



CMA.No.370 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.370 of 2023
CMP.No.3112 of 2023

Magma HDI Genera Insurance Co. Limited
by its Manager (Legal), Chennai-29

Appellant

Vs

1. S.Stella Rani
2. R.Selvaraj
3. Munir Hasan Khan

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the decretal order and award, dated 16.10.2019, made in MCOP.No.721 of 2014, by the I Additional District and Sessions Court (MACT), Vellore.

For Appellant : Mr.Somasundaram

For Respondents : Mr.M.Sivakumar-R2
RR1 and 3 - No Appearance

JUDGEMENT

1. Challenging the ratio of apportionment of contributory negligence as well as the liability fixed and the quantum of compensation awarded by the Tribunal, the present appeal came to be filed by the Appellant Insurance Company.
2. In so far as fixation of apportionment of contributory negligence as well as the liability is concerned, the learned counsel for the Appellant would submit that the lorry bearing Reg.No.MH 04 FD 8937 was parked on the extreme left



CMA.No.370 of 2023

WEB COPY

side of the road with parking signal and that only due to the rash and negligent driving on the part of the deceased rider of the two wheeler, bearing Reg.No.TN 23 AY 9914, he dashed on the rear side of the lorry. However, the Tribunal erroneously fixed contributory negligence in the ratio of 75%:25% on the part of the driver of the lorry and the rider of the two wheeler respectively. The learned counsel would further submit that 25% contributory negligence has been fastened against the deceased rider of the two wheeler for not wearing the helmet. Though the learned counsel has challenged the quantum of compensation formally stating that the deceased rider being a bachelor, 50% was not deducted, but, subsequently, he, after perusal of impugned order, confirmed to the extent that 50% was deducted and would submit that appropriate orders may be passed in the facts and circumstances of the case.

3. In reply, the learned counsel for the 2nd Respondent would submit that the driver of the lorry negligently parked the vehicle across the road, without any parking signal or indicator and that the rider of the two wheeler, without knowing as to whether the lorry was parked or moving, because there was no parking signal or indicator, drove the two wheeler and dashed against the lorry and that only due to the negligence on the part of the driver of the lorry, the accident had occurred and that taking into consideration all these aspects only, the Tribunal has rightly fastened contributory negligence in the ratio of 75%:25% on the part of the driver of the lorry and deceased rider of the two wheeler respectively. The learned counsel would further submit that



CMA.No.370 of 2023

he has not filed any appeal as against the quantum of compensation and appropriate orders may be passed in this regard and that in so far as the fixation of contributory negligence is concerned, there is no error on the part of the Tribunal and the same may be confirmed.

4. I have given my due and careful consideration to the submissions of the learned counsel for the Appellant as well as the learned counsel for the 2nd Respondent and also perused materials placed on record.
5. In so far as fixation of liability is concerned, the Tribunal has fastened 75% contributory negligence on the part of the driver of the lorry and 25% contributory negligence on the deceased rider of the two wheeler. Now, the question that arises for consideration is as to whether fixation of 75%:25% liability against both the driver of the lorry and the rider of the two wheeler by the Tribunal is just and proper?
6. Before going into the facts of the case, this court put a question to the learned counsel for the Appellant as to whether the lorry was parked in a parking place, meant for such purpose, with proper parking signal or indicator, on the left side of the road, he would answer that the lorry was not parked in a place meant for parking. Once a vehicle was not parked in a non parking area and even if it was parked in a parking area without any parking signal or indicator, if any accident occurred due to the such parking, then 100% contributory negligence on the part of the driver of the lorry alone can be fastened. It is not that negligence could be fastened only in the cases where the vehicle is moving. Even in cases where a non-moving vehicle was



CMA.No.370 of 2023

WEB COPY

parked in a negligent manner without any parking signal or indicator, liability can be fastened in such cases. However, at the same time, based on the evidence, the Tribunal found that the deceased rider of the two wheeler did not wear helmet at the time of the accident. Considering these aspects and circumstances, the Tribunal has rightly fastened contributory negligence in the ratio of 75%:25% on both the drivers of the lorry and the rider of the two wheeler. This Court does not find any error or infirmity on the part of the Tribunal in fastening such liability on both the driver of the lorry and the rider of the two wheeler. Therefore, in so far as the fixation of apportionment of contributory negligence as well as liability by the Tribunal is concerned, the impugned order of the Tribunal stands confirmed.

7. In so far as the impugned quantum of compensation is concerned, though the learned counsel for the Appellant has raised an issue that no 50% was deducted towards personal expenses, since the deceased was a bachelor, after perusal of the order, he confirmed to the extent that the Tribunal has correctly deducted 50% towards personal expenses. Hence, on this aspect also, this Court does not find any error or infirmity in the impugned award passed by the Tribunal with regard to the quantum of compensation and hence, the same is confirmed.
8. In fine, this Civil Miscellaneous Appeal is dismissed, confirming the impugned award in all respects. No costs. Consequently, the connected MP is closed.

24.01.2024



CMA.No.370 of 2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. I Additional District and Sessions Court (MACT), Vellore.
2. The Record Keeper, VR Section, Madras High Court, Madras



WEB COPY



CMA.No.370 of 2023

KRISHNAN RAMASAMY, J.

Srcm

CMA.No.370 of 2023

24.01.2024