



CMA.Nos.2794 and 2796 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.Nos.2794 and 2796 of 2023

1. Sathya
2. Minor Manish
3. Minor Rakshitha

Appellants-CMA.2794 of 2023

1. Indra
2. Sudhakar
3. Subashini
4. Angammal

Appellants-CMA.2796 of 2023

Vs

1. Aparna
2. HDC ERGO General Insurance Company Limited
by its Manager, Chennai-32
3. The General Manager, Tamil Nadu State Transport
Corporation Limited, Villupuram,
Kancheepuram Region 631552

Respondents-Both CMAs

Prayer:- These Civil Miscellaneous Appeal have been filed, against the judgement and decree, dated, 01.06.2022, made in MCOPs.No.347 and 348 of 2018, by the Principal District Court (MACT) Perambalur, respectively.

For Appellants : Mr.P.Parthikannan-Both CMAs

For Respondents : Mrs.S.Mahalakshmi-R1-Both CMAs
Mr.N.Somasundar-R2-Both CMAs
Mr.C.R.Sureshkumar-R3-Both CMAs

JUDGEMENT

1. These Civil Miscellaneous Appeal have been filed, by the respective claimants, against the judgement and decree, dated, 01.06.2022, made in



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MCOPs.No.347 and 348 of 2018, by the Principal District Court (MACT) Perambalur, respectively.

2. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the claim petitions.
3. The above claim petitions have been filed by the legal representatives of the two deceased persons, namely, Anandhan and Karuppaiah, before the Tribunal, seeking a compensation of Rs.30,00,000/- each, respectively, on various heads, for the death of the said two deceased persons, who died in a motor road accident, which had happened on 13.01.2018. The 1st Respondent herein/owner of the car, which is insured with the 2nd Respondent and the 3rd Respondent Transport Corporation remained exparte. The claim petitions were resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a counter. On the side of the claimants, PW.1 to PW.4 were examined and Ex.P1 to Ex.P10 were marked.
4. The Tribunal, in so far the quantum of compensation is concerned, has arrived at a total compensation amounts of Rs.35,10,000 and Rs.31,43,188/- on various heads, for the death of the said two deceased persons, in the respective claim petitions. However, finding that the accident had occurred due to the rash and negligent driving of the driver of the car and the deceased persons were also responsible for the accident and accordingly, fastening contributory negligence in the ratio of 50%:50% on the part of the driver of the car and the deceased persons, respectively, the Tribunal has awarded the compensation amounts of Rs.17,55,000/- and Rs.15,71,594/-,



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on various heads, in the respective claim petitions, with interest at 7.5% p.a. from the date of the claim petitions till the date of realization, to be payable by the 2nd Respondent Insurance Company. Aggrieved by the fixation of contributory negligence in the ratio of 50:50 on the part of the driver of the car and on the part of the deceased persons, respectively, by the Tribunal, these appeals have been filed by the respective claimants.

5. This Court heard the learned counsel for the claimants, the 2nd Respondent Insurance Company and the 3rd Respondent Transport Corporation, considered their submissions and also perused the entire materials placed on record.
6. After hearing the learned counsel on either side elaborately, in these appeals, this Court finds that there is no dispute about the factum of the accident, in which the said two persons died on the spot and also about the quantum of compensation. However, the main issue raised by the learned counsel for the claimants is only with regard to the findings of the Tribunal in respect of negligence aspect and fixation of liability at 50% on the part of the deceased persons, by the Tribunal. Hence, it is necessary to narrate the manner, in which the accident had happened.
7. According to the claimants, on 13.01.2018, at about 05.20 a.m. when the deceased persons were standing and waiting on the Tiruchy to Chennai (South-North) NH 45 Road, on the right side of the road, near U Turn of Center Median, opposite to Kalpadi Pirivu Road, to take Chennai-Tiruchy NH45 Road and then to take Kalpadi Pirivu Road, which is situated on the



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Eastern side of the said Chennai-Trichy NH 45 Road, the car bearing Reg.No.TN 10 AY 2499 belonged to the 1st Respondent and insured with the 2nd Respondent Insurance Company coming from Trichy to Chennai (South to North) direction, driven by its driver in a rash and negligent manner dashed against them. In the said accident, both of them thrown out and the deceased Anandhan was thrown out and fell on the front windscreen of the bus, bearing Reg.No.TN 21 N 1480, belonged the 3rd Respondent Transport Corporation, standing on the Chennai-Trichy Road and fell down and both of them sustained fatal injuries and died on the spot.

