

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.03.2023

PRONOUNCED ON : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.920 of 2014
and
Cross Objection No.9 of 2023
and CMP(MD).No.2180 of 2023

The General Manager
Tamil Nadu State Transport Corporation
Maruthupathy Nagar
Karaikudi Town
Sivagangai

.....Appellant
/ Respondent in Cross Objection

Vs.

1.Ravi

2.Kalyani

...Respondents in
/Cross Appellants

PRAYER in CMA(MD).No.920 of 2014:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal, set aside the judgement and decree dated 04.01.2014 passed in M.C.O.P.No.13 of 2013 on the file of the Motor Accident Claims Tribunal/Sub Court, Paramakudi.

PRAYER in Cross Objection No.9 of 2023: - Cross Objection has been filed under Order 41 Rule 22 read with Section 173 of the Motor Vehicles Act, to enhance the award dated 04.01.2014 made in MCOP.No.13 of 2013 on the file of the Motor Accident Claims Tribunal /Sub Court, Paramakudi.

For Appellant : Mr.P.Prabhakaran
in the appeal
& Respondent in the Cross Objection

For Respondents : Mr.D.Senthil
in the appeal and
Cross Objector in Cross Objection

J U D G M E N T

The present appeal has been filed by the Transport Corporation challenging the award passed by the Motor Accident Claims Tribunal primarily on the ground of liability.

2.The claim petition has been filed by the parents of the deceased who had driven a two-wheeler from Pillaiyarpatti to Paramakudi. While the two-wheeler was nearing Okkur at around 4.30 p.m, the respondent Transport Corporation bus came from the opposite direction and dashed against the motor bike in which the deceased died on the spot. An F.I.R in Crime No.1202 of 2002 was registered as against the bus driver on the

file of Sivagangai Town Police Station. The accident has happened only due to the rash and negligent driving of the bus driver. The claimants had further contended that the deceased was studying first year Diploma and the parents have prayed for a sum of Rs.10 lakhs towards compensation.

3.The Transport Corporation has filed a counter contending that the deceased had driven the motor bike in which there were two pillion riders and hence, it is a clear violation of the provisions of Motor Vehicles Act. They have further contended that the two wheeler hit against another two wheeler and because of the said impact, it dashed against the bus on the right bumper and the accident had happened. They have further contended that the driver of the bike namely Vignesh did not have any driving license.

4.The Tribunal after considering the oral and documentary evidence, had arrived at a finding that since the bike was driven in triples, the driver of the motor bike is also responsible for the accident. In view of the said findings, the Tribunal had arrived at a conclusion that both the bike driver as well as the bus driver are 50:50 responsible for the said accident and the claimants would be entitled to only 50% of the compensation. The Tribunal after considering the quantum, finally

arrived at a finding that the claimants are entitled to Rs.6,35,000/- and after deducting 50% towards Contributory Negligence, an award of Rs.3,17,500/- was passed. Challenging the said award, the Transport Corporation has filed the above appeal.

5.The claimants have filed Cross Objection No.9 of 2023 challenging the compensation of 50% towards contributory negligence on the bike driver and for enhancement of compensation.

6.The learned counsel for the appellant had contended that even as per the claim petition, three persons have travelled in the bike which was driven by the son of the claimants. When there is a clear violation of the statutory provisions, the Corporation is not liable to pay any compensation. He had further contended that if one or two persons have travelled in the bike, they could have better control over the vehicle and they would be in a position to stop the vehicle in case of any emergency. However, when three persons have travelled in a bike, they would not be in a position to control the vehicle and stop the same when they are dashed against by another two wheeler.

7.The learned counsel for the appellant had further contended that the deceased Vignesh was not having valid and effective driving license

at the time of accident and therefore, there is a violation of policy condition and they are not entitled to receive any compensation. He had further contended that the award amount of the Tribunal is already on excessive side and therefore, the request of the claimants for enhancement of compensation is not legally sustainable.

8.The learned counsel had further contended that the Tribunal was right in fixing 50:50 responsible on the drivers of both the vehicles. Therefore, there cannot be any grievance on the side of the claimants with regard to the apportionment of liability. Hence, he prayed for allowing the appeal in entirety and exonerate the Transport Corporation, in view of the triples driving and no holding of the driving license by the deceased person.

9.Per contra, the learned counsel appearing for the respondents/claimants had relied upon the judgement of the Hon'ble Supreme Court reported *in 2020 (1) TN MAC P 161 (Mohammed Siddique & another Vs. National Insurance Co.,Ltd. & others)* to contend that mere fact the deceased was driving the motor cycle along with two others may only be violation of law, but such violation itself cannot lead to a finding of contributory negligence, unless it is

established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There should be a casual connection between the violation and the impact of the accident upon the victim. Therefore, according to the learned counsel appearing for the respondents, the accident has happened only due to the rash and negligent driving of the bus driver that has come from the opposite direction. Whether there was one pillion rider or two pillion riders, would not have changed the impact of the accident upon the victim.

