

C.M.A(MD)No.358 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.12.2020

Pronounced On : 04.02.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.358 of 2016

and

C.M.P.(MD)No.5106 of 2016

The Branch Manager,
Tamil Nadu State Transport Corporation,
Pillaithanneerpandal, Thirumayam Road,
Pudukkottai. ... Appellant / Respondent

Vs.

1.Marimuthu

2.Kamala

3.Kayathiri

: Respondents 1 to 3 /Petitioners 1 to 3

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.445 of 2014, dated 30.06.2015 on the file of Motor Accidents Claims Tribunal/ Principal District Court, Pudukkottai.

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C.M.A(MD)No.358 of 2016

For Appellant : Mr.D.Sivaraman

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the award passed in M.C.O.P.No.445 of 2014, dated 30.06.2015, on the file of Motor Accidents Claims Tribunal/Principal District Court, Pudukkottai.

2.Admittedly, the first claimant is the father, the second claimant is the mother and the third claimant is the sister of the deceased Govindaraju. The accident is admitted and the involvement of TVS Sport/Motor Cycle and the Bus bearing Registration No.TN-55-0520 owned by the Appellant/Transport Corporation, is not in dispute.

3.The case of the claimants is that on 15.12.2011, when the deceased Govindaraju was returning to his school, after purchasing paper and pen along with his three friends Venkateshwaran, Prasanth and Gowthamanraj in a Motorcycle driven by the said Prasanth, one lorry, which was proceeding before the two wheeler had allowed the two

C.M.A(MD)No.358 of 2016

wheeler to overtake the lorry, that when the two wheeler rider was proceeding after overtaking the said lorry, the bus bearing Registration No.TN 55 0520, which came in the opposite direction in a rash and negligent manner, dashed against the two wheeler and as a result of which, all the four persons were thrown out and sustained serious injuries, that the said Govindaraju, despite treatment, succumbed to the injuries on 26.12.2011 and that the accident had occurred only due to the rash and negligent driving of the Bus driver.

4.The defence of the Transport Corporation is that on 15.12.2011 at about 01.20. pm when the Bus after brief stop at Vadakadu school Bus stand, was proceeding towards west, two lorries and a Sumo Car came in the opposite direction and on noticing the same, the Bus driver diverted the Bus towards left side of the road, that at that time, one two wheeler with four boys by overtaking the lorries came in a rash and negligent manner and on seeing the same, the Bus driver had immediately stopped the Bus and sounded horn, that the two wheeler rider, who was unable to control the vehicle, had dashed against the front right side bumper of the Bus and caused the accident and that the Motorcycle rider was responsible for the accident.

5. During enquiry, the claimants have examined the first claimant as P.W.1 and one Rengan, alleged to be the occurrence witness as P.W.2 and exhibited five documents as Ex.P.1 to Ex.P.5. The Appellant/Transport Corporation has examined its driver Thiru.Subramanian as R.W.1 and adduced no documentary evidence.

6. The trial Court, upon considering the evidence both oral and documentary, has passed the impugned award, dated 30.06.2015, holding that the Bus driver was responsible for the accident and directing the appellant to pay compensation of Rs.6,62,000/- with interest at 7.5% per annum to the claimants. Aggrieved by the said award, the Transport Corporation has preferred the present appeal.

7. The learned counsel for the appellant would contend that the deceased Govindaraju was proceeding in a two wheeler along with three persons and while the rider had tried to overtake the lorry without noticing the Bus, which came in the opposite direction and thus invited the accident, that the accident had occurred only due to the negligence on the part of the deceased himself and that even otherwise, the deceased

had contributed to the accident and as such, he was liable for contributory negligence.

8.It is not in dispute that the deceased was proceeding in a two wheeler as a pillion rider along with his three friends Venkateshwaran, Prasanth and Gowthamanraj and that the two wheeler was owned by the said Gowthamanraj. The claimants in order to prove their case have examined P.W.2 Rangan as occurrence witness and he would reiterate the version of the claimants and according to him, when he was taking Tea at Thankaprakasam Tea Stall on 15.12.2011, the Bus bearing Registration No.TN-55-0520, which came in a rash and negligent manner and without sounding horn dashed against the two wheeler and as a result of which, motorcycle rider and pillion riders had sustained serious injuries and that the accident was occurred only due to the rash and negligent driving of the bus driver.

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9.P.W.2 in his cross examination would say that he came to depose at the request of the claimants, that he had not lodged any complaint with the police, that he was taking tea at the time of accident and that the Bus came towards west. He would deny the suggestion that the accident was

occurred due to the negligence of the deceased Boy and that he was deposing falsely as both of them were belonging to the same place.

