



C.M.A.No.890 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.890 of 2022

1.R.Devaki

2.M.Rajendran

..Petitioners/ Appellants

Vs.

1.J.Saravanan

2.The Branch Manager,
United India Insurance Company Ltd.,
Chengalpattu Branch,
Varadhanar Street Alagesan Nagar,
Chengalpattu Town, Taluk & District.

3.E.Muniyappan

4.A.Manojkumar

..Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal award passed by the learned Additional District Judge (Motor Accident Claims Tribunal, Chengalpattu) dated 31.08.2021 in MCOP.No.378 of 2009.

For Appellants : Mr.S.Udhayakumar

For Respondents : Ms.K.Kumudha for R2

Mr.K.Thilakeshwaran for R4



C.M.A.No.890 of 2022

WEB COPY

JUDGMENT

Feeling aggrieved with the award passed by the Motor Accident Claims Tribunal, (Additional District Judge), Chengalpattu, dated 31st August 2021, the petitioners have preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience the parties are referred to as per the array before the Tribunal.

3. The case of the petitioners is that on 23.08.2007, son of the petitioners namely Thilakraj, aged 27 years, was travelling in a Car bearing Registration No.TN-07-U-6972 belonging to the 4th respondent from Bangalore to Chennai. While so, a Lorry bearing Registration No.TN-28-1559, was parked on Bangalore Highways near Pillayarkuppam Village in a dark place without any signal or indication. To prevent collision, the driver of the car tried to control the Car, however, his efforts failed and the car dashed on the back side of the Lorry which was stationed at that place. Due to the said accident, the son of the petitioners Thilakraj sustained multiple injuries. Hence, he was



C.M.A.No.890 of 2022

admitted in the hospital and later passed away. Hence, the petitioners seek compensation of Rs.30,00,000/- [Rupees Thirty Laksh only].

4. The 1st respondent is the owner and the 3rd respondent is the driver of the lorry bearing Registration No.TN-28-1559, the 2nd respondent is the insurer for the 1st respondent's Lorry. The 4th respondent is the owner-cum-driver of the Car bearing Registration No.TN-07-U-6972.

5. The respondents 1, 3 and 4 did not choose to contest the case and they were set *ex parte* before the Tribunal. The 2nd respondent, who is the insurer for the 1st respondent's vehicle alone filed a counter.

6. The case of the 2nd respondent is that the police have registered a case and also filed charge sheet against the 4th respondent. Therefore, the 1st respondent's vehicle was not responsible for the accident and hence the 2nd respondent is not liable to pay any compensation to the petitioners. Hence, the 2nd respondent is an unnecessary party to the original claim petition. Further the 2nd respondent denied the manner of the accident and the employment and earnings as mentioned in the original claim petition



C.M.A.No.890 of 2022

are incorrect.

WEB COPY

7. Before the Tribunal on the side of petitioners, the 1st petitioner was examined as PW1 and one Sampandhan, eye witness to the accident, was examined as PW2, one Mr.Hemanth Kumar was examined as PW3 and Exs.P1 to P8 were marked. On the side of the respondents, Tr.P.Sivanna, Assistant Manager of the 2nd respondent was examined as RW1 and Exs.R1 to R4 documents were marked.

8. After hearing both sides, the Tribunal found that the driver of the 1st respondent and the driver of the car viz., the 4th respondent are responsible for the accident. Accordingly, fixed the liability on the 2nd respondent and the 4th respondent in the ratio of 30:70.

9. Feeling aggrieved with the said award the petitioners have filed this Civil Miscellaneous Appeal.

10. The learned counsel for the petitioners has submitted that the Tribunal has not considered the evidence of PW2, an eye witness who



C.M.A.No.890 of 2022

travelled in the Car along with the 4th respondent and Thilakraj on the date of the accident. He deposed that at the time of the accident on seeing the 1st respondent's vehicle stationed on the wrong side of the road without any indicator or signal, the 4th respondent made an attempt to avert the collision, but, despite his attempt, the car struck the rear side of the 1st respondent's lorry. He further argued that the Tribunal relied upon the First Information Report and fastened the liability in the ratio of 30:70 which is erroneous. Accordingly, he prayed to allow this Civil Miscellaneous Appeal and modify the award of the Tribunal.

