

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

CMA.Nos.3231 and 3313 of 2006

The Oriental Insurance Company Limited
Coimbatore 641 012

Appellant in both CMAs/
3rd Respondent

Vs

1.R.Indhirani
2.R.Shankar Anand
3.Harprith Singh
4.Kishore Transport Services P Limited
Dadra and Nagar Haveli
5.K.Ramakrishnan

Respondents-CMA.3231/2006/
Petitioners 1 & 2 and Respondents

1,2, 4

1.S.Rangasamy
2.R.Savithri
3.Selvi R. Sangeetha
4.Harprith Singh
5.Kishore Transport Services P Limited
Dadra and Nagar Haveli

Respondents-CMA.3312/2006/
Petitioners 1 to 3 &
Respondents 1

& 2

Prayer:- These Civil Miscellaneous Appeals are filed against the common judgement and decree, dated 13.04.2006, made in MCOP.Nos.1133 and 444 of 2004, by the learned Additional District Judge (MACT FTC-I), Coimbatore.

For Appellant : Mr.J.Chandran
in both CMAs

For Respondents : Mr.M.Parthasarathy-RR1 to 3
in CMA.3313/06 and for R1 and 2
in CMA.3231/06
RR4 & 5 - Given Up in
CMA.No.3313 of 2016
R5 - No appearance in
R3 and 4 in
CMA.3231/16
CMA.No.3131/06

ORDER

The Oriental Insurance Company P Limited, Coimbatore has filed these civil miscellaneous appeals, challenging the common award, dated 13.04.2006, made in MCOP.Nos.1133 and 444 of 2004 by the learned Additional District Judge (MACT FTC-I), Coimbatore, awarding a sum of Rs.5,96,000/- and Rs.4,57,000/- with 7.5% interest as total compensation to the respective respondents/claimants.

2. Unfortunately, when on 04.10.2003 at about 20.00 hours, one R.Ramesh, accompanied by his friend R.Sudharshan, sitting next to him, was driving his Car, bearing Reg.No.TN-01-E-9932 in the GST Road from Chennai towards Mettupalayam, near the Thondi River Bridge, one container lorry bearing Reg.No.DN-09-9273, coming in the opposite direction, driven by its driver in a rash and negligent manner was said to have dashed against the said Car, as a result of which, both R.Ramesh and his friend R.Sudharshan succumbed to fatal injuries. The post-mortem conducted by the Doctors in the Government Hospital, Tindivanam, has been relied upon by the learned Tribunal to conclude that both R.Ramesh and R.Sudharshan had succumbed to grievous injuries caused by the said accident. Hence, the Respondents/claimants, who are related to both the deceased persons, filed two separate claim petitions in MCOP.Nos.1133 and 444 of 2004 before the learned Additional District Judge (MACT FTC-I), Coimbatore, claiming compensation.

3. A detailed counter affidavit has been filed by the Appellant/ Insurance Company before the learned Tribunal.

4. At the outset, it must be mentioned herein that the driver and the owner of the offending lorry bearing Reg.