



C.M.A. (MD) No. 1897 of 2013

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Dated: 19.01.2024

CORAM:

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

C.M.A.(MD)No.1897 of 2013

and

M.P(MD) No.2 of 2013

M/s.Royal Sundaram Alliance Insurance
Co. Ltd., represented by its Divisional manager,
No.37, TVS Co-operative Building,
Krishnarayar Theppakulam Street,
Madurai. ... Appellant / Respondent No.2

Vs.

1.P.Leelavathy

2.P.Sudalaimani

3.P.Veerabathiran

4.P.Nagarajan ... 1 to 4 respondents / Petitioners

5. Venkatesh (exonerated)

(R5 exonerated and he is not a necessary party
vide Court order dated 29.11.2023) ... 5th Respondent /
Respondent No.1

6.The Tamil Nadu State Transport
Corporation Ltd.,
Represented by its Managing Director
Bye Pass Road, Madurai.



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7. Shanmugavel
(Amended as per order
dated 15.06.2011)

... Respondents / Respondents 3 and 4

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the fair and decreetal order dated 28.03.2012 made in M.C.O.P.No.2097 of 2009 on the file of the Motor Accident Claims Tribunal, (Additional District Judge / Fast Track Court-I), Madurai District and allow this appeal.

For Appellant : Mr.S.Srinivasaragavan

For R1 to R4 : Mr.R.Raja

For R6 : No representation

For R7 : Mr.D.Venkatesh

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.2097 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Fast Track Court, Madurai, dated 28.03.2012, wherein the respondents 1 to 4 herein have filed claim petition as against the 5 to 7 respondents and the appellant herein, for claiming compensation. The Tribunal awarded a sum



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of Rs.3,79,500/- towards compensation by directing the appellant / second respondent to pay the amount along with interest at the rate of 7.5% and thereafter, the appellant can claim the same from the seventh respondent herein / fourth respondent, who is the owner of the vehicle. Aggrieved by the judgment, the present appeal has been preferred by the second respondent / insurance company.

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

On 04.10.2009, at about 2 a.m., one Pechimuthu was travelling in the bus bearing registration number TN 58 N 0705 from Madurai to Nagercoil. When the bus was proceeding near Gangaikondan pappankulam, the fourth respondent lorry driver drove the lorry bearing registration number TN 72 R 1874, in a rash and negligent manner, without giving signal turned the vehicle and thereby the bus belonging to the third respondent dashed against the lorry. Both the vehicles were capsized. Due to that impact, the said Pechimuthu died on the spot. The petitioners are the legal heirs of the deceased Pechimuthu. The said deceased was aged about 55 years at the time of accident. He was earning Rs.5,000/- per month and they claim a compensation of Rs.5,00,000/- per month.



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3. Brief averments of the counter filed by the second respondent are as follows:

The averments made in the petition are false, except those that are specifically admitted herein. The accident took place due to the negligence on the part of the third respondent bus driver. After hitting the lorry, the driver of the bus gone more than 300 feet and thereafter capsized. Therefore, the accident took place due to the negligence on the part of the third respondent bus driver. Hence, the petition is liable to be dismissed as against the second respondent.

4. Brief averments of the counter filed by the third respondent are as follows:

The petitioners are put to strict proof of the averments made in this petition, except those that are specifically admitted by this respondent. The respondent denied the age, income, occupation of the deceased. The accident took place only due to the negligence on the part of the the fourth respondent driver and not the negligence on the part of the third respondent bus driver. The driver of the fourth respondent lorry without



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any signal suddenly crossed the road and thereby caused the accident.

Therefore, the third respondent is not liable to pay any compensation and this petition is liable to be dismissed.

5. In order to prove the case, on the side of the petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P6, on the side of the respondents R.W.1 to R.W.4 were examined and marked Ex.R1 to Ex.R5. On hearing both sides and perusing the records, the trial Court awarded a sum of Rs.3,79,500/- with interest at the rate of 7.5% p.a., by directing the second respondent to pay the amount to the petitioner and recover the same from the fourth respondent.

6. Aggrieved by the above said order, the second respondent / insurance company has preferred this appeal on various grounds including that the accident was occurred only owing to the negligence on the part of the third respondent bus driver.

