



C.M.A.(MD)No.1134 of 2012

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Dated: 03.01.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A.(MD)No.1134 of 2012

and

M.P(MD) No.1 of 2012

Bharti AXA General Insurance Co. Ltd.,
No.965, 2nd Floor,
Avinashi Road, Coimbatore 641 037.

... Appellant/ 4th Respondent

Vs.

1.P.Amsavalli

2.P.Mohanraj

P.Ammaiyappan (died)

3.A.Natchammal

... Respondents / Petitioners

(Memo filed by respondents 01.12.2010 stating that the 3rd respondent died on 18.09.2010 and the same has been recorded on 01.12.2010. Further memo filed by the petitioners that the legal heirs of deceased third petitioner are already on record and the same was recorded on 01.02.2011)

4.M.Adiyaman

5.The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Periyamilaguparai, Trichy.



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6.B.Sudha

... Respondents / Respondents 1 to 3

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 08.03.2012 made in M.C.O.P.No. 491 of 2009 on the file of the Motor Accidents Claims Tribunal (District Court), Karur and allow this Civil Miscellaneous appeal.

For Appellant	: Mr.V.Muthukamatchi
For R1 to R3	: Mr.P.Senthil
For R5	: Mr.A.Feroz Khan for Mr.A.V.B.Krishnakanth
For R4 and R6	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant / the fourth respondent as against the order passed M.C.O.P.No.491 of 2009 on the file of the Motor Accidents Claims Tribunal (District Court), Karur, dated 08.03.2012, wherein respondents 1 to 3 have filed the petition for compensation as against the appellant herein and the respondents 4 to 6 herein.



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2. The Tribunal has awarded a sum of Rs.4,92,000/- by directing the second respondent therein to pay 80% of compensation and on the fourth respondent therein to pay 20% of compensation with interest at the rate of 7.5% per annum. Aggrieved by the above order, the fourth respondent therein has filed this present appeal.

3. The brief facts of the petition averments are as follows:

On 04.10.2009, at about 10.30 p.m., when the deceased Ramesh Kumar was travelling in a Honda City car bearing registration number TN 39 X 4646 from Kangeyam-Karur main road, near Muthur Pirivu road, at that time, a bus bearing registration number TN 45 N 2481, driven by its driver in the opposite side in a rash and negligent manner, dashed against the car. Due to that, the deceased Ramesh Kumar died in the spot itself. This petitioners are legal heirs of the deceased Ramesh Kumar. The accident took place due to the rash and negligence on the part of the bus driver. At that time of accident, the deceased was aged about 23 years and he was earning a sum of Rs.10,000/- per month. Therefore, the petitioners are claiming a sum of Rs.15,00,000/- towards compensation.



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4. The brief facts of the counter filed by the second respondent are as follows:

All the averments in the petition are false, except those that are specifically admitted by the respondent. The accident took place due to the rash and negligent driving of the driver of the Honda City Car bearing registration number TN 39 X 4646. The driver of the car drove the vehicle in a rash and negligent manner and in a zig-zag manner. After noticing the above said driving, the driver of the bus applied sudden brake and the car driver lost his balance and dashed against the front portion of the respondent bus. Therefore, the respondent is not at all responsible for the accident and he is not liable to pay any compensation. The respondent denies the age, occupation and monthly income of the deceased. The amount claimed by the petitioner is too high. Hence this petition is liable to be dismissed.

5. The brief facts and the counter filed by the fourth respondent are as follows:

This petition is not maintainable by the law and facts. The petitioners have to strictly prove all the allegations except those that are specifically admitted herein. The fourth respondent denies the age,



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occupation and income of the deceased. The manner of accident is also denied. The accident was occurred only due to the rash and negligence solely on the part of the driver of the bus, as such the fourth respondent is no way responsible for the accident. Hence, the petition is liable to be dismissed.

6. In order to prove the case of the petitioner, the petitioner has examined P.W.1 to P.W.3 and marked exhibits Exs.P.1 to Ex.P.6 and marked Ex.X1 and Ex.X2. On the side of the respondent no oral or documentary evidence adduced.

7. After hearing both sides and perused the materials on record, the Tribunal has awarded a sum of Rs.4,92,000/- (Rupees Four Lakhs Ninety Two Thousand only) towards compensation with interest of 7.5 % per annum, by fixing the liability as against the second respondent as 80% and as against the fourth respondent as 20%. Aggrieved over the said judgment and decree, the present Civil Miscellaneous Appeal is filed by the fourth respondent.



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8. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i)whether the appeal is liable to be allowed or not?

9. In this case, it is an admitted fact that the deceased died in a road accident and there is no dispute with regard to the involvement of the vehicles in the evident. The appellant's contention is that, the accident took place only due to the negligence on the part of the bus driver and the car driver is no way responsible for the accident. The claimants' contention is that the occurrence took place due to the rash and negligent driving of the bus driver. However, the Tribunal, after taking into consideration of all the evidence adduced on either side, fixed the liability on both drivers of the vehicles at 80% liability as against the bus driver and 20% liability as against the car driver. As per the evidence of P.W.2, the occurrence took place due to the rash and negligence on the part of the bus driver. No contra evidence adduced by the respondents ie., either by the second respondent or by the fourth respondent.



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10. The Tribunal, after consideration of the material evidence, fixed the liability on both the drivers of bus as well as the car. The Tribunal stated the reason by noticing the Ex.P2 and Ex.P3 that are the Motor Vehicle Inspection Reports and held that both the vehicles have not applied brake prior to the accident. However, the evidence of P.W.2 stated that on the date of accident at about 10.30 p.m., the driver of the bus suddenly turned the bus to right side, at that time, it dashed against the car and overturned. Further during the cross examination, the same P.W.2 stated that he was travelling in the bus in the third row of the front seat while so it is not possible to see the accident. Further when the Tribunal also after referring Ex.P2 and Ex.P3, came to a conclusion that both the vehicles have not applied brake before the accident. Thereby fixing the liability of 80% on the second respondent and 20% on the fourth respondent.

11. Even, the second respondent driver drove the vehicle in a rash and negligent manner, if the third respondent driver came in a normal



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speed, he could not have dashed against the bus and could have avoided the accident. But the third respondent vehicle also heavily damaged, thereby shows the contribution of driver of the third respondent. Therefore, the Tribunal has fairly come to a conclusion and fixed the liability. Therefore, this Court has no warrant to interfere with the order passed by the Tribunal.

12. In view of the above said discussion, this Court finds no merits in the appeal and it deserves to be dismissed. Accordingly this Civil Miscellaneous Appeal is dismissed, without any costs and the award dated 08.03.2012 made in M.C.O.P.No. 491 of 2009 on the file of the Motor Accidents Claims Tribunal (District Court), Karur, is confirmed. As per the interim order passed by this Court, the appellant / fourth respondent was directed to deposit 20% of the award amount with proportionate interest at the rate of 7.5% per annum, as ordered by this Court, if already not deposited, the appellant / 4th respondent is directed to deposit the proportionate award amount, within a period of two months from the date of this order. Respondents 1 to 3 herein, are at liberty to withdraw the said amount as and when deposited, together with interest



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and costs by filing application before the Tribunal. Consequently
connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accidents Claims Tribunal (District Court), Karur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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