A judgment of the Hon'ble Supreme Court reported in **2009 (1) TN MAC 638** in the case of **Raj Rani and Others v. Oriental Insurance Company Limited and others,** is cited, wherein it is held that,

> *"18. Hence in the insistent case, we find that there was contributory negligence on the part of the deceased and accordingly the claimant was entitled to only 50% of the total amount of Loss of Dependency."*

10.On the side of the appellant, a judgment of this Court reported in **2009 (2) TN MAC 491,** in the case of **Saroja and 4 others Vs Senthilkumar and another,** is cited, wherein it is held that,

> *"Tribunal, having believed evidence of P.Ws.2 & 3 and having negatived contention of Insurer that P.Ws.2 & 3 were interested witnesses, ought to have given finding that accident caused solely due to negligence on part of Van driver - Insurer though took stand that accident was due to negligence of deceased, no rebuttal evidence adduced before Tribunal - In absence of rebuttal evidence, Tribunal ought to have fixed liability on Van driver alone - Further, Criminal proceedings also filed against Van driver for rash and negligent driving - FIR / Ex.P.1 also proved about rash and negligent driving by Van driver - In view of categorical evidence of eyewitnesses and documentary evidence, held, finding of contributory negligence liable to be set aside."*

11.On the side of the appellant it is stated that it was the bus that came in a rash and negligent manner and hence after hitting the van, the bus was dragged to a distance of 150 feet which clearly proves that the bus driver was rash and negligent. R.W.1 has deposed that the place of occurrence is a slop and that the bus was dragged to some distance before it came to a halt, after hitting a tamarind tree.

12.On the side of the seventh respondent it is stated that it was the van which came in a rash and negligent manner. The Tribunal has fixed 80% negligence on the van driver and 20% negligence on the bus driver. The FIR was only against the van driver. The FIR was registered on the complaint of P.W.2. After investigation, the police filed charge sheet against the van driver. Copy of the charge sheet was marked as Ex.P2. The petitioner also have pleaded that the van driver was responsible for the accident. P.W.2 was examined as an eye witness. P.W.2, the driver of the bus has deposed that the van driver was negligent and he caused the accident. He has deposed that the it was the van driver who suddenly turned the vehicle on the right side. The van driver was not examined as a witness. The appellant has not chosen to examine any eye witness. Only because the driver of the bus is to be more cautious, the Tribunal has fixed 20% contributory negligence on the bus driver.

13.On the side of the seventh respondent it is stated that fixing 20% contributory negligence on the bus is wrong and the entire negligence ought to have been fixed on the van driver. On the side of the seventh respondent a judgment reported in **2010 (2) TN MAC 278 (DB)** in the case of **United**

India Insurance Company Limited and others vs Vasantha and others, is cited, wherein it is held that,

> *"Contributory Negligence - Plea of - Maintainability - Driver of Car, in which deceased was travelling, on noticing Lorry suddenly coming from petrol bunk, stopped car in order to leave way for Lorry - Lorry coming behind car hit against car and both driver and deceased died on spot as categorically stated by eye witness / P.W.2 - Tribunal on analysis of evidence holding that accident took place due to rash and negligent driving of Lorry driver - Appellant / Insurer though taken defence of contributory negligence of car driver, no rebuttal evidence adduced - Criminal case also registered against Lorry driver - In absence of rebuttal evidence plea of contributory evidence, held, not acceptable - Finding of Tribunal upheld."*

14. A copy of the FIR was marked as Ex.P1, Motor Vehicle Inspector report was marked as Ex.P3 and Ex.P4, Charge sheet was marked as Ex.P12. Normally, there is a possibility of a vehicle to be dragged to some distance, after hitting another vehicle and the speed of the vehicle also may be a reason for the dragging of a bus. Considering the fact that the bus was a heavy vehicle and considering the fact that the vehicle was dragged to some distance, before coming to a halt, the Tirbunal has fixed 20% contributory

negligence on the bus driver. From the evidence of P.W.2 and from Ex.P1, Ex.P3, Ex.P4 and Ex.P9, the Tribunal fixed 80% responsibility on the van and 20% responsibility on the bus driver.

