



C.M.A.(MD)No.1329 & 1330 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.1329 & 1330 of 2014

and

M.P.(MD)No.3 & 3 of 2014

The Divisional Manager,
M/s. National Insurance Company Limited,
3, North Veli Street,
Madurai – 1.

...Appellant/Respondent No.4
(in both appeals)

Vs.

1.Minor Thameem UI Ansari ... Respondent No.1/Petitioner
(in CMA(MD)No.1329 of 2014)
(Minor 1st respondent is represented through his father, natural guardian
Sathik Basha.)

1.N.Ambika Beevi ... Respondent No.1/Petitioner
(in CMA(MD)No.1330 of 2014)

2.Sethupathi .. Respondent No.2/Respondent No.1
(in both appeals)

3.The Divisional Manager,
M/s.The Oriental Insurance Co. Ltd.,
16, North Veli Street,
Madurai. .. Respondent No.3/Respondent No.2
(in both appeals)



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4.The Proprietor,
M/s.Pradeep Road Ways,
11/3, Narayanagar,
Dindigul – 1.

... Respondent No.4/Respondent No.3
(in both appeals)

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order dated 29.01.2013 in M.C.O.P.No.1141 of 2009 and in M.C.O.P.No.638 of 2009 on the file of the Motor Accident Claims Tribunal, IV Additional Subordinate Court, Madurai.

For Appellant : Mr.J.S.Murali
(in both appeals)

For Respondents : Mr.K.Hemakarthiskeyan (R2)
(in both appeals)

Mr.E.Chandrasekaran (R3)
(in both appeals)

Mr.A.Jahangir Badusha
(R1 in in CMA(MD)No.1330 of 2014)

COMMON JUDGMENT

The instant appeals have been filed challenging the finding on negligence in the common award passed in the claim petitions in M.C.O.P.Nos.638 & 1141 of 2009 on the file of the Motor Accident Claims Tribunal, IV Additional Subordinate Court, Madurai.



2. The first respondent in both appeals, who were passengers of the bus insured with the third respondent (hereinafter referred to as 'Sethupathi bus'), had filed claim petitions stating that while they were travelling in the said bus, another bus bearing Reg.No. TN-57-H-6366 belonging to the fourth respondent herein, insured with the appellant (hereinafter referred to as 'Pradeep Roadways Bus'), came in a rash and negligent manner and dashed against the bus, as a result of which, the claimants sustained grievous injuries. They had impleaded the owners and the insurance companies of both the buses as respondents.

3. The appellant insurance company filed a counter stating that the accident took place only due to the negligence of Sethupathi bus insured with the third respondent and that FIR was only lodged against the driver of the said bus, and hence, they are not liable to pay any compensation.

4. The third respondent had also filed a counter stating that the accident took place only due to the negligence of Pradeep Roadways bus insured with the appellant and that the compensation has to be paid only by the appellant.



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5. The claimants examined PW1 to PW4 and marked Exs. P1 to P21. The appellant had examined the driver of the insured vehicle as RW1 and marked his driving licence in Ex.R1. Both the claim petitions were tried together, and a common award was passed by the tribunal, by which the tribunal held that the drivers of both buses were guilty of rash and negligent driving and ordered contributory negligence at 50% on each of them.

6. The first respondent/claimant in CMA(MD)No. 1329 of 2014 was awarded a sum of Rs. 1,07,312/- and the first respondent/claimant in another appeal in CMA(MD)No. 1330 of 2014 was awarded a sum of Rs. 12,000/- along with 7.5% interest per annum from the date of the petitioner till the date of realization with costs.

7. The learned counsel appearing for the appellant insurance company would submit that the finding on negligence is erroneous, as the tribunal did not consider the evidence of RW1, in proper perspective and no contra evidence was let in by examining the driver of Sethupathi bus insured with the third respondent. The learned counsel was however, unable to point out any infirmity in the quantum of compensation.



8. Per contra, the learned counsel appearing for the third respondent submitted that the finding is based on the evidence of PW1 and PW2, who were the passengers of the Sethupathi bus insured with the third respondent, and the tribunal, after analyzing the evidence of PW1 to PW3 and also the evidence of RW1, rightly came to the conclusion that the driver of both buses were equally liable for rash and negligent driving, and hence, no interference is called for.

9. The points for consideration is '*Whether the finding on negligence is justified?*'

10. The quantum of compensation awarded by the Tribunal is not under challenge. As regards the negligence, the claimants, who were the passengers of Sethupathi bus were examined as PW1 and PW2. It is the fact that the driver of Sethupathi bus insured with the third respondent was the accused in the FIR, which was lodged by the driver of Pradeep Roadways insured with the appellant. It is well settled that the result of the investigation would not be binding on the tribunal, and the tribunal has to independently consider the aspect of negligence on the basis of the evidence adduced before it.



11. It is seen that though RW1 was examined by the appellant, the rough sketch was not marked by both the parties. The tribunal found that the accident took place where there was a curve in the road and hence, both the buses ought to have been carefully driven. Though RW1 had put the entire blame on the driver of Pradeep Roadways bus, his evidence is that of an interested witness. His evidence is further contrary to the other evidence on record.

12. The evidence of PW1, however, a passenger had deposed that both the buses were driven in a rash and negligent manner. His evidence is consistent and is in consonance with the other evidence on record. Therefore, the tribunal was right in apportioning of contributory negligence on both the bus drivers. Therefore, this Court finds that there is no infirmity in the award passed by the Tribunal, and hence, both the appeals are liable to be dismissed.

13. The learned counsel appearing for the appellant submitted that the appellant has deposited their share of the compensation. The learned counsel appearing for the third respondent submitted that the third respondent has also deposited their share.



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14. The first respondent/claimant in CMA(MD)No.1330 of 2014 is permitted to withdraw her award amount with interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The first respondent/claimant in CMA(MD)No.1329 of 2014 was minor when the claim petition was filed in the year 2009. He would have attained majority now. Hence, he is directed to file appropriate application for recording himself as major and withdraw his share.

15. In the result, this Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

24.10.2024

Index : Yes / No
Neutral Citation : Yes / No

TO:-

- 1.The Motor Accident Claims Tribunal,
IV Additional Subordinate Court, Madurai.
- 2.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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Common Judgment made in
C.M.A(MD)No.1329 & 1330 of 2014

Dated: 24.10.2024