

S. Mohan and Another Vs. Johnson Selvaraj and Others

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Court : Chennai Madurai

Decided On : Nov-23-2016

Judge : S.M. Subramaniam

Appeal No. : CMA (MD) Nos. 1499 of 2006 & 1220 of 2010 & M.P (MD) No. 1 of 2010

Appellant : S. Mohan and Another

Respondent : Johnson Selvaraj and Others

Judgement :

(Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 19.09.2005 made in MCOP.No.22 of 2003 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Nagercoil.)

Common Judgment:

1. The accident took place on 19.10.2001 at about 04.00 p.m on Panakudy to Nagercoil National Highways near Leppai Kudiyiruppu junction. It is an accident occurred between the transport corporation bus and the Lorry. The injured victim filed an application in MCOP.No.22 of 2003 before the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Nagercoil, and the Tribunal considering the facts and the circumstances, awarded Rs.2,18,905/- as compensation with interest at 7.5% per annum. The Tribunal fixed contributory negligence in the ratio

of 50:50 as between the drivers of the appellant transport corporation bus and Lorry and out of the total compensation, the appellant transport corporation was directed to pay 50% of the award amount.

2. The contention of the appellant is that the Lorry driver alone was the tort-feasor and 100% liability ought to have been fixed on the Lorry driver, since the driver, who was driving the vehicle belonging to the appellant transport corporation was in the right direction and not committed any negligence. It was the Lorry driver, who was driving the vehicle rashly and negligently and caused the accident, due to which, the respondent/claimant alone got injured and it is the contention of the counsel for the appellant that the respondent/claimant put his hand outside the window of the bus and hence, 50% negligence fixed on the part of the appellant company, is erroneous and in violation of the established principles of law.

3. The learned counsel for the respondent/claimant opposed the contention, by stating that the Tribunal was right in fixing 50% liability on the appellant transport corporation, in view of the fact that there was an accident and the Lorry was coming from the opposite direction caused the accident. Further, the Tribunal was right in fixing negligence in the ratio of 50:50. The fact remains that the Lorry was not identified and it was driven rashly and negligently and the Tribunal made a finding to that effect. Further, the Tribunal categorically found that there is no proof regarding the filing of FIR against the driver of the transport corporation bus. The FIR was filed only against the Lorry driver and therefore, the contention of the learned counsel for the appellant that 100% negligence should be fixed on the Lorry driver is to be considered.

4. In support of the arguments, the counsel for appellant cited a judgment of this Court reported in 2013 (1) TN MAC 415 in the case of New India Assurance Co.Ltd., vs. K.Udayakumar and this Court considered these aspects as below:-

"17. Now, in this case, the allegation in the claim petition is that the rider of the Hero Honda bike came driving the bike in a rash and negligent manner and hit against the Yamaha Motorbike. This is also what the allegations in the F.I.R. These allegations have been substantiated by PW1. He has been elaborately cross-examined by the contesting respondent. The evidence adduced would show

that the rider of the Hero Honda bike came driven the bike in a rash and negligent manner. On the other hand, there is no contra evidence implicating the rider of the Yamaha bike. In the circumstances, merely on account of collision between the two bikes, negligence cannot be apportioned between the riders of both the bikes."

5. In view of the above facts and circumstances of the case, the present appeal deserves to be considered and accordingly, the award dated 19.09.2005 made in MCOP.No.22 of 2003 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Nagercoil, is set aside. The appellant transport corporation is permitted to withdraw the entire amount deposited with proportionate accrued interest by filing necessary application before the Tribunal.

In the result, CMA(MD)No.1220 of 2010 is allowed. No costs. Consequently, M.P(MD)No.1 of 2010 is closed.

This appeal is filed against the award dated 19.09.2005 made in MCOP.No.22 of 2003 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Nagercoil, seeking enhancement of compensation.

In view of CMA(MD)No.1220 of 2010 being allowed, this appeal deserves no consideration and accordingly, CMA(MD)No.1499 of 2006 is dismissed. No costs.

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