10.The learned counsel for the respondents had further contended that the respondent Corporation had examined its driver. After chief examination, RW1 has not turned up for cross examination. Therefore, the evidence of the RW1 namely the driver of the bus has been eschewed by the Tribunal. When the respondent Corporation has not let in any oral evidence, the plea of contributory negligence does not stand proved. Though the Transport Corporation has raised the plea that the deceased was not having a driving license, no efforts have been taken on either side to establish the said fact.

11.The learned counsel for the respondents had further contended that the multiplier adopted by the Tribunal taking into consideration the age of the claimants is erroneous and he prayed that multiplier 18 should have been adopted. He had further contended that each one of the claimants should have been awarded Rs.40,000/- each for loss of filial consortium and Rs.20,000/- towards funeral expenses and Rs.10,000/- towards transport expenses. He had further contended that the claimant's son being a Diploma Student, future prospects should have been taken into consideration at the time of fixing of the compensation.

12.I have considered the submissions made on either side and perused the materials available on record.

13.It is the specific case of the claimants that the bus belonging to the Transport Corporation coming from the opposite direction had dashed against the motor bike and it has resulted in the accident in which their son had passed away.

14.The Transport Corporation had filed a counter contending that the bike had hit against another bike and due to the said impact, the bike in which the deceased was travelling had hit against the Transport Corporation Bus. In order to prove the said contention, the transport

corporation has not let in evidence whatsoever. The driver of the bus who was examined as RW1 has not turned up for his cross examination and the evidence has been eschewed by the Tribunal. The rough sketch prepared by the Sub Inspector of Police marked as Exhibit P3 will indicate that the accident has happened only inside the lane which is meant for the vehicle moving in the north-south direction. Therefore, it is clear that the contention of the Transport Corporation that the accident has happened due to the rash and negligent driving of the deceased has not been established.

15.The learned counsel for the appellant had contended that while the deceased was driving the bike, two other pillion riders were there and this has contributed to the accident. If really there was one pillion rider, the driver of the motor bike could have controlled the vehicle in a proper manner and could have avoided the accident. As rightly pointed out by the learned counsel for the respondent, unless the respondent is able to establish that only because of the triples driving, the accident had taken place or the impact would not have been that much if there is no triples driving, the said defence cannot be raised on the part of the respondent corporation.

16.The Hon'ble Supreme Court in a judgement reported *in 2020 (1) TN MAC P 161 (Mohammed Siddique & another Vs. National Insurance Co.,Ltd. & others)* has held that the burden is upon the respondents to establish that there was contributory negligence on the part of the deceased by proving that the accident has happened only due to the triples driving of the vehicle. In the present case, the accident has happened within the lane, meant for the vehicles moving in north-south direction. Therefore, it is clear that the bus belonging to the respondent corporation had strayed into the adjacent lane meant for the vehicle coming from the opposite direction and this has resulted in the accident. Therefore, this Court is of the opinion that contributory negligence cannot be attributed to the deceased who had driven the two-wheeler.

17.The learned counsel for the appellant had contended that the deceased did not have any driving license. Though the said plea has been specifically raised in the counter, the claimants have not chosen to produce the driving license of the deceased person. Therefore, this Court is constrained to draw adverse inference as against the claimants and arrive at a conclusion that the deceased was not having driving license at the time of accident. Therefore, this Court is of the opinion that 10% of

the award amount has to be deducted towards non-holding of the driving license considering the manner in which the accident has taken place.

18.The Tribunal had taken into consideration the notional income of a Diploma Student at Rs.7,500/- per month and had erroneously applied multiplier of 13 based upon the age of the claimants. Being a bachelor, 50% amount to be deducted towards personal expenses. Therefore, the monthly notional income could be arrived at Rs.3,750/- and applying multiplier of 18, the total compensation under the head of loss of income would be at Rs.3,750/- X12X18= Rs. 8,10,000/-. The loss of filial consortium, this Court is inclined to award a sum of Rs.40,000/- to each instead of Rs.20,000/- each that is awarded by the Tribunal. This Court is inclined to award a sum of Rs.15,000/- towards funeral expenses and Rs.5,000/- towards transport charges. The total compensation could be arrived at Rs.9,10,000/-. Out of which, 10% should be deducted towards non-holding of the driving license by the deceased. Therefore, the total compensation of Rs.3,17,500/- awarded by the Tribunal is enhanced to Rs.8,19,000/-. The enhanced amount will carry interest at the rate of 7.5% from the date of filing of the claim petition. The

claimants have to deposit the deficit Court fee before drafting of the decree by this Court.

19.In view of the order passed by this court in CMP(MD).No.2183 of 2023 dated 28.02.2023, the claimants shall not be entitled to claim interest for the enhanced amount for the period of 3052 days.

20.The appeal filed by the Transport Corporation is dismissed and the Cross Objection is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

31.03.2023

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

1. The Motor Accident Claims Tribunal/
Subordinate Judge, Paramakudi.

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

CMA(MD).No.920 of 2014 and Cross Obj.No.9 of 2023

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.920 of 2014
and
Cross Objection No.9 of 2023
and CMP(MD).No.2180 of 2023

31.03.2023