



C.M.A.No.555 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 31.01.2024

PRONOUNCED ON : 16 .02.2024

CORAM :

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.555 of 2021
and C.M.P.No.3483 of 2021

The Divisional Manager,
United India Insurance Company Ltd.,
104-A, Peramanur Main Road,
Salem-636 007.

... Appellant

Versus

1.S.Sathya

2.Minor. S.Kishore

3.Raja

4.Kamala

(2nd claimant minor represented by next
friend Guardian his mother sathya)

5.M.Nandhini

6.The Divisional Manager,
The New India Assurance Co ltd,
Office at 133/31-A, Trichy Main Road,
Sethu Ramakrishnan Traders, 2nd Floor,
Prabath Theatre Bus Stop,
Gugai, Salem- 636 006.

7.K.Parthasarathi



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... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order made in M.C.O.P.No.43 of 2019, dated 14.09.2020 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Salem.

For Appellants : Mr.D.Bhaskaran

For RR1 to R4 : Mr.V.Vijayakumar

For R6 : MR.J.Chandran

For R5-R7 : No appearance

JUDGMENT

This civil miscellaneous appeal is directed against the award of the Motor Accident Claims Tribunal, (Pincipal District Judge) Salem in M.C.O.P.No. 43 of 2019, dated 14.09.2020.

2. The appellant/Insurance Company is the 4th respondent/Insurer in M.C.O.P.No.43/2019 on the file of the Motor Accident Claims Tribunal,(Pincipal District Judge) Salem.

3.The respondents 1 to 4 as claimants filed the said claim petition



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claiming a sum of Rs.40,00,000/- as compensation for the death of one Silambarasan, who died in the accident that took place on 29.08.2017.

4. According to the respondents 1 to 4 the deceased R.Silambarasan was aged 26 years at the time of accident. He was a lorry driver working in Sri Vinayaka Transport at Valasiayur, Salem, and was earning Rs.15,000/- p.m., apart from daily batta. He was hale and healthy at the time of accident. On 29.08.2017 at about 5.35 p.m., when the said Silambarasan was riding the Bajaj Discover Motorcycle bearing registration No.TN 54 H 2410 from Harur to Salem i.e. from North towards South, near Paruthikadu Mariamman Koil, he overtook a Hero Honda Splendor Plus motorcycle bearing registration No.TN 54 7440, at that time the rider of Hero Honda Splendor Plus motor cycle bearing registration No.TN 54 7440 all of a sudden dashed against the said Silambarasan, due to which he fell down on the road. At that time a Multi Axle Lorry bearing registration No.TN 52 C 2739 was driven by its driver on the opposite direction from Salem To Harur in a rash and negligent manner and ran over on the head of the said Silambarasan, due to which he died instantaneously.



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5.The 6th respondent/Insurer of the lorry, in the counter submitted that, the accident was taken place on the middle of the road and it was happened only due to the rash and negligent riding of the said riders of two wheelers. Since the deceased and the complainant are local people, the police registered the FIR against the driver of the lorry by suppressing the real fact. Since the driver of the lorry was not responsible for the accident, the claimants are not entitled to claim any compensation from the 6th respondent/insurer.

6.The appellant as 4th respondent in the claim petition, in the counter affidavit submitted that the rider of two wheeler of Hero Honda bearing No.TN 54 7440 namely Parthasarathi, the 7th respondent herein rode the vehicle in a slow and cautious manner by adopting all traffic rules, at that time the deceased drove his Bajaj Discover in a rash and negligent manner with great speed, without having proper driving license and overtook the said Hero Honda motorcycle and dashed on the front right side of the vehicle, due to which 7th respondent lost his control and fell down on the road, and the deceased also fell down. At that time, the lorry bearing No.TN 52 C 2739 driven by its driver in rash and negligent manner ran over on the deceased and caused the accident. FIR and charge sheet had been laid only against the lorry driver. Therefore, the



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owner and Insurer of the lorry were liable to pay the compensation. Since

R3 is not responsible for the accident, therefore, the appellant, insurer of

R3 vehicle is not liable to pay any compensation to the claimants.

7. Based on the above contentions, the Tribunal has formulated the following points for determination:

1. Whether the accident was happened due to the rash and negligent driving of the 1st respondent's vehicle driver or the 3rd respondent?

2. Whether the owner and insurer of the two wheeler bearing No.TN 54 H 2410 are very necessary parties to this petition for adjudication of the petition?

3. Whether the petitioners are entitled to claim compensation from the respondents?

4. To what any other relief the petitioners are entitled to?

8. In the conclusion the Tribunal has awarded a sum of Rs.19,97,800/- to the claimants. The Tribunal found that the driver of the lorry and the rider of the Hero Honda Splendor Plus motorcycle are responsible for the accident and apportioned 75% of compensation i.e., Rs. 14,98,350/- to be paid by the 5th and 6th respondents, the owner and insurer of the Multi Axle lorry bearing Registration No.TN-52-C-2739 and apportioned 25% of compensation amount i.e., Rs.4,99,450/- to be paid by the appellant/Insurer and by the 7th respondent herein who are



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the owner and insurer of the Hero Honda Splendor Plus motorcycle bearing Registration No.TN 54 7440.

9. Aggrieved by this, the present appeal is preferred by the appellant/4th respondent in the claim petition. The learned counsel appearing for the appellant/4th respondent would content that FIR was lodged only against the driver of the lorry and the lorry driver was charged under Section 279 and 304 A IPC after due investigation. The accident happened only when the deceased motorcycle rider overtook the motorcycle driven by the 7th respondent herein in a rash and negligent manner without any precaution. If the deceased had exercised a reasonable care, the accident would not have happened. The deceased ought to have maintained a safe distance, as envisaged in Regulation 23 of the Rules of the Road Regulations, 1989 to avoid collusion if the vehicle in front suddenly slow downed or stopped. The eyewitness P.W.2 clearly deposed that the accident happened only when the deceased overtook the motorcycle in front and also stated that the driver of the lorry was alone responsible for the accident. The evidences of R.W.1 who was driver of the lorry and R.W.2 is the rider of motorcycle TN-54-7440 which is clearly deposed that the rider of the above motorcycle was



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not responsible for the accident. If the driver of the lorry had maintained a reasonable speed, he would have prevented the accident. However, the Tribunal without considering the above factual aspects failed to award contributory negligence on the part of the deceased erroneously fixed 25% liability on the appellant/4th respondent which is erroneous. Hence, prayed for setting aside the order passed by the Tribunal in M.C.O.P.No.43 of 2019 on the file of the Motor Accident Claims Tribunal(Principal District Judge) Salem.

10.On the other hand, the counsel appearing for the respondents /claimants would submit that the deceased Silambarasan was riding the Bajaj Discover motorcycle bearing Registration No. TN 54 H 2410 from Arur to Salem, near Paruthikadu mariamman koil, and while the deceased overtook Hero Honda Splendor Plus motorcycle bearing Registration No. TN 54 7 440, at that time the rider of the said vehicle suddenly dashed against the deceased vehicle, due to which, the deceased fell down on the road. At that time, the driver of the lorry bearing Registration No.TN 52 C 2739 was driven by its driver in the opposite direction in a rash and negligent manner ran over the deceased Silambarasan, who died on the spot. Therefore, the Tribunal has rightly apportioned 25 % compensation on the part of the appellant/4th respondent.



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11.The learned counsel appearing for the 6th respondent herein/Insurance Company would submit that the deceased was riding his motorcycle bearing Registration No. TN 54 H 2410 at high speed in a rash and negligent manner and while trying to overtake the Hero Honda Splendor Plus driven by the 7th respondent herein dashed against the 7th respondent motorcycle. The rider of the Hero Hondo Splendor plus motorcycle also drove the vehicle at high speed in a rash and negligent manner on the same direction and dashed the deceased vehicle. Therefore, the riders of the two motorcycles caused the accident. The driver of the lorry though applied break, but it was in vain. The accident took place on the middle of the road. Since the riders of the two motorcycles were local people, the police registered the FIR only against the driver of the lorry. The Tribunal with regard to the alleged accident erroneously rendered a finding in the award stating that the lorry driver was also responsible for the accident.

11.This Court has gone through the case records and the submissions made by the respective counsel for the parties.

12.P.W.2, the eye witness has clearly deposed that the accident



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took place when the deceased was trying to overtake the motorcycle driven by the 7th respondent. He further deposed that the rider of the Splendor motorcycle and the lorry driver drove the vehicles in a rash and negligent manner and were responsible for the accident. On the other hand, the rider of the Hero Honda Splendor Plus motorcycle who was examined as R.W.2 and the driver of the lorry examined as R.W.1 deposed that when the deceased overtook the Hero Honda motorcycle dashed against it and caused the accident. However, the appellant and the 7th respondent failed to examine any independent witness to establish that the 7th respondent rode the vehicle cautiously with moderate speed and therefore, the 7th respondent is not responsible for the accident. Neither the investigation report nor the spot mahazar was filed on the side of the appellant to establish the above contention. When the 6th respondent/Insurer in the counter affidavit has specifically stated that the 7th respondent rode the vehicle at high speed in a rash and negligent manner and the accident took place on the middle of the road, the appellant ought to have produced the sketch and spot mahazar to disprove the same. When the evidence of eyewitness is contrary, the appellant ought to have established that the 7th respondent was not responsible for the accident by adducing tangible evidence. Moreover,



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the 7th respondent should have been cautious when the deceased vehicle was overtaking him. At the same time, it cannot be ruled out, that the deceased is also responsible for the accident. If he had driven the vehicle cautiously while overtaking the 7th respondent vehicle the accident would have not occurred. The deceased also contributed to the accident. Therefore, it is concluded that the accident occurred due to composite negligence of the driver of the lorry as well as rider of the Hero Honda Motorcycle and the contributory negligence on the part of the deceased. Hence, the apportionment of negligence made as follows:

- | | |
|-----------------------------------|-----|
| 1.The appellant | 15% |
| 2. The deceased | 10% |
| 3. The 6 th respondent | 75% |

13.In the result, the Civil Miscellaneous Appeal is partly allowed with the above said terms. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2024

vsn

Index: Yes/No

Speaking Order / Non-Speaking Order



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Neutral Citation: Yes / No

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To:

1.The Principal District Judge,
The Motor Vehicle Accident Tribunal,
Salem

2.The Section Officer,
VR Section,
High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

pre delivery judgment made in
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