

(2008) 03 MAD CK 0145

In the Madras High Court

Case No : C.M.A. (MD) No's. 1093 to 1095 of 2005

National Insurance Co. Ltd.

APPELLANT

Vs

P. Murugan and Others

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Citation : (2009) ACJ 2411

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S. Srinivasa Raghavan, for the Appellant; M. Ajmalkhan, Gokul, for Rajinish Pathiyil, for the Respondent

Judgement

G. Rajasuria, J.—C.M.A. Nos. 1093 to 1095 of 2005 have been filed as against the common judgment and decrees dated 16.9.2004 passed in M.C.O.P. Nos. 403, 404 and 1192 of 2000, by Motor Accidents Claims Tribunal-cum-First Additional District Judge, Madurai.

2. All these appeals have been taken for discussion and disposal as they emerged relating to one and the same accident.

3. The challenge in these appeals are relating to the quantum of negligence fixed exclusively on the driver of the van, leaving the driver of the State Transport Corporation bus, even though it is an accident involving head-on collision between two vehicles in a broad road and that too, in broad daylight.

4. The point for consideration is as to whether the Tribunal was justified in fastening the driver of the van as exclusively responsible for the accident?

5. Heard both sides.

6. The learned Counsel for the appellant insurance company being the insurer of offending van, would develop his argument by drawing the attention of this Court to the deposition of PW 1 that the accident occurred due to rash and negligent driving of both the drivers of the vehicles concerned, namely, the van and bus.

7. According to the learned Counsel for the appellant, the Tribunal ignored the trite proposition of law that whenever there is collision between two vehicles on a broad road, drivers of both the vehicles should be equally made liable for the accident. In support of his contention, he would cite the decision of the Hon'ble Apex Court in *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, . An excerpt from it, would run thus:

(12) Adverting to the next contention of the claimants, no doubt High Court has not dealt with the point in issue. However, we have noticed the reasoning and finding of M.A.C.T. recorded under issue No. 2. It is the evidence of Rajesh Kumar Gupta, PW 2 who was travelling in Maruti car along with the deceased Raj Kumar Dugar on the day of the accident that he had also suffered some injuries in the said accident. He stated that while coming from Digboi, Maruti car being driven by the deceased met with an accident as a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head-on collision. M.A.C.T. has not accepted the evidence of PW 2 to prove that the driver of the offending bus was driving the vehicle at abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as PW 2 wanted the court to believe, it was but natural, as a prudent man, for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus coming from the opposite direction from a long distance. It was head-on collision in which both the vehicles were damaged and, unfortunately, Raj Kumar Dugar died on the spot. M.A.C.T., in our view, has rightly observed that had the knocking been only on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and we do not find any cogent and convincing reason to disagree with the well reasoned order of M.A.C.T. on this point. M.A.C.T. has awarded interest at the rate of 10 per cent per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by M.A.C.T. and, in our view, the discretion exercised by M.A.C.T. cannot be said to be inadequate and inappropriate.

8. It has to be seen in this case whether there is actually head-on collision or not?

9. The deposition of PW 1 would unambiguously demonstrate that when the van was negotiating along the broad road, namely, Madurai-Sivagangai Road from west to east direction, the State Transport Corporation bus was coming in the opposite direction from east to west and while so, both the vehicles dashed as against each other; the accident occurred almost in the middle of the road, even though on either side of those moving vehicles, there was lot of space including the mud portions of the road on either side.

10. The perusal of the judgment of the Tribunal would clearly indicate that oblivious of such glaring admission on the part of PW 1, it arrived at the conclusion as though the driver of the van alone was at fault. The ratiocination adhered to by the Tribunal that the driver of the van was not examined, is neither here nor there and for that matter, even the driver of the bus was also not examined. Simply because the F.I.R. was registered as against the driver of the van and that even the driver of the bus might have been made to pay fine in the criminal court, there is no hard and fast rule that the entire responsibility should be fixed only on the driver of the van.

11. The reality as discussed supra would evince and evidence that the accident had occurred due to rash and negligent driving of the drivers of both the vehicles. Accordingly, the responsibility has to be apportioned between the drivers of the van and bus belonging to the State Transport Corporation and ultimately, the respective owners should be made to honour the award.

12. In the result, C.M.A. Nos. 1093 to 1095 of 2005 are disposed of and the common judgment and decree of the Tribunal is modified to the effect that the negligence on the part of the drivers of both the vehicles is apportioned to the extent of 50 per cent each and consequently, the respective owners are responsible to pay the award amount at the rate of 50 per cent each. The rest of the common judgment and decree of the Tribunal shall hold good. Consequently, connected miscellaneous petition is closed. No costs.