



C.M.A(MD)No.796 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.02.2023

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THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)No.796 of 2021

and

C.M.P(MD)No.7472 of 2021

The Manager,
TATA AIG General Insurance Company Limited,
No.1, Ethiraj Salai, Egmore,
Chennai-600 008.

... Appellant/
4th Respondent

Vs

1.Maheshwari

2.Minor.Gunashree
*(Minor R2 is represented by her mother
and natural guardian, the 1st Respondent
Maheshwari)*

3.Sulochana

4.Subramanian

5.Minor.Prithiyankaradevi

..Respondents 1 to 5/
Petitioners

*(Minor R5 is represented by her mother and
natural guardian, the 3rd Respondent
Sulochana)*

6.Rajesh

...6th Respondent/
1st Respondent

7.The Manager,
The Reliance General Insurance Company Limited,
Door No.15A, B.L.A.Kanaga Towers,



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2nd Floor, 11th Street, Thillai Nagar, Main Road,
Trichy-620 018.

...7th Respondent/
2nd Respondent

8.Robert

...8th Respondent/
3rd Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to set aside the judgment and decree made in M.C.O.P.No.712 of 2019, dated 09.12.2020 on the file of the Motor Accidents Claims Tribunal, Special District Court, Thanjavur.

For Appellant : Mr.J.S.Murali
For R1 to R5 : Mr.G.Kannan
For R6 : No Appearance
For R7 : Mr.V.Sakthivel

JUDGMENT

The appeal is filed against the judgment and decree of the Motor Accidents Claims Tribunal, Special District Court, Thanjavur in M.C.O.P.No.712 of 2019, dated 09.12.2020.

2. The appeal is filed questioning the negligence alone.

3. The brief facts necessary for disposal of the appeal are as follows:

On 27.10.2018, when the deceased was riding his two wheeler bearing Registration No.TN-68-K-0473 along with his friend Selva Kumar, the two



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wheeler was hit by a bullet motor cycle bearing Registration No.TN-49-BQ-4615, which was coming in the opposite direction. Due to the impact of the accident, both the deceased and the pillion rider fell on the road. While so, lorry bearing Registration No.TN-30-AA-7589 came in the same direction ran over the deceased and the pillion rider crushing them to death. The bullet motor cycle bearing Registration No.TN-49-BQ-4615 was insured with the appellant Insurance company and the lorry bearing Registration No.TN-30-AA-7589 was insured with the seventh respondent in the appeal. The deceased was working as an Office Assistant in the Court of Arbitration for Jurisprudence and Criminal Court, Papanasam and earning a monthly income of Rs.20,480/-. The deceased was aged 31 at the time of the accident. The legal heirs of the deceased rider of the two wheeler therefore filed the claim petition claiming a sum of Rs.75,00,000/- as compensation.

4. The Tribunal on an assessment of the entire pleadings and evidence on record, on the issue of negligence held that the deceased, the rider of the third respondent's bullet motor cycle and also the Driver of the lorry belonging to the first respondent were negligent and responsible for the accident and therefore apportioned the negligence at 10% for the deceased and 45% each for the appellant and the seventh respondent.



5. The respondents 1 and 3 remained *ex parte* before the Tribunal and the respondents 2 and 4 as the insurers of the respondents 1 and 3 filed counters. The respondents 2 and 4 apart from denying all the averments raised in the claim petition stated that the negligence of the rider of the two wheeler resulted in the accident. The second respondent attributed contributory negligence to the Driver of the fourth respondent insurance company.

6. The Tribunal awarded a sum of Rs.40,58,312/- along with 7.5% interest as compensation after considering the entire evidence on record.

7. Aggrieved by the finding of the Tribunal on the issue of negligence alone, the appellant insurance company has filed the present appeal.

8. As far as the quantum of compensation determined by the Tribunal, the insurance company has no issues and the appeal is confined to the issue of negligence alone. The Tribunal relied on the evidence of P.W.2, who was an eye witness to the accident and the FIR Exhibit B1 to return a finding of negligence against all the three vehicles.