10.As already pointed out, the Appellant Corporation has examined its driver as R.W.1 and he would narrate the manner of the accident as put forth in their counter statement. R.W.1 would say that after seeing the two wheeler with four persons coming in the opposite direction in a rash and negligent manner, he stopped the Bus at a distance of 15 feet, that they were unable to control their vehicle and that the accident was occurred for the reason that four persons had travelled in the two wheeler.

11.R.W.1 in his cross examination would say that FIR was lodged against him, that he has not preferred any complaint before the police as FIR was wrongly registered against him, that he has not filed any documents to show that he preferred a complaint and that he has not filed any documents to show that the criminal case ended in his favour. No doubt, though R.W.1 has stated that the criminal case ended in his favour, he has not produced any documents to prove the same. But the fact remains that though R.W.1 has specifically stated that the complaint

registered against him has been closed in FIR stage itself, the same was not specifically disputed or denied by the claimants.

12.The trial Court has relied on the decision reported in **2011 (1) TN MAC 136 (DB), United India Insurance Company Limited, Karaikudi Vs. Uma and others.** In that case, the deceased was travelling with his wife and 14 years old son in a two wheeler and the High Court has held that simply because three persons travelled in a motorcycle, it is not to be presumed that the deceased was negligent in riding the two wheeler and rejected the plea of contributory negligence. No doubt, recently our Hon'ble Supreme Court in **Mohammed Siddique and another Vs. National Insurance Company Limited and others,** reported in **2020(1) TN MAC 161 (SC),** has set aside the order of the High Court, holding that the victim was guilty of contributory negligence. In that case, the accident was occurred at 02.00.am and the motorcycle in which, the deceased was travelling, was hit by a Car from behind. The Hon'ble Apex Court has held that the fact that a person was a pillion rider on a motorcycle along with driver and one more person on pillion, may be a violation of the law, but such violation by itself, without

anything more, cannot lead to a finding of Contributory Negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. In para No.14, the Hon' ble Apex Court has held as follows:

“14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of Contributory Negligence. Hence, the reduction of 10% towards Contributory Negligence, is clearly unjustified and the same has to be set aside.”

13. The learned counsel for the Appellant has relied on the decision of this Court reported in **2012 (1) TN MAC 713 [Oriental Insurance Company Limited Vs. Sivakami and others.]**

In para No.10:

“10. In spite of warning of this Court earlier, deprecating the practice of the drivers of Two-wheelers carrying more number of passengers, unfortunately, as rightly pointed out, they do not care about their lives when they take the entire family in a Two-wheeler, which has to be deprecated and therefore, as rightly held by the Hon'ble Supreme Court, this Court only would say that by carrying extra person, the injured person definitely has contributed to

the accident and 50% is liable to be borne by the injured person as he has violated Section 128 of the Motor Vehicles Act. Hence, this Court is of the view that contributory negligence can be fixed at 50%.”

14. Generally, two wheeler popularly called as Motor bike or motorcycle is designed and is meant for travelling of two persons. If anyone takes more than 2 persons and violates two only rule, then he will be committing an offence and is punishable under Section 128 of the Motor Vehicles Act.

15. That is one aspect of the matter. Let us discuss the other aspect. Suppose if a two wheeler rider takes two grown-up persons or weighty and bulky persons or three grown-up persons in the pillion which is only meant for one person, what would be the effect or impact? Firstly, rider has to necessarily move forward towards petrol tank so as to give some place to those pillion riders which forces him to sit and ride in an unusual position and posture. Secondly if 2 or 3 persons are seated in the pillion, then they have to necessarily sit in a cramped or jam-packed position along with rider and the rider will definitely feel or suffer pressure behind, which in turn, will definitely affect or disturb his rhythm of

driving and consequently balancing of the vehicle. Thirdly, if any one of 2 or 3 pillion riders makes any movement usual or unusual, that would make the rider to loose his control over the vehicle. In the above scenario, the movement of rider's legs and hands would get restricted and consequently he can't have full control over the vehicle.

16. Now coming to the technical side, there are many factors like weight, aerodynamics, gearing, etc. which contribute to determining a vehicle's top speed and acceleration. But Power and Torque are the most important factors, Power determines the vehicle's top speed and Torque helps the vehicle in its acceleration. In automobile industry, it is commonly said that higher the power of a vehicle, higher is its top speed and that better the torque of a vehicle, better is its acceleration. Various automobile manufacturers are releasing their two wheelers with different maximum power and maximum torque and with lot of facilities for easy and convenient riding and for safe and comfortable travelling, even for very long distances. But whatever be the power or torque and whatever be the facilities made, the two wheeler is only meant to take a rider and a pillion rider and not more than two at any cost. If the rider takes 2 or 3 persons in his vehicle, then he has to give more acceleration to increase

the pulling capacity so as to take more weight. The efforts required from the rider to maintain the acceleration level would affect or divert his attention and concentration.