7. Learned counsel appearing for the appellant would contend that when the lorry was waiting for taking 'U' turn, in the opposite side, the



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third respondent bus came in a high speed and dashed against the rear side of the lorry and thereby the lorry was capsized and the bus also overturned after running more than 300 feet. It shows the negligence on the part of the bus driver. In order to prove the negligence on the part of the bus driver, the driver of the lorry was examined as R.W.3 and he categorically deposed about the rash and negligent driving of the bus driver and without considering the evidence, the trial Court fixed the entire liability on the part of the driver of the lorry. Therefore, the order passed by the Tribunal is liable to be set aside.

8. No representation on the part of the sixth respondent. Learned counsel appearing for the respondents 1 to 4 / petitioners / claimants would contend that as per the evidence of P.W.1 and P.W.2, the accident took place due to the rash and negligence on the part of the driver of the lorry who without giving any signal turned the vehicle in the right side and thereby the accident was happened. Though, R.W.3 was examined as witness who is responsible for the accident and FIR was also registered as against the driver of the lorry and thereby the Tribunal has fixed the liability only as against the lorry driver. Therefore, the Tribunal after



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taking into consideration of these aspects, correctly fixed the liability as against the lorry driver. Therefore, the order passed by the Tribunal is in order and the present appeal is liable to be dismissed.

9. Learned counsel for the seventh respondent has adopted the arguments of the appellant.

10. This Court heard both sides and perused the records. Upon 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?

11. In this case, there is no dispute with regard to the manner of accident and no dispute with regard to the involvement of the vehicle. It is an admitted fact that the rear side of the lorry and the front side of the bus were damaged. According to the appellant, the accident took place due to the negligence on the part of the sixth respondent bus driver and according to the petitioner, the accident took place due to the negligence on the part of the driver of the seventh respondent lorry driver. Though, the



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petitioners have examined eye witness with regard to the negligence on the part of the lorry driver, the manner of accident itself speaks about the negligence on the part of the bus driver. Because, as per the evidence of petitioners as well as the respondents when the lorry was turned towards right, the rear side of the lorry was hit by the bus. The lorry was capsized and the bus also over turned after running through more than 300 feet, hence it shows the negligence on the part of the bus driver. However, FIR has been registered as against the driver of the lorry. Mere registering FIR as against the lorry driver alone is not substantiate to hold that the accident took place due to the negligence solely on the part of lorry driver. Even according to FIR it is clearly stated that the bus hit against the rear side of the lorry and both the vehicles were overturned. If the bus driver had driven the vehicle in a slow speed then he could have avoided the accident.

12. Therefore, considering the evidence and though the FIR was registered as against the lorry driver considering all the aspects, this Court is of the view that the accident took place due to the negligence on the part of both the drivers of the lorry as well as the TNSTC bus. But the Tribunal



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failed to see the contents of the FIR as well as the evidence of R.W.3.

Therefore, the finding of the Tribunal with regard to the negligence is liable to be set aside and both the vehicles are liable for the accident. Therefore, this Court fixes the liability each 50% on the lorry as well as the driver of the bus. Therefore, each respondents ie., the appellant herein as well as the sixth respondent herein are liable to pay compensation to the petitioners. In this case, there is no contravention with regard to the quantum of the award passed by the Tribunal. The appellant / insurance company also not disputed the quantum of the award passed by the Tribunal and the 1 to 4 respondents who are the claimants have also not filed any appeal or cross objection in respect of the quantum of award passed by the Tribunal. Therefore, the order passed by the Tribunal is liable to be modified.

13. In the result, the Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal dated 28.03.2012 made in M.C.O.P.No.2097 of 2009 on the file of the Motor Accident Claims Tribunal, (Additional District Judge / Fast Track Court-I), Madurai District, is modified to the effect that the petitioners are entitled to a sum



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of Rs.3,79,500/- (Rupees Three Lakhs Seventy Nine Thousand and Five Hundred only) along with interest at the rate of 7.5% from the date of petition and the second respondent as well as the third respondent are directed to pay each 50% of the said award amount to the petitioners. The second respondent already deposited the entire amount. Now he is at liberty to withdraw the 50% of award amount and the sixth respondent herein / third respondent in the main petition is directed to deposit the remaining 50% amount within a period of two months from the date of the order. The appellant herein / second respondent can recover the amount paid to the petitioners from the third respondent, by filing appropriate application. After deposit of 50% amount by the third respondent, the petitioners are at liberty to withdraw the said amount in accordance with law. 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 Accident Claims Tribunal,
(Additional District Judge / Fast Track Court-I), Madurai District
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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