



C.M.A(MD)No.1265 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

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and

C.M.P(MD)No.12144 of 2017

The Bajaj Allianz Insurance Company Ltd.,
Through its Branch Manager,
Door No.97/498, 5th Floor,
Sana Kattima Building,
Poonamallee High Road,
Arumbakkam, Chennai.

... Appellant/5th Respondent

Vs.

1.A.Hariraman

2.H.Balamurugan

3.H.Geetha

... Respondents/Petitioners

4.S.Prakash

5.S.Gopal

6.The United India Insurance Company Ltd.,
Through its Branch Manager,
Door No.23-E, EVR Road,
Trichy District.

7.M.Malaichamy

... Respondents/Respondents 1-4



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accidents Claims Tribunal / 6th Additional District Judge of Madurai in M.C.O.P.No.1339 of 2015, dated 03.05.2017 by allowing this appeal.

For Appellant : Mr.V.Sakthivel

For R1-R3 : Mr.Sasidharen Tamilkani

For R4,R5&R7 : No Appearance

For R6 : Mr.I.Suthakaran

JUDGEMENT

The present appeal has been filed by the 5th respondent in the claim petition challenging the award in M.C.O.P.No.1339 of 2015 on the file of the Motor Accident Claims Tribunal, Madurai primarily challenging the fixation of 50% of negligence on the owner of the car in which the deceased was travelling.

2. According to the claimants, the deceased Nageswari was travelling in a car owned and driven by one Malaichamy. The said car was insured with the appellant insurance company.



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3. According to the claimants, the car was proceeding from south to north on Trichy-Madurai National Highways. Near Viralimalai Kondamanayakkanpatti junction road, the bus belonging to the 1st respondent was coming from the north to south direction, suddenly turned on the right hand side with full speed without observing and adhering the traffic rules. Due to un-controllable speed, he allowed the bus on his left rear side to dash against the 4th respondent's car. In the said accident, all the persons had passed away.

4. The claimant had contended that she was self-employed and receiving an income of Rs.10,000/-. The 3rd respondent has filed a counter contending that only the car was driven in a rash and negligent manner. The fact that the rear side of the bus got damaged will clearly indicate that the bus has already crossed the junction and only thereafter, the car dashed against the left side rear portion of the bus. Therefore, there was no negligence on the part of the driver of the bus.

5. The 4th respondent who is the owner of the car had filed a counter that the bus driver had suddenly turned to his west side without observing any traffic rules and due to his uncontrollable speed, he allowed the bus on his left rear side to dash against the respondent car.



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6. The 5th respondent who is the appellant herein and the insurance company of the car had filed a counter contending that only the bus driver had driven the vehicle in a rash and negligent manner and dashed against the car.

7. The tribunal after considering the oral and documentary evidence had arrived at a finding that the car driver while crossing the junction should have waited for the bus to cross. It has further found that the bus driver should have also verified whether any vehicle is coming from the south to north direction and only thereafter, he should have crossed the national highways to reach the branch road. In view of the said findings, the trial Court has fixed 50% liability on the owner of the car and the balance 50% liability on the owner of the bus and directed the respective insurance companies to indemnify the owners.

8. The tribunal had fixed the quantum of compensation at Rs.6,49,000/- and directed the 3rd respondent insurance company and 5th respondent insurance company to share the said liability. Challenging the said award, the 5th respondent insurance company has filed this present appeal.



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9. The learned counsel appearing for the appellant (the insurance company of the car) had contended that on the side of the respondents, the driver of the bus has not been examined to prove the contributory negligence on the side of the car driver. Therefore, the tribunal ought not to have fixed 50% liability on the driver of the car. He further contended that the driver of the bus being in a better position to see the vehicles coming from the opposite directions, he should have visualized the car coming from the opposite direction. He further contended that the car is proceeding from south to north in the proper lane. However, the bus which was proceeding from north to south had suddenly taken a right turn and attempted to cross the national highways to reach the branch road on the western side. Therefore, the driver of the bus alone should have been more cautious while crossing the said junction. Therefore, the tribunal ought not to have fixed 50% liability upon the driver of the car and consequentially upon the 5th respondent / appellant insurance company.

10. Per contra, the learned counsel for the respondents had contended that a very reading of the claim petition will clearly indicate that the bus has been damaged on the rear side. This will clearly indicate



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that the bus has already crossed the national highways and it had entered into the branch road on the western side. Only thereafter, the car had dashed against the rear side of the bus. Therefore, the tribunal was right in holding that the car driver was also responsible for the said accident. Hence, he prayed for dismissal of the appeal.

11. I have carefully considered the submissions on either side.

12. In paragraph no.1 of the claim petition, the claimants have specifically contended that due to uncontrollable speed, the bus driver has allowed the bus on his left rear side to dash against the 4th respondent's car. The owner cum driver of the car, namely the 4th respondent in his counter in paragraph no.6 has also contended that the car has dashed against the left rear side of the bus. The 5th respondent insurance company in paragraph no.3 of their counter have also specifically contended that the car has dashed against the rear side of the bus. Therefore, it is the specific case of the claimants that the car had dashed against the left rear side of the bus. The car driver cum owner who was examined as P.W.2 in his chief examination has also categorically admitted that the rear side of the bus had dashed against the car. Therefore, it is clear that the bus which was travelling in the north-



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south direction, had turned towards the western direction in Viralimalai junction to enter into a branch road. 90% of the bus has crossed the national highways and has entered into the branch road. Only thereafter, the car has dashed against the left rear side of the bus. The manner of the accident would clearly indicate that the bus driver cannot be held negligent when he had already crossed the national highways and entered into the branch road on the western side. The driver of the car had dashed against the rear portion of the bus.

13. The tribunal had held that the driver of the bus ought to have gauged the direction and speed of the opposite coming vehicle and only thereafter, he should have crossed the national highways and fixed 50% liability upon the owner of the bus. The owner of the bus or the concerned insurance company have not challenged the said finding. Therefore, this Court is not in a position to consider their request that the accident has happened solely due to the negligence on the part of the car driver.

14. In view of the above said deliberations, this Court is of the view that the tribunal was right in fixing 50% liability upon the driver of the car. Therefore, the grounds raised by the appellant insurance



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company for exonerating them and fixing the liability on the owner of the bus are not legally sustainable. Considering the quantum, this Court is of the view that it is neither exorbitant nor unreasonable.

15. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

03.04.2023

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

1.The Motor Accidents Claims Tribunal /
6th Additional District Judge,
Madurai.

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



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R.VIJAYAKUMAR ,J.

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Order made in
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