

SMT. INDRANI RAJA DURAI AND ORS.

v.

MADRAS MOTOR AND GENERAL INSURANCE
COMPANY AND ORS.

JANUARY 16, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Motor Vehicles Act :

Accident—Claim of compensation—Contributory negligence—To that extent viz. 40% of claim will be forgone—Entitled to balance of Rs. 60,000 with interest at 6% from date of Tribunal's judgment—Insurance company to pay proportionately to the extent of insurance cover—Balance to be recovered from owner of the vehicles.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 994 of 1977.

From the Judgment and Order dated 5.7.74 of the Madras High Court in C.M.A. Nos. 34 & 178 of 1973.

A.T.M. Sampath and V. Balaji for the Appellants.

Anant Palli, E.C. Agarwala, Ranbir Yadav and K.G. Bhagat for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave arises from the order dated June 14, 1971 of the Division Bench of the High Court of Madras in Appeal against Order No. 34 and 174 of 1973. The facts are fairly clear.

On April 4, 1971, while the deceased Rajadurai was driving the motor cycle from western direction to eastern direction on the National Highway Madras to Bangalore at Kalathur Junction, a motor vehicle had come in between. As a consequence, he had taken extreme right to save his life. Consequently, the bus hit the motor cycle. As a result of which he died on the spot. The appellants are the widow and the children of the deceased who was aged about 31 years. The finding of the Tribunal is that the deceased was earning Rs. 800 per month. On that basis the Tribunal awarded a sum of Rs.

1 lakh. The Tribunal held that there was a contributory negligence. On that basis, after giving the benefit of contributory negligence it fixed the amount at Rs.1 lakh. The High Court reversed the finding on the ground that the driver of the bus was not negligent. The entire negligence was on the part of the deceased. As a consequence, the appellants are not entitled to the compensation. Thus this appeal by special leave.

We have scanned the evidence and reasoning of the High Court and the Tribunal. Unfortunately, the High Court has not considered the evidence from the proper perspective. Since the driver of the bus equally was driving at high speed, greater care was required of him to see that no accident took place. It would appear from the circumstances that the deceased, with a view to save himself from being sandwiched between the car and the bus, had taken to the extreme right. As a consequence, he hit the left bumper of the bus. It would thus be clear that the driver of the bus equally contributed to the accident. On the facts and circumstances, we think that negligence can be apportioned as 60% and 40%. As a consequence, the respondent is liable to pay compensation of Rs. 60,000 and Rs. 40,000 would be forgone by the appellants. Under these circumstances, the order of the High Court is set aside. The order of the Tribunal is also modified. The appellants are entitled to a sum of Rs. 60,000 with interest at 6% from the date of the judgment of the Tribunal dated November 30, 1972. It would appear that the original Insurance Company which insured the vehicle having been taken over by the United India Insurance Company, which is a nationalised company, is liable to pay proportionately to the extent of the insurance cover. The appellants are entitled to recover the amount from the Company and the balance from the owner.

The appeal is accordingly allowed. No costs.

Appeal allowed.