(2015) 10 MAD CK 0161

In the Madras High Court

Case No : C.M.A. (MD) Nos. 528 to 533 of 2009, C.R.P. (NPD) (MD) No. 707 of 2009, M.P. (MD) Nos. 1, 2 of 2009, 1 of 2014 and 1 of 2010 in C.M.A. (MD) Nos. 528 to 533 of 2009

Branch Manager, The Oriental Insurance Co. Ltd. APPELLANT

Vs

C. Thangamani and Others RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Citation : (2015) 10 MAD CK 0161

Hon'ble Judges : P. Devadass, J.

Bench : Single Bench

Advocate : K. Bhaskaran, for the Appellant; N. Balakrishnan, for the Respondent

Judgement

P. Devadass, J.—As this batch of appeals were directed as against the common judgment of the Motor Accidents Claims Tribunal (Sub Court), Pudukottai and they arose out of a common judgment, they were all grouped together, heard together and are being disposed of together.

2. On 07.08.2002 at about 1.30 p.m. at a place on Trichy - Chennai High Way near Deenadhayalan Petrol Bunk an accident took place. In this a lorry which has been insured with the appellant and a TATA Sumo Car, which has been insured with the National Insurance Company are involved. In the accident, four persons, who came in the TATA Sumo car died and certain persons sustained injuries. They have claimed compensation before the Tribunal. The Tribunal assessed the evidence adduced before it and determined the compensation payable to the dependants of the deceased and the injured persons as detailed below:

3. The learned counsel for the appellant would refer to the M.V. Report and would submit that the rear portion of the lorry had marks of damage and the front portion of the Tata Sumo Car also has damage. It indicates that the Tata Sumo Car has dashed against the lorry, which was parked near the Petrol Bunk. Further, even the eye witnesses are not clear about the manner of accident. In the cross-examination their version in their chief examination has been

shattered. In such circumstances, the lorry driver alone cannot be held responsible. At any rate, clean chit cannot be given to the driver of Tata Sumo Car and the insurer.

4. On the other hand, the learned counsel for the National Insurance Company with which the Tata Sumo Car has been insured would submit that it has not been clearly established that at the time of accident, the lorry was stationary. The evidence of eye-witnesses would show that suddenly from the nearby Petrol Bunk the lorry emerged and it came rashly driven and it had dashed against the Tata Sumo, which came from the other side of the road. He would also submit that the Tata Sumo Car was completely damaged and it had also contained damaged on the side portion. Further, the F.I.R. has been registered as against the lorry driver and after investigation police charge sheeted him. He would also stress that the lorry driver has not preferred any police complaint exhibiting his innocence. Further, even the lorry owner had not taken any such step. He would also submit that the answers obtained by way of suggestions are not equivalent to admission.

5. The learned counsel for the claimants would sustain the award of the Tribunal.

6. I have anxiously considered the rival submissions, perused the materials on record and the impugned common Award of the Tribunal.

7. Initially it appears to be an accident involving two vehicles. The manner of the accident cannot be solely decided on the basis of Sketch Map and the Motor Vehicle Inspector''s Report etc. Manner of accident largely to be decided based on the evidence of eye-witnesses. Of course, the documentary evidence stated above may furnish assistance to the evidence of eye-witnesses or they may corroborate the material particulars. Further, a road accident case cannot be expected to be proved like a murder case, where strict proof is called for. Whereas a road accident case when a victim claim compensation it is to be dealt with as a civil case. It depends upon the preponderance of probabilities. Proof beyond all reasonable doubts, which is completely foreign to an enquiry under the Motor Vehicles Act.

8. Now, in this case, our attention has been invited by the learned counsel for he Oriental Insurance Company with regard to the damage found on the rear side of the lorry and also the damage on the front side of the Tata Sumo. The learned counsel deduce that the driver of the Sumo is not all right. He had also contributed his part for the emergence of the road accident. As I stated already by such physical evidence suddenly we cannot come to a conclusion that such a stage driver alone is responsible for the accident. Now, in this case, as rightly pointed by the learned counsel for the National Insurance Company, there is no evidence adduced to show that lorry was stationed. The evidence of the eyewitnesses is that at about that time when they were travelling in the Tata Sumo Car, suddenly the lorry emerged from the Petrol Bunk. It is pertinent to note that the front part of the Tata Sumo also have some damages. But eye-

witnesses in their evidence were consistent about the wrong doing of the lorry driver. It is pertinent here to note that F.I.R. has been registered as against the lorry driver. The police after collecting evidence charge sheeted him. Above all, when 4 persons have been died and certain persons also sustained injuries the lorry driver if is not responsible for the accident, he could have lodged a police complaint at a nearest police station. So, he should have given a report to the lorry owner as to the fact that he is not responsible for the accident. This aspect speaks volumes about the contention put up by Original Insurance Company through lorry driver and R.W.1. The lorry driver also in his cross-examination admits that he did not take any action to exclude himself from the offence of causing the death of 4 persons and causing injuries to many persons.

9. Now, while winding up our exercise on evidence we will also take a decision close on the heals of the evidence recorded by the Tribunal.

10. In view of our above deliberations and discussions and analysis we hold that these appeals deserves for dismissal and are hereby dismissed. The common award of the Tribunal is upheld. The appellant is directed to deposit the entire amount, less the amount, if any already deposited within six weeks from the date of receipt of a copy of this judgment. On such deposit being made, on proper petitions, the Tribunal shall disburse the amount, less amount, if any already withdrawn to the adult claimants. In respect of minors, their amount shall be deposited in a Nationalized Bank, if not already deposited and if already deposited, the amount shall continue to be in deposit till their attaining 18 years of age. However, accrued interest thereon shall be paid to the guardian. No costs. Consequently, connected miscellaneous petitions are closed.