11. Per contra, the learned counsel for the 2nd respondent Insurance Company submitted that the First Information Report was registered against the 4th respondent and he is the competent person to speak about manner of accident. However the 4th respondent did not choose to contest the petition before the Tribunal. In these circumstances, there is no warrant to interfere with the order of the Tribunal. Accordingly he prayed to dismiss this Civil Miscellaneous Appeal.

Discussion and Decision

12. The learned counsel for the petitioners has not disputed or challenged the quantum of compensation awarded by the Tribunal. His



C.M.A.No.890 of 2022

grievance is only regarding the proportion of distribution of claim amount between 2nd and 4th respondent. The Tribunal ordered that the 2nd respondent shall pay 30% of the award amount and the 4th respondent shall pay 70% of the award amount.

13. In this case, the petitioners have examined PW2 to prove the manner of the accident. PW2 in his evidence has deposed that on 23.08.2007 at 3.00 a.m., he and Thilakraj were travelling in the 4th respondent's car bearing Registration No.TN-07-U-6972. While the car was approaching Pillaiyarkuppam village, the lorry bearing Registration No.TN-28-1559 was stationed on the road without any indicator or signal due to breakdown. The driver of the car attempted to stop the car, but despite his efforts, the car collided the back side of the 1st respondent's lorry. Due to the accident, Thilakraj sustained serious injuries and later he passed away. He further deposed that the 1st respondent's driver is responsible for the accident. Notably PW2 was cross-examined by the 2nd respondent and no suggestion was put to PW2 that he was not traveling in the car along with the deceased.

14. The complaint has been given by the 1st respondent's driver.



C.M.A.No.890 of 2022

There is nothing on record to show that PW2 preferred complaint with regard to the accident. Admittedly no medical records have been filed to show that PW2 was also injured in the accident. Hence, his evidence has to be scrutinized with care and caution. Admittedly the First Information Report has been registered against the 4th respondent. The 4th respondent who is the driver of the car and the competent person to depose about the accident has not contested the petition before the Tribunal.

15. The 4th respondent as well as the driver of the lorry/ 3rd respondent are the competent persons to speak about the accident. But they were not examined by either side. In these circumstances there is no clear picture about the manner of the accident. However, the Tribunal found that the driver of the lorry as well as the driver of the car viz., the respondents 3 and 4 are responsible for the accident.

16. Considering the cumulative circumstances, this Court is of the view that the apportionment of the liability to pay compensation at the ratio of 40:60 would be fair and reasonable.

17. In the result, this Civil Miscellaneous Appeal is **allowed in**



C.M.A.No.890 of 2022

part. The award passed by the Motor Accident Claims Tribunal (Additional District Judge), Chengalpattu in MCOP.No.378 of 2009 is modified as hereunder:

The total compensation awarded by the Tribunal is Rs.43,67,200/-. The 2nd respondent is hereby directed to pay 40% of the compensation viz., Rs.17,46,880/- and the 4th respondent is hereby directed to pay 60% of the compensation amount viz., Rs.26,20,320/- to the petitioners [appellants / claimants] with proportionate costs and accrued interest thereon at 7.5% per annum from the date of claim petition i.e., 27.10.2009 till the date of deposit. In all other aspects, the award of the Tribunal shall hold good. No costs.

25.06.2024

dsa
Index : No
Internet : Yes
Neutral Citation : No
Speaking order



C.M.A.No.890 of 2022

To

The Additional District Judge,
Motor Accident Claims Tribunal,
Chengalpattu.



WEB COPY



C.M.A.No.890 of 2022

R.SAKTHIVEL,J.

dsa

C.M.A.No.890 of 2022

25.06.2024