17.Despite the penal laws and awareness programmes conducted by the Governments and various NGOs, people have not changed. Every road user owes a duty of care and caution and is duty bound to drive their vehicles in such a way not to endanger themselves and more importantly not to endanger the pedestrians, cyclists, two wheelers and other vehicle users.

18.As per the statistics available for the past two years excluding the Corona year of 2020, in 2018 India ranked 1st in the road accidents across 199 countries with total accidents at 4,67,044 in which two wheeler accidents accounted for 35.2%, the highest in all categories of vehicles. It is pertinent to note that in India, the state of TN stood 1st in the number of accidents. In 2019, total accidents occurred were 4,37,396 in which 38% of victims of road accidents were riders of two wheelers.

19.It is high time for all stakeholders to review our mind-set that in cases of road accidents involving big and small vehicles, fixing the driver of the big vehicle as tort-feasor, as in majority of cases FIRs came to be registered against the driver of the big vehicle and investigations are being carried out in such a way to make that driver is responsible for the accident. It is also high time for all who are dealing with motor accident claims to review our mentality in considering the plight of the injured victim or the legal heirs of the deceased victim sympathetically and awarding of compensation in the accidents occurred by violating the Laws and Rules.

20.No doubt, as already pointed out, taking more than 2 persons in a two wheeler, by itself is an offence but whether it would amount to negligence or not is required to be decided on the facts and circumstances of the given case. If a rider takes 2 persons as pillion riders, that itself would not amount to negligence. For example, if a rider takes his wife and a child or if he takes 2 small boys or lean persons, that by itself would not amount to negligence. But if the rider takes 2or 3 grown-up persons or obese persons, that by itself would amount to negligent driving since the rider can loose his control of the vehicle at

any point of time. In the case on hand, since four grown-up students had travelled in the two wheeler, I have no hesitation to hold that the rider and all the pillion riders are guilty of negligent riding / travelling.

21.In the present case, to some extent, it's a case of head on collision. In Ex A3, the Motor vehicle Inspector has pointed out that he noticed some damages in the centre of bumper and grill of the Bus. The Appellant in their counter statement has taken a stand that the Bus driver after noticing the two wheeler with four persons coming after overtaking two lorries in the opposite direction, stopped the Bus on the left extreme of the road and that at that time two wheeler rider who came in a rash and negligent manner, unable to control the vehicle, dashed against the front right side bumper of the Bus. The Tribunal, on considering the damages shown in MVI Report, has observed that the version of the Appellant cannot be accepted. Considering the evidence available, I am of the view that the variation shown as to where the damages occurred in the Bus, does not make any difference.

22.Though the claimants have pleaded that lorry driver had allowed the two wheeler rider to overtake the lorry and while proceeding

after overtaking the lorry, bus driver who came in the opposite direction, in a rash and negligent manner, had dashed against the two wheeler, they have not chosen to examine the said lorry driver nor gave any particulars of the said lorry.

23. Since the two wheeler was proceeding on the right side of the lorry and was overtaking the lorry, as alleged by the claimants, two wheeler rider should have seen the Bus coming from the opposite direction. Even after seeing the Bus, he decided to proceed further and in that decision, we can easily infer that he miscalculated the speed of the vehicles, the space and the time taken to cross that space between the two wheeler and the Bus, as he was carrying more weight than the prescribed. Considering the above, this court is of the clear view that not only the two wheeler rider but all the pillion riders are also liable for contributory negligence. Considering the entire facts and circumstances, this court is also of the view that the degree of contributory negligence can be fixed at 50% on the part of the deceased and is fixed accordingly.

24. Though the Appellant has disputed the quantum of compensation arrived at and the mode of calculation in the Appeal

C.M.A(MD)No.358 of 2016

memorandum, the same was not pressed into service. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

25.In the result, the Civil Miscellaneous Appeal is partly allowed, directing the claimants to bear 50% of the amount awarded by the tribunal for contributory negligence. In case if the Appellant/Corporation has already deposited the entire amount, they are at liberty to withdraw the 50% of the amount with proportioned interest and the claimants are permitted to withdraw their share amounts with interest and costs on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

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04.02.2021

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C.M.A(MD)No.358 of 2016

K.MURALI SHANKAR,J.

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To

- 1.The Motor Accidents Claims Tribunal,
Principal District Court, Pudukkottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



C.M.A(MD)No.358 of 2016
and
C.M.P.(MD)No.5106 of 2016

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04.02.2021