8. The learned counsel for the Appellants, while narrating the manner of the accident, as stated in the claim petitions, would submit that the eye witness, PW.4, who is the driver of the bus and who gave the complainant to the police concerned, has categorically deposed that only due to the rash and negligent driving of the driver of the car, the accident had happened, when the deceased persons were standing near U Turn of Center Median and after hit by the car, both the deceased persons were thrown out and the body of deceased Anandhan hit against the front windscreen of the bus and the windscreen of the bus was also broken. The learned counsel would further submit that PW.4 has given the complainant, stating that the accident had occurred on the right side of the road and that in the rough sketch also, the scene of occurrence is shown as the 'Place near U Turn of Center Median' and that therefore, the accident had occurred when the deceased persons were standing for the bus near U Turn of Center Median, but, however,



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without considering the said evidence, the Tribunal erroneously came to the conclusion that the place where the deceased were standing prior to the accident is different in the First Information Report and in the Petitions filed by the Petitioners and that the eye witness PW.4 also corroborated the averments made in the petitions, by stating that they were standing near U Turn of Center Median and hence, there was no possibility for the car to hit the deceased persons, without any damage to the car and that the car might have sustained several damages if it dashed against the persons, standing near U Turn of Center Median, as the Center Median would have made impact on the car due to collision. The learned counsel would further submit that mere because the MVI report was not filed by the claimants, the Tribunal came to the conclusion that the accident had happened, when the deceased were attempting to cross the road and holding so, fixed the percentage of contributory negligence in the ratio of 50:50 on the part of the deceased and the driver of the car respectively, which is erroneous.

9. The learned counsel for the Appellants would further submit that when the Tribunal gave a categoric finding that the accident had happened near the U Turn of Center Median, it also should have held that the driver of the car should have take precaution and driven the car slowly and that in normal courses, when there is U Turn available, the driver of the car is expected to drive carefully and slowly and that the way in which the accident had occurred clearly indicates that only due to the rash and negligence driving on the part of the car driver, the accident had happened and that therefore, the



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Tribunal ought to have fixed the entire negligence on the part of the driver of the car, but it erred in fixing contributory negligence in the ratio of 50:50 on the part of the deceased persons and the driver of the car and hence, the impugned judgement and decree, in so far as fixing contributory negligence in the ratio of 50:50, is not sustainable.

10.Per contra, according to the learned counsel for the 2nd Respondent Insurance Company, with which the car was insured, the contributory negligence in the ratio of 50:50 fixed by the Tribunal is just and fair and that there are contradictions with regard to the place of occurrence in the First Information Report, the rough sketch and in the averments made in the claim petitions. The learned counsel would further submit that in the First Information Report, it is stated that the place of occurrence is the right side of the road, whereas in the claim petitions, the place of occurrence is stated as the place near U Turn of Center Median. Only in view of these contradictions and considering the fact that MVI Report was not filed, the Tribunal rightly fastened 50:50 contributory negligence on both of them and hence, the said findings are sustainable and liable to be confirmed.

11.According to the learned counsel for the 3rd Respondent Transport Corporation, due to the accident, the bodies of the deceased were thrown out and the body of the deceased Anandhan fell on the front windscreen of the bus, as a result of which, damage was caused to the windscreen and there was no chance for the bus to hit suddenly the deceased persons, who were standing near U Turn of Center Median and if they would have been hit



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by the bus, they would have been thrown out to some other place and not in front of the bus, but since they were hit by the Car only, they had fallen in front of the bus and hence, the findings with regard to contributory negligence of the Tribunal are maintainable.

12.On considering the submissions of the learned counsel on either side and the entire evidence, including the deposition of PW.4, who is the eye witness to the occurrence and driver of the bus, at the outset, it is crystal clear that the car hit against the deceased persons, who were standing near U Turn of Center Median and that the accident had happened only due to the rash and negligent driver of the car.

