

(2017) 04 MAD CK 0213
In the Madras High Court
Case No : 2585 of 2003

The Oriental Insurance Co. Ltd., Pondicherry

APPELLANT

Vs

T.Pachaiyappan & Ors.

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Citation : (2017) 04 MAD CK 0213

Hon'ble Judges : M.M.Sundresh, M.S.Ramesh

Bench : DIVISION BENCH

Advocate : M.M.Sundresh, M.S.Ramesh

Judgement

1. This appeal has been filed by the Oriental Insurance Company against the award passed by the learned II Additional District Judge-Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P.No.1638 of 2001 dated 31.12.2002.

2. The brief facts of the case is as follows:- a)On 18.05.2001 in the early morning at about 1.30 a.m., the bus bearing registration No.TN-01-N-6137 belonging to State Express Transport Corporation was proceeding from Krishnagiri to Chennai and en-route, when the bus was proceeding near Ayyannur Village, a lorry bearing registration No.PY-01-Q-6788 insured with M/s.Oriental Insurance Company came from the opposite direction and both the vehicles dashed against each other. In the impact, several persons were injured and five of them died.

b)The claimant in the present appeal, had sustained injuries owing to the aforesaid accident and had filed a claim petition before the Tribunal, claiming a sum of Rs.10 lakhs.

c)The Tribunal, after consideration of the various documentary as well as oral evidences let in, had awarded a sum of Rs.4,93,950/- towards compensation under the following heads:

S. No. Head Amount awarded by the Tribunal

1. Loss of income 1,40,000
2. Pain and sufferings 15,000
3. Medical Expenses 1,12,750
4. Transportation 11,200
5. Extra Nourishment & Attender charge 5,000
6. Future Medical Expenses 10,000
7. Permanent Disability 1,00,000
8. Loss of disfigurement 1,00,000

Total Rs. 4,93,950/-

3. Aggrieved over the said award, the Insurance Company has filed the present appeal. It is to be noted that the injured claimant has not preferred an appeal seeking for enhancement of compensation.

4. In the present appeal, the attack is only on the ground of liability of the Insurance Company to pay the compensation.

5. According to the learned counsel for the appellant, the State Express Transport Corporation, whose bus was also involved in the accident, is liable to pay the compensation.

6. In connection with the same accident, the legal representatives of one of the passengers, namely, Pandian who had died in the accident, had filed M.C.O.P.No.423 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub Court, Thirupattur, Vellore District.

7. The Tribunal while awarding the compensation, had thought it fit to direct both the Transport Corporation as well as Insurance Company to equally pay the compensation to the claimants.

8. As against the same award, the Transport Corporation as well as the Oriental Insurance Company had filed CMA Nos.1308 of 2005 & 1147 of 2017, questioning their respective liabilities and quantum. It is pertinent to mention here that this Court while passing final orders, has held as follows: "13. The grounds raised by the appellants questioning their respective liabilities is answered as follows:-

i) This is the case of Composite Negligence where the death of a passenger of a bus owned by the Tamil Nadu State Transport Corporation was caused due to the negligence of the drivers of the bus as well as the lorry which was insured with Oriental Insurance Company. The Tribunal, while determining the negligence had relied upon the exhibits A1, A14 & A15 and by taking into account the evidence

of P.W.1 and P.W.2, had come to the conclusion that both the drivers of the bus, as well as the lorry, were equally negligent and had caused the accident.

ii) While awarding the compensation, the Tribunal thought it fit to direct both the Transport Corporation as well as the Oriental Insurance Company to equally pay the compensation to the claimants.

iii) It is well settled law in case of Composite Negligence that liability is joint and several and that the Tribunal shall pass a composite decree against the owners of both the vehicles. When this legal issue came up before the Hon"ble Supreme Court in *Khenyei V. New India Assurance Company Ltd. & others* reported in 2015 (1) TNMAC 801 (SC), the Court after taking into account, various judgments of the Hon"ble Supreme Court as well as the Full Bench Judgment of the High Court of Karnataka, while holding that the liability of the Joint Tort-feasors are joint and several, observed as follows:

"iii) In case all the Joint Tort-feasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of Composite Negligence of the drivers. However, determination of the extent of negligence between the joint tort-feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in main case one Joint Tort-feasor can recover the amount from the other in the Execution proceedings."

iv) In the instant case, both the drivers of the bus as well as the lorry had died. The only witness namely, P.W.2 who claimed to have witnessed the accident had stated in the cross examination that he was in his house at the time of accident and that he was not present at the accident site. In the absence of any direct eye-witness and by relying upon Exhibits A1, A14 and A15 as well as the oral evidence of P.W.1 and P.W.2, the Tribunal had come to the conclusion that both the Transport Corporation, as well as the Oriental Insurance Company, which is the insurer of the lorry, are equally liable for payment of compensation. As held by the Hon"ble Supreme Court in the judgment cited above, whenever there is sufficient evidence, it is open to the Court/Tribunal to determine inter-se the extent of Composite Negligence of the drivers. The determination of extent of negligence between the drivers is only for the purpose of inter-se liability so as to enable one to recover the same from the other, after making whole of payment to the claimants.

v) Since the Tribunal had rightly applied the doctrine of Composite Negligence and come to the conclusion that there was enough evidence to show that both the drivers were equally responsible for having caused the accident, has fixed the liability of the Transport Corporation as well as the Oriental Insurance Company was fixed in the ratio of 50:50. In view of the same, we have no hesitation to

hold that the joint liability as arrived by the Tribunal in fixing the award is valid.

14. In view of the foregoings and above discussions, we do not find any merits in the appeal filed by the State Transport Corporation as well as Oriental Insurance Company. Hence, the Civil Miscellaneous Appeals stand dismissed accordingly. No costs."

9. The above reasonings rendered by us are self explanatory.

10. In view of the same, we do not find any merits in the present appeal filed by the Insurance Company. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs.