
(2014) 07 MAD CK 0023

In the Madras High Court

Case No : C.M.A.No.1053 of 2014 and M.P.No.1 of 2014

New India Assurance Co. Ltd.

APPELLANT

Vs

Sathishraj

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Citation : (2014) 2 TNMAC 39

Hon'ble Judges : Mr. R.Subbiah, J.

Bench : Single Bench

Advocate : Mr.J.Chandran, Advocate, for the Appellant; Mr.C.Kulainthaivel, Advocate, for the Respondent Nos. 1 and 2

Final Decision : Disposed Off

Judgement

Mr. R.Subbiah, J.—This appeal has been filed by the insurance company challenging the finding of the Motor Accident Claims Tribunal (Subordinate Judge), Erode, in and by the judgment and decree dated 19.11.2012 made in M.C.O.P.No.243 of 2010, in directing the insurance company to pay the compensation amount, by fixing the negligence on the part of the driver of the insured vehicle.

2. The first respondent is the son of the deceased Jamuna and second respondent is the mother of the deceased. Third respondent is the driver of the insured vehicle, respondents 4 and 5 are the owners of the vehicle involved in the accident and the sixth respondent is the daughter of the deceased Jamuna.

3. It is the case of the claimants/respondents 1 and 2 before the Tribunal, that on 24.2.2010 at about 1.30 p.m., the deceased Jamuna was travelling in a Scooty pep bearing registration No.TN 36 H 7221 as a pillion rider, which was driven by the sixth respondent, on Bhavani-Anthiyur east to west main road near Pungattar Kadai in the extreme left side of the road. At that time, the third respondent/driver of an Eicher Van bearing registration No.TN 69 K 6630, which was running in front of the vehicle, applied sudden break without giving any

signal. Therefore, left with no other alternative, in order to avoid major accident, the scooty rider dashed against the rear wheel of the Eicher van and thus got involved in the accident, in which the deceased was thrown on the road and sustained grievous head injuries. Immediately, she was taken to KMC Hospital at Coimbatore and died in the hospital on 2.3.2010. It is the further case of the claimants that the deceased was doing tailoring business and earning a sum of Rs.6,500/- per month. Hence, the claimants have made a claim as against the owner of the Eicher Van as well as the appellant insurance company, claiming a sum of Rs.20,00,000/- as compensation.

4. The said claim was resisted by the insurance company contending that at the time of accident, the Eicher Van was parked on the mud portion of the road i.e., on the left side of north south road. The rider of the scooty pep, the sixth respondent herein entered into the mud portion of the road and hit behind the parked van and thus, got involved in the accident. Originally, first information was registered only as against the sixth respondent. But, subsequently, by the influence of police, charge sheet was filed as against the driver of the Van. That apart, the insurance company has also taken a defence that the amount of Rs.20,00,000/- claimed by the claimants as compensation is highly excessive.

5. In order to prove the claim, the son of the deceased/the first claimant examined himself as P.W.1, besides examining one Saravanan as P.W.2 and Dr.K.Kesavamoorthy, who treated the deceased in the hospital from the date of accident till her death, as P.W.3 and marked 11 documents as Exs.P.1 to P.11. On the side of the respondents, the daughter of the deceased Jamuna, who had driven the scooty pep, was examined as R.W.1 and one Subbaiyah, the investigating officer of the insurance company was examined as R.W.2 and one document was marked as Ex.R.1.

6. The Tribunal after analysing the entire evidence, both oral and documentary, has come to the conclusion that the accident was the result of rash and negligent driving of the driver of the Eicher Van, which was proceeding in front of the two wheeler, in which the deceased was travelling as a pillion rider and thus, fixed the entire liability on the part of the driver of the Eicher Van. By coming to such a conclusion, the Tribunal has calculated the compensation under different heads and passed an award for a total sum of Rs.6,39,500/- and directed the insurance company to pay the same. Aggrieved over the said finding, the present appeal has been filed by the insurance company.

7. I have heard the submissions made by the learned counsel on either side and carefully gone through the entire materials available on record.

8. Since the present appeal has been filed only challenging the entire negligence fixed on the part of the driver of the insured vehicle and thereby directed the insurance company to pay the entire compensation, I am not dealing with the other aspects of the award i.e., with regard to quantum of compensation awarded by the Tribunal.

9. From the materials available on record, I find that immediately after the accident, the complaint was given only by the driver of the Eicher Van. In his complaint, he had clearly stated that on the date of accident, after parking the Van on the extreme left side of the road, he got down from the Van to ease himself. At that time, the sixth respondent came in a two wheeler and entered into the mud portion of the road and hit behind the Van. Since, the driver of the Van was not examined before the Tribunal, the Tribunal, by placing reliance on the evidence of P.W.1, has fixed the entire liability on the part of the insurance company. On a perusal of the records, I find that on the side of the claimants, the rough sketch prepared by the investigating officer was marked as Ex.P.3. In Ex.P.3, it has been clearly indicated that the accident had occurred only on the mud portion of the road. In fact, the investigating officer, who was examined as R.W.2 on the side of the insurance company, has also admitted in his evidence that the accident had occurred only on the mud portion of the road. But, the evidence of R.W.2 was not properly considered by the Tribunal. On the other hand, the Tribunal has fixed the entire liability on the part of the insurance company merely on the reasoning that the driver of the Eicher Van was not examined. I find that there is sufficient evidence to show that the accident had occurred only on the mud portion of the road. Under such circumstances, the Tribunal ought to have come to the conclusion that there is a contributory negligence on the part of the sixth respondent also. Further, since scooty pep dashed on the rear side of the Eicher Van, it is a fit case to apply the doctrine of contributory negligence.

10. In this regard, a reference could be placed on the decision of the Hon''ble Apex Court in the case of H.Renukadevi v. Bangalore Metropolitan Transport Corporation reported in 2008 (1) TNMAC 430 (SC). In that case also, the scooty driven by the victim, hit on the rear wheel of the bus and thus the rider of the scooty got himself involved in the accident and the Tribunal had fixed the entire fault/negligence on the part of the Transport Corporation Bus. On appeal, the High Court of Karnataka, found that the Tribunal had lost sight of the spot mahazar, which clearly indicated that the scooty driven by the claimant hit the rear wheel of the bus, indicating that the claimant was also negligent to a great extent. On further appeal, the Hon''ble Apex Court found that the finding of the fact arrived at by the High Court reversing the finding of the Tribunal cannot be said to be perverse or arbitrary in fixing the contributory negligence on the part of the claimant also. The dictum laid down by the Hon''ble Apex Court in the decision is squarely applicable to the facts of the present case.

11. Considering the facts and circumstances of the case and as per the decision of the Hon''ble Apex Court cited supra, I am of the opinion that 25% of negligence could be fixed on the part of the sixth respondent and 75% could be fixed on the part of the driver of the Eicher Van. In view of the same, the claimants are entitled only 75% of the compensation amount awarded by the Tribunal and it works out to Rs.4,79,625/- (Rs.6,39,500/- x Rs. 5/100).

12. In the result, the civil miscellaneous appeal is partly allowed and a sum of Rs.6,39,500/- awarded by the Tribunal is hereby reduced to Rs.4,79,625/-. No costs. Consequently, connected miscellaneous petition is closed.

13. The appellant insurance company is directed to deposit 75% of the compensation amount awarded by the Tribunal viz., Rs.4,79,625/- together with interest at the rate of 7.5% from the date of plaint till the date of deposit, less the amount, if any, already been deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants and the sixth respondent are entitled to withdraw their respective shares along with interest.