



C.M.A.No.3126 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date 02.02.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3126 of 2021

and

C.M.P.No.17641 of 2021

M/s.IFFCO-TOKIO General Insurance Co. Ltd.,
Rep. by its Manager
Thiripura Arcadde, 3rd Floor
No.75, Trivandram Road, Palayamkottai
Thirunelveli 627 002

... Appellant

Vs.

1.Vijaya
W/o.Late.Veerapandiyan

2.Girija
D/o.Late.Veerapandiyan

3.Minor.Raja,
S/o.Late.Veerapandiyan

4Minor.Savithiri
D/o.Late.Veerapandiyan

Minors 3 & 4 rep. by their NF
Natural guardian & Mother Vijaya

5.Pazhaniammal



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W/o.Paramasivam
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6.Paramasivam
S/o.Ponnusami

All are residing at No.414
North Street, Thondankurichi
Kazhudur Post, Thittakudi Taluk,
Kaludur, Cuddalur District

7.Regina
W/o.Thinkar
No.8, Balaji Nagar, Palayamkottai
Thirunelveli 627 011

8.Murugesan
S/o.Velu
No.17, Govindaraj Compound
Lakshmi Narasingapuram
Palayamkottai, Thirunelveli District.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the
Award and Decree dated 28.04.2021 made in MCOP.No.556 of 2018 on the file
of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.T.Gobinath (for R1 to R6)



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JUDGMENT

The Appeal has been filed against Award and Decree dated 28.04.2021 made in MCOP.No.556 of 2018 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

2.The Insurance Company is the Appellant herein, challenging the award passed in MCOP.No.556 of 2018 dated 28.04.2021, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The Insurance Company filed the above Appeal on the point of negligence and quantum.

4.During the trial, on the side of the claim Petitioner, PW1 & PW2 were examined, Ex.P1 to Ex.P.13 were marked and on the side of the Respondents, RW1 to RW3 were examined and Ex.R1 to Ex.R6 were marked.



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5. Heard the learned counsel for the Insurance Company/Appellant and learned counsel for Respondent 1 to 6.

6. MCOP.No.556 of 2018 has been filed seeking compensation for the death of one Veerapandiyan in a road traffic accident occurred on 01.07.2017, alleging that the accident occurred on 01.07.2017 at about 2.30 p.m. on Tiruchy – Chennai NH 45 road, in front of TTPL Canteen situated near Pirivu road of V.Kalathur. While the deceased Veerapandiyan drove the Honda Splendor Pro motor cycle bearing Regn. No. TN 31 BT 9439 along with his wife as pillion rider from south to north, on the extreme left side of the above said road, the Ashok Leyland Bus bearing Regn. No. TN 72 AC 2079 belongs to the 1st respondent, insured with the 2nd respondent which was going ahead of them, drove by the 3rd respondent recklessly, without making any sign or signal and applied sudden brake. Due to which the deceased hit the said bus and sustained grievous injuries.

7. In the counter statement before the Tribunal the Insurance Company has denied the manner of the accident and contended that at the time of accident



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the 1st respondent parked the bus on the extreme left side (western) margin of the road leading towards Chennai before the TTPL Canteen and the red parking lamps on the rear side of the bus were blinking so as to serve as a warning to the other users of the road. The deceased drove the vehicle rashly and negligently, came behind the parked bus and dashed on the rear body of the parked bus.

8.PW1 is the occurrence witness examined on behalf of the claim Petitioner demonstrate the manner of the accident. PW1, who is the wife of the deceased Veerapandiyan, travel as pillion rider in the two wheeler driven by her husband deposed that on 01.07.2017 at about 2.30 p.m., Pw1 was travelling as a pillion rider and the two wheeler bearing Regn. No.TN 31 BT 9430 drove by her husband from south-north on the Tiruchy – Chennai NH 45 road, near service road of V. Kalathur Pirivu road and at that time, the driver of the 1st respondent's private bus bearing Regn. No.TN 72 AC 2079, without noticing the oncoming vehicle, suddenly opened the driver side door in a careless and negligent manner and due to which the deceased dashed the right side driver side door of the bus.



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9.Per contra, the Insurance Company had examined the driver of the vehicle as RW1, RW1 as well as the 3rd respondent deposed in their evidence that to go to Thiruppathi, on 01.07.2017, RW1 took the bus bearing Regn. No.TN 72 AC 2079 from Thirunelveli and went to Pilliayarpatti and other places and stopped the bus in the corner of TTPL Canteen, V.Kalathur for taking lunch, after hearing noise they came to the spot at that time, a two wheeler came from south to north, hit in the middle of right side of the bus and fell down and one person sustained head injury.

10.In the cross examination the driver of the bus has categorically admitted that driver seat's door was damaged, which is in the front side of the bus. Had there been an accident as projected by the Appellant that the vehicle driven by the deceased hit the bus from behind, there is no possibility of causing damage to the door of the driver seat. Hence the version of PW1 appears to be more probable than the version of RW1 for more than one reason that version of RW1 is a self serving statement to save his skin. Admittedly PW1 is the eyewitness as well as wife of the deceased. It is the evidence of



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RW1 that he heard noise and came from the canteen and Ex.P.13/M.V.I.Report, clearly stated that front right wheel rear damaged and the driver door damaged and the vehicle was parked in the service road. Hence, the Tribunal has come to the conclusion that the accident has taken place due to the contributory negligence on the part of the driver of both the vehicles. Accordingly, the Tribunal fixed 30% on the part of the deceased and 70% on the part of the driver of the bus.

11.After perusing the entire records, I find that the finding of the trial Court with regard to contributory negligence does not warrant any interference. Hence the contributory negligence fixed by the Tribunal in the ratio of 70:30 is well considered and well merited, and does not require any interference at the Appellate stage.

12.Mr.S.Arunkumar, learned counsel for the Appellant would contend that the quantum of compensation is on the higher side. After perusal of the order passed by the Tribunal, I find that based upon Ex.P.10/Passport of the deceased and Ex.P.11/ID card of the deceased, the age of the deceased was



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fixed at 47 years and notional income at Rs.7,500/- and based upon the Pranay Sethi's case 25% has been added towards future prospects and the amount awarded towards other heads by the Tribunal are just and fair. Hence, I am not inclined to interfere with the award passed by the Tribunal.

13.In fine, the Appeal is dismissed. The Insurance Company/Appellant is directed to deposit the amount awarded by the Tribunal with interest at the rate of 7.5% per annum within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

02.02.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To
The Principal District Judge,
Perambalur.
(Motor Accident Claims Tribunal)



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RMT.TEEKAA RAMAN.J,

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and
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Dated: 02.02.2024