13.Further, as per the evidence of PW.4, the accident had happened, when the car was plying along Tiruchy-Chennai (South to North) and the deceased persons were standing near U Turn of the Center Median, situated on the Eastern side of the Kalpadi Pirivu Road and therefore, it can be presumed that the place of occurrence is the place very near U Turn of Center Median, where the deceased persons were standing and the car hit them near the U Turn Center Median. Therefore, this Court does not find any substance in the contentions of the learned counsel for the Insurance Company, in respect of negligence and liability aspects.

14.In this regard, it is also to be noted that even in the First Information Report, it is stated that the deceased persons were standing on the right side of the road, when the bus was plying from Chennai to Tiruchy Road (North-South). Therefore, on a reading of the exhibits and depositions, it is very clear that



the car hit the deceased persons, who were standing near U Turn of Center Median and that the accident had happened only due to the rash and negligent driving of the driver of the car.

15.The only ground, on which the Tribunal fastened 50:50 contributory negligence, is that the MVI Report was not filed by the claimants. When there are ample evidence available, even in the absence of MVI Report, the Tribunal ought to have taken into consideration the other evidence, both oral and documentary and fixed the entire negligence on the part of the car driver alone, but it failed to do so. Such an approach of the Tribunal in not considering the other evidence available is not fair and proper.

16.Even in the absence of MVI Report, considering the other materials as well as the deposition of PW.4, it is crystal clear that the accident had happened only due to the rash and negligent driving of the driver of the car, in other words, the driver of car alone was responsible for the accident and it cannot be stated that the deceased persons were responsible for the accident, since it is established that they were not crossing the road, but they were standing near U Turn of Center Median, where the accident had happened. Hence, this Court is of the firm opinion that the Tribunal ought to have fixed the entire negligence on the part of the driver of the car alone and accordingly, fastened entire liability on the part of the 2nd Respondent Insurance Company, with which the car was insured. Since this Court finds errors and infirmities in the findings of the Tribunal in respect of the contributory negligence and liability aspects, the impugned judgement in respect of those



aspects is to be modified.

17. In view of the aforesaid reasons and discussions, this Court, while holding that the driver of the car alone was responsible for the accident, fixes the entire negligence i.e. 100% contributory negligence on the part of the driver of the car alone, insured with 2nd Respondent Insurance Company and accordingly, 100% liability on the part of the 2nd Respondent Insurance Company to pay the entire compensation.

18. In fine, these Civil Miscellaneous Appeals are allowed. In all, the claimants in MCOP.No.347 and 348 of 2018 are entitled to the total compensation amounts Rs.35,10,000 and Rs.31,43,188/-, respectively, with interest 7.5% from the date of the claim petitions till the date of realisation, as arrived at by the Tribunal. Except modification of the findings with regard to fixation of contributory negligence to the extent indicated above and the compensation amounts, as stated above, in all other aspects, the impugned judgement and decree shall stand confirmed.

19. Out of the total compensation, the claimants 1 to 3 in MCOP.No.347 of 2018 are entitled to Rs.15,10,000/-, Rs.10,00,000/- and Rs.10,00,000/-, respectively, with proportionate interest. Out of the total compensation, the claimants 1 to 4 in MCOP.No.348 of 2018 are entitled to Rs.8,00,000/-, Rs.10,00,000/-, Rs.10,00,000/- and Rs.3,43,188/-, respectively, with proportionate interest. The respective claimants shall pay proper court fee for their respective enhanced compensation amounts.

20. In all the claim petitions, the 2nd Respondent / Insurance Company is



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directed to deposit the entire award amounts with interest at 7.5% p.a. from the date of the claim petitions till the date of deposit, after deducting the amount, if any already, deposited and also the interest for the delay in filing the appeals if any for the enhanced compensation, within a period of six weeks from the date of receipt of a copy of this order.

21. On such deposit being made, the share of the minor claimants in MCOP.No.347 of 2018 shall be deposited in any one of the Nationalised Banks till they attain majority and the guardian of the said minor is permitted to withdraw the accrued interest once in three months directly from the Bank and utilise the same for the welfare of to the minors. The Tribunal is directed to transfer, by way of RTGS, the respective compensation amounts with proportionate interest directly to the respective bank accounts of the claimants, within a period of three weeks thereafter. No costs.

28.02.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
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To

1. The Principal District Court (MACT) Perambalur
2. The Record Keeper, VR Section, High Court, Madras

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