



C.M.A. (MD) No.176 of 2012

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Dated: 26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.176 of 2012

and

M.P(MD) No.1 of 2012

The Branch Manager
The Oriental Insurance Company Ltd.,
Near M.S.M.College Office
Malliyakkal Galaxy
Kayankulam

.. Appellant/5th Respondent

Vs.

- | | |
|---|--|
| 1. P.V.Sasi | .. 1 st Respondent/1 st Petitioner |
| 2. Kumari | ..2 nd Respondent/2 nd Petitioner |
| 3. Deepa | ..3 rd Respondent/3 rd petitioner |
| 4. Mohammed Musthappa | ..4 th Respondent/1 st Respondent |
| 5. Ramesh | ..5 th Respondent/2 nd Respondent |
| 6. The Branch Manager
New India Assurance Company
K.S.M.F Building, 2 nd Floor Office
Chinnakkada, Kollam
Kerala State | ..6 th Respondent/3 rd Respondent |
| 7. Abdul Azeez | ..7 th Respondent/ 4 th Respondent |

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP No.228 of 2008 dated 20.12.2010 on the file of the Motor Accident Claims Tribunal/ Additional Sub Court, Tenkasi

For Appellant : Mr.C. Jawahar Ravindran

For R1to R5 & R7: No appearance



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For R6

: Mr.I. Robert Chandrakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed by the Motor Accident Claims Tribunal, Sub Court, Additional Sub Court, Tenkasi in MCOP No.228 of 2008 dated 20.12.2010 wherein the respondents 1 to 3 herein have filed petition before the Tribunal for claiming compensation for the death of one Dinesh who died in the road accident. The Tribunal has awarded a sum of Rs. 6,75,000/- towards compensation by directing the appellant/fifth respondent and third respondent/sixth respondent each 50%. As against the order of the Tribunal the fifth respondent has filed this appeal.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

3. The brief averments of the petition filed before the Tribunal are as follows:

The deceased Dinesh was working as driver and also doing banana business and he was earning a sum of Rs.12,000/- per



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month. On 11.02.2008 when he was proceedings in a lorry bearing Reg. No. KL29 Z 950 at about 6.30 am., near Tenkasi Ambasamuthiram main road near Valimarichan bus stop at that time a lorry bearing Reg. No. KL 29Z 950 came in a rash and negligent manner and dashed against the lorry which was driven by the deceased. Due to the accident, the said Dinesh died in the spot itself. The accident took place due to the negligence on the part of the driver of the first respondent. The fourth respondent is the owner of the vehicle which was driven by the deceased and it was insured with the fifth respondent. Hence they claimed compensation as against the respondents.

4. The counter filed by the third respondent are as follows:

The deceased drove the vehicle in a rash and negligent manner and thereby caused the accident. Further the age, occupation, income of the deceased are all denied by the respondents. The accident did not take place due to the negligence of the driver of the first respondent since the accident took place due to the negligence on the part of the deceased, petition as against the third respondent is liable to be dismissed.



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5. The averments made by the fifth respondent are as follows:

The accident took place due to the negligence on the part driver of the first respondent and the First Information Report was also registered as against the driver of the first respondent. Therefore the fifth respondent is not liable to pay any compensation. The respondent denied the age, income and occupation of the deceased, hence the petition is liable to be dismissed as against the fifth respondent.

6. Before the Tribunal the petitioner has examined P.W.1 and marked Exs.P.1 to P.4. On the side of the respondent no witnesses were examined and no documents were marked.

7. After evaluating the oral and documentary evidences adduced on either side, the Tribunal has fixed liability as against the third and fifth respondents each 50% and awarded a sum of Rs.6,75,000/- towards compensation. As against the liability of 50% , the fifth respondent has filed this appeal on various grounds

8. The learned for the appellant would contend that the accident took place due to negligence on the part of the driver of the



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first respondent and First Information Report was also registered as against the driver of the first respondent. Further P.W.1 has deposed that the accident took place due to the negligence on the part of the driver of the first respondent but the Tribunal based on the Motor Vehicle Inspector Report erroneously fixed liability as against this appellant/fifth respondent 50% negligence. Without any evidence, the Tribunal has fixed liability as against the appellant/fifth respondent, therefore the order of the Tribunal is liable to be set aside.

9. The learned counsel appearing for the sixth respondent/third respondent would contend that the accident took place due to the negligence on the part of the deceased. However the Tribunal fixed liability as against each of the vehicle. If the driver of the fourth respondent vehicle drove the vehicle in slow speed he would have avoided the accident but both the vehicles were collided with each other. However there is a head on collision and thereby the Tribunal has fixed liability as against both the vehicles. Therefore the Tribunal has fastened the liability on both the vehicles and awarded just and fair compensation. To support his contention he relied on the judgment of this Court in the case of ***Oriental Insurance Company Ltd. Rep. through its Branch***



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Manager .vs. Vasimalai and others reported in **2020 SCC Online Mad 26400.**

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

- i) Whether the accident took place due to the negligence on the part of the driver of the first respondent?
- ii) Whether the appeal is liable to be allowed or not?

Point No.1

11. In this case the respondents 1 to 3 herein have filed petition for compensation alleging that one Dinesh died in the road accident and these petitioners are the legal heirs of the deceased. The accident took place due to the negligence on the part of the driver of the first respondent and the First Information Report was also registered as against the first respondent. P.W.1 also deposed that the accident took place due to the negligence on the part of the driver of the first respondent. The respondent have not adduced any contra evidence to rebut the evidence adduced on the side of the petitioner but the Tribunal has fastened the liability as against both the vehicles based on the Motor Vehicle Inspector report. By relying the Motor Vehicle Inspection report the Tribunal fixed liability as



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against both the vehicles. Where two vehicles collided with each other obviously both the vehicles would have got damaged but based on damages the Tribunal cannot fasten the liability on both vehicles and other evidence have to be taken into account for fixing the negligence. In this case the First Information Report has been registered as against the driver of the first respondent and P.W. 1 also in his evidence stated that the accident took place due to the negligence on the part of the driver of the first respondent. The first respondent has not adduced any contra evidence to rebut the petitioner side evidence. Therefore in the absence of any contra evidence the evidence on the side of the petitioner is reliable and acceptable. But the Tribunal without considering the same only relying upon the Motor Vehicle Inspector Report fastened the liability and the same is not proper and needs interference. Therefore the findings of the Tribunal in respect of fastening liability as against both the vehicles is liable to be set aside and the accident took place only due to the negligence on the part of the driver of the first respondent. Thus point no.1 is answered.

Point No.2

12. In this case there is no dispute in respect of quantum of amount. The appeal has been filed by the fifth respondent/appellant as against the liability and this Court in previous points decided that



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the accident took place due to the negligence on the part of the driver of the first respondent and thereby the award passed by the Tribunal is liable to be modified by allowing the appeal in part.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal in MCOP No. 228 of 2008 dated 20.12.2010 on the file of the Motor Accident Claims Tribunal/ Additional Sub Court, Tenkasi is modified to the effect that the third respondent /sixth respondent is directed to pay the award amount as awarded by the Tribunal along with interest @ 7.5 % per annum within a period of two months from the date of this order and the petition stands dismissed as against the fifth respondent. Consequently connected miscellaneous petition is closed. No cost.

26.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
aav

To:

1. The Motor Accident Claims Tribunal
Additional Sub Court, Tenkasi
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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