15.Considering the size of the bus and considering the fact that the bus was dragged to a distance, after hitting the van and considering the fact that the complaint was lodged only by the bus driver, and considering the fact that responsibility is more on the bus driver who is driving a heavy vehicle, it is decided that the responsibility is to be fixed as 30% on the bus driver and 70% on the van driver.

16.On the side of the appellant it is stated that the Tribunal hsa fixed the monthly income as Rs.5000/- without any documentary evidence to that effect. On the side of the claimant it is stated that the deceased was employed as a fitter doing centring work and he was earning Rs.5000/- per month, the receipt issued by the builders was marked as Ex.P9 and Ex.P10, P.W.3 was examined to prove the income. Considering the date of accident, the notional income is fixed as Rs.6000/-.

17.On the side of the appellant it is stated that the Tribunal deducted 1/3 of the income towards personal expenses, which is wrong. Since the deceased is a bachelor, 50% ought to have deducted. Since the deceased is a bachelor, 50% ought to have deducted for the own expenses of the deceased. After deducting 50%, the deceased might have contributed Rs.3000/- (50% of 6000), to his family.

18.On the side of the claimant it is stated that the age of the deceased at the time of accident is 19 years and the award is to be enhanced. It is stated that the Tribunal applied multiplier on the basis of the age of the parents and not on the age of the deceased and pray the compensation to be enhanced.

19.In Ex.P2, post mortem report, the age of the deceased was mentioned as 19 years. Ex.P14, ration card also reveals the age and hence the Tribunal fixed the age of the deceased as 19 years which is reasonable. The law is now well settled that the age of the deceased is to be taken into consideration for fixing the multiplier. The age of the deceased at the time of accident is 19 years and hence the Tribunal fixed the multiplier at 16. Considering the date of accident, it is decided that the multiplier adopted by the Tribunal as per schedule 2 of the Motor Vehicle Act is reasonable. By applying multiplier 16, the loss of income is calculated as Rs.5,76,000/- (3000 x 12 x 16).

20.The Tribunal has awarded Rs.10,000/- for each of the claimants towards loss of love and affection. The Tribunal has awarded Rs.5,000/- towards transport expenses, Rs.5000/- towards funeral expenses which are all reasonable. The compensation is calculated as follows:

Loss of income	-	Rs.5,76,000/-
Loss of love and affection	-	Rs. 40,000/-
Transport expenses	-	Rs. 5,000/-
Funeral expenses	-	Rs. 5,000/-
Total	-	Rs.6,26,000/-

Hence the liability is fixed as 30:70 against the 7th respondent and the appellant. The appellant is liable to pay Rs.4,38,200/- (70% of the award amount) with proportionate interest at the rate of 7.5% from the date of petition till the date of deposit with costs and the seventh respondent is directed to pay Rs.1,87,800/- (30% of the award amount) with proportionate interest at the rate of 7.5% from the date of petition till the date of deposit with proportionate costs.

21. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is hereby confirmed as Rs.6,26,000/- (Rupees Six Lakhs Twenty Six Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant / New India Assurance Company is directed to deposit Rs.4,38,200/- (Rupees Four Lakhs Thirty Eight Thousand and Two hundred only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate interest and with proportionate cost to the credit of Motor Accidents Claims Tribunal/Additional Subordinate Judge, Kumbakonam, within a period of eight weeks from the date of receipt of a copy of this order ; and

(iii) the seventh respondent herein / Oriental Insurance Company is directed to pay a sum of Rs.1,87,800/- (Rupees One Lakh Eight Seven Thousand and Eight hundred only) (if not already deposited) together with proportionate interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with proportionate cost to the credit of Motor Accidents Claims Tribunal/Additional Subordinate Judge, Kumbakonam, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the appellant and the seventh respondent herein, the first respondent herein / first claimant is permitted to withdraw her share of Rs.3,26,000/- (Rupees Three Lakhs Twenty Six Thousand only)with proportionate interest and cost. The respondents 2 to 4 herein / 2 to 4 claimants are permitted to withdraw a share of Rs.1,00,000/- (Rupees One Lakh only)**each** with proportionate interest by adhering to the procedures. The claimants are not entitled to interest for the default period, if there is any.

09.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Additional Subordinate Judge, Kumbakonam.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai

R. THARANI, J

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Pre-delivery Judgment made in C.M.A(MD)No.2022 of 2013

09.02.2023