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9. The learned counsel for the appellant submitted that the apportionment of negligence by the Tribunal on the rider of the bullet motor cycle which was insured with the appellant insurance company at 45% was on the higher side and without consideration of the fact that it was the seventh respondent's lorry that ran over the deceased and caused the death. The immediate cause for the death was that of the seventh respondent's vehicle. The learned counsel relied on the FIR filed by the father of the deceased and after referring to the contents thereof submitted that the driver of the seventh respondent drove the vehicle in a rash and negligent manner and ran over the deceased thereby crushing him to death. The learned counsel after referring to the evidence of P.W.2, eye witness submitted that even the eye witness had stated that the lorry ran over the deceased, who fell on the road due to the impact of the head on collision with the appellant's vehicle. The learned counsel therefore submitted that the contributory negligence of the seventh respondent was greater than the appellant and therefore, the apportionment of negligence should be re-fixed.

10. The learned counsel for the claimants submitted that the finding of the Tribunal is based on the evidence on record and the same does not call for any interference.



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11. The learned counsel for the seventh respondent on the other hand opposed the apportionment of negligence at 45% against its Driver and for the said submission relied on the evidence of the eye witness.

12. I have heard all the learned counsels and perused the records.

13. The manner of accident is not disputed. It is an admitted fact that the deceased while riding his two wheeler was hit by the bullet motor cycle insured with the appellant and fell on the road. While so, the lorry which came on the same side ran over the deceased and the pillion rider and crushed them to death. In this scenario, it is to be seen as to whether the apportionment of negligence by the Tribunal is reasonable or not. It is pertinent to note here that no independent evidence was filed by the seventh respondent before the Tribunal. The appellant examined one Karthi as R.W.1, who is the official of the appellant insurance company. The appellant further filed Exhibit R1 containing MVI report of the vehicle bearing Registration No.TN-58-K-0473. The claimants on the other hand filed FIR, dated 28.10.2018 which was registered by the father of the deceased as, Exhibit P1. The post mortem report was marked as Exhibit P2 and the other documents evidencing the salary etc were marked by the claimants.



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14. A reading of the FIR, Exhibit P1 shows that there was a head on collusion between the deceased's two wheeler Honda Activa and the bullet motor cycle insured with the appellant and as a result of the impact of the collusion, the deceased as well as the pillion rider, Selva Kumar fell on the road and at that time, the lorry insured with the seventh respondent which came in the same direction ran over the deceased and the pillion rider and crushed them to death. P.W.2, who was an eye witness to the accident deposed that the Driver of the bullet motor cycle came on the wrong side of the road and hit the deceased Honda Activa head on and as a result of the collusion deceased fell on the road. The lorry which came from behind ran over the deceased and the pillion rider and crushed them to death. P.W.1 was cross-examined and in the cross-examination not much was elicited from him regarding the negligence of the appellant or the seventh respondent. The father of the deceased was examined as P.W.1 and he admitted that he had not seen the accident and therefore, the evidence of P.W.1 is not of much help.

15. I have perused the entire evidence on record and I am of the view that though the initial negligence was that of the bullet motor cycle rider, the driver of the lorry which came in the same direction could have averted the accident had he driven the same at reasonable speed and kept reasonable



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distance from the two wheeler. The post mortem report as Exhibit P2 clearly shows that the cause of death was injury to the internal organs like lung, brain and fracture of the ribs. In the light of the post mortem report, the submission of the learned counsel for the appellant that if the lorry was driven at reasonable speed and kept reasonable distance then death could have been averted is justified.

16. I am therefore of the view that the apportionment of negligence as far as the appellant is concerned cannot be equal to that of the seventh respondent vehicle. I therefore apportion the negligence of the appellant's driver at 35%, 55% for the seventh respondent vehicle and 10% for the deceased vehicle. In my view, the Tribunal has failed to note that the lorry is a heavier vehicle and as per the post mortem report the injuries referred to therein were caused due to the seventh respondent's lorry running over the deceased and crushing him to death.

17. In the light of the above discussion, the appeal is partly allowed and the apportionment of the negligence is refixed at 35% for the appellant, 55% for the seventh respondent and 10% for the deceased. As already stated supra, the appeal is confined only to the issue of negligence. Therefore, with regard



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to all other aspects, the award of the Tribunal is confirmed. The appellant as well as the seventh respondent are directed to deposit the award amount in their respective proportions within a period of four weeks from the date of receipt of copy of this order, if not already deposited. On such deposit being made by the appellant and the seventh respondent, the claimant is permitted to withdraw the same. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.02.2023

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

- 1.The Motor Accident Claims Tribunal
Special District Court, Thanjavur.
- 2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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N.MALA, J

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