



C.M.A.(MD)No.652 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.03.2023

Delivered On : 13.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.652 of 2019

The Oriental Insurance Company Limited,
Rep. By its Branch Manager,
1st Floor Layola Building Salai Road,
Dindigul Town and District,
Dindigul Court Ilakka.

.. Appellant

Vs.

1.Ramanathan

2.The Tamil Nadu State Transport Corporation Ltd.,
Rep. By its Divisional Manager,
Kumbakonam Railway Station New Road,
Kumbakonam Kaspas,
Thanjavur District.

3.Senthilkumar

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment made in M.C.O.P.No.131 of 2011, dated 28.02.2019, on the file of the Motor Accidents Claims Tribunal cum III Additional District and Sessions Judge, Thanjavur at Pattukottai.



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For Appellant
For 1st Respondent
For 2nd Respondent
For 3rd Respondent

: Mr.E.Chandrasekaran
: Mr.M.R.S.Prabhu
: Mr.D.Siva Raman
: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.131 of 2011 dated 28.02.2019, on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Thanjavur at Pattukottai.

2.The appellant herein is the third respondent, the first respondent herein is the petitioner, the second respondent herein is the first respondent and the third respondent herein is the second respondent in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.131 of 2011, claiming compensation for the death of one Palaniammal, in an accident that took place on 24.11.2010. The Tribunal has awarded a sum of Rs.9,89,720/- (Rupees Nine Lakhs Eighty Nine Thousand Seven Hundred and Twenty only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.131 of 2011 is as follows:



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On 24.11.2010, at about 04.30 a.m., when the deceased Palaniammal was travelling in a bus bearing registration No.TN-68-N-0087, the bus driver drove the vehicle in a rash and negligent manner and dashed against the lorry bearing registration No.TN-57-W-9617, which was proceeding in front of the bus. The deceased sustained injury and she died in the hospital. The deceased was doing milk vending business and was earning Rs.5,000/- (Rupees Five Thousand only) per month. The petitioner is the dependant of the deceased and he claimed a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) as compensation.

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

It was the lorry driver, who suddenly reduced the speed without any signal and hence, the accident had happened due to the negligence of the lorry driver.

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

The lorry driver drove the vehicle in a slow and cautious manner. It was the bus driver, who drove the vehicle in a rash and negligent manner and dashed against the lorry on the rear side.



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6. On the side of the petitioner, two witnesses were examined and 12 documents were marked. On the side of the respondents therein, one witness was examined and no documents were marked. After trial, the Tribunal has awarded a sum of Rs.9,89,720/- (Rupees Nine Lakhs Eighty Nine Thousand Seven Hundred and Twenty only) as compensation and 50% of the compensation to be paid by the third respondent therein/insurance company and remaining 50% of the compensation to be paid by the first respondent therein/Transport Corporation.

7. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:-

The Tribunal failed to consider that the FIR was against the bus driver. The claimant claimed compensation only against the Corporation bus. The Tribunal is wrong in fixing 50% responsibility on the lorry driver. Contributory negligence cannot be considered in this case. The lower Court ought to have awarded only Rs. 50,000/- (Rupees Fifty Thousand only) towards no fault liability. It was the bus which failed to maintain safe distance from the truck running ahead of the bus. The driver of the bus was rash and negligent. No liability can be fastened on the lorry. Under Section 23 of the Rules of the Road Regulations, the driver of the motorcycle moving behind another vehicle shall keep sufficient distance from the other vehicle to avoid collision, if the vehicle in front should suddenly slow down or suddenly



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8.On the side of the appellant, it is stated that there was collision between the bus and the lorry. The lorry was going ahead of the bus. Two claim petitions in M.C.O.P.Nos.131 of 2011 and 301 of 2011 were filed claiming compensation that arose out of the same accident. One of the passengers in the bus died and one of the passengers in the bus was injured. In the injured case, entire amount was settled by the Transport Corporation. There was no appeal filed by the Transport Corporation in that case and the liability is to be fixed against Transport Corporation. In this case, 50% negligence was fixed on the insurance company and on the Transport Corporation. The entire negligence ought to have been fixed on the bus.

9.On the side of the first respondent, it is stated that the quantum was not questioned in the appeal and that two different stands cannot be taken with regard to the same accident.

10.On the side of second respondent, it is stated that the lorry driver failed to give signal and that leads to the accident. A copy of the FIR was marked as Ex.P1. P.W.2 has deposed that the bus driver was rash and negligence. R.W.1 has deposed that the lorry which was proceeding in front of the bus slowed down without giving



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any signal.

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11.On the side of the appellant, a copy of the decree in M.C.O.P.No.301 of 2011 was filed wherein in another claim petition that arose on the same accident, entire liability was fixed against the bus driver. On the side of the appellant, it is stated that the entire amount was settled in M.C.O.P.No.301 of 2011 and that there was no appeal against in M.C.O.P.No.301 of 2011 and that two different stands cannot be taken with regard to the same accident.

12.In the FIR, the bus driver was mentioned as the accused. In the evidence of P.W.2, in M.C.O.P.No.301 of 2011, it is stated that the bus driver was rash and negligence. The bus hit the lorry from behind. For the above reasons, the entire responsibility is fixed on the bus driver.

13.There is no dispute with regard to quantum. No question was raised in the appeal regarding the quantum fixed by the Tribunal. Hence, it is decided that the insurance company is to be exonerated from the liability. The entire liability is fixed on the transport Corporation. Hence, the second respondent/transport Corporation is liable to pay the compensation.



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14.In the result, this Civil Miscellaneous Appeal is **allowed**. The appellant is exonerated from the liability and the liability is fixed on the second respondent/Transport Corporation. The first respondent is entitled to a sum of Rs. 9,89,720/- (Rupees Nine Lakhs Eighty Nine Thousand Seven Hundred and Twenty only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit and costs. The second respondent is directed to deposit the aforesaid award amount with 7.5% interest from date of the claim petition till the date of deposit and costs and the amount less any amount deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On deposit, the first respondent is permitted to withdraw the award amount, after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. No Costs.

13.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

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To

- 1.The III Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Thanjavur at Pattukottai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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