
(2007) 03 MAD CK 0237

In the Madras High Court

Case No : C.M.A. No. 514 and C.M.P. No. 750 of 2007

S. Palaniswamy and Another

APPELLANT

Vs

Chinnakali and Others

RESPONDENT

Date of Decision : 09-03-2007

Acts Referred:

Citation : (2009) ACJ 297

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : S. Manohar, for the Appellant; K.S. Narasimhan, for the Respondent

Judgement

P.D. Dinakaran, J.—The appeal is directed against the judgment and decree dated 30.6.2003 made in M.C.O.P. No. 733 of 1995 on the file of the Motor Accidents Claims Tribunal (Additional District-cum-Fast Track Court No. 4), Coimbatore at Tiruppur.

2. The impugned accident had taken place on 2.3.1995 at about 6 p.m., while the deceased Ramkumar, as a cleaner, was travelling and assisting the driver of mini lorry bearing registration No. TN 37-E 8944 proceeding towards west-Palladam to Coimbatore, the bus belonging to the appellant No. 1 and driven by the driver, respondent No. 3, in a rash and negligent manner, came from the opposite direction and near Perumbalikuttai dashed against the mini lorry, as a result of which, the deceased sustained grievous injuries and died on the spot and the driver of the mini lorry, who also sustained injuries, was admitted in the hospital. The claim of the respondents-claimants,-parents of the deceased Ramkumar, a sum of Rs. 5,00,000 towards compensation, was resisted by the appellant No. 2.

3. The Tribunal, by the impugned judgment, while holding that the accident had occurred only due to rash and negligent driving of the bus, held that the appellants and the respondent No. 3 are liable to pay compensation. The Tribunal, while exonerating respondent Nos. 4 and 5, owner and insurer of the

mini lorry, held that the respondents-claimants are entitled to get compensation and determined a sum of Rs. 1,52,400 as compensation payable by the appellants and the respondent No. 3. Hence, this appeal by the appellants.

4. Though several grounds have been raised, learned Counsel for the appellants assails the impugned judgment mainly on the ground of fixation of liability wholly on the appellants, holding that the accident had occurred only due to negligence on the part of the driver of the bus. According to the learned Counsel, the accident was only due to composite negligence of the driver of the bus and the driver of the lorry.

5. The Tribunal, based on the evidence of the driver of the tanker lorry, PW 2, which came behind the mini lorry involved in the accident, found that the bus driver was responsible for the accident. But, in view of the fact that another court of law has decided that both the drivers of the vehicles are responsible for the accident and hence, both the insurance companies are equally liable for payment of compensation, as evident from the evidence of the administrative officer of the appellant insurance company, RW 2, and as had been repeatedly held by the Supreme Court that there cannot be different findings by different courts in respect of one set of facts, I am of the opinion that the Tribunal has failed to appreciate the evidence in proper manner.

6. Hence, considering the facts and circumstances of the case, I am of the opinion that the appellants and respondent Nos. 4 and 5, owner and insurer of the mini lorry, are equally liable for payment of compensation and they shall bear 50 per cent of the compensation awarded by the Tribunal.

7. As no other argument is advanced by the appellants, with the above modification in the award of the Tribunal, the appeal stands disposed of. No costs. Consequently, connected C.M.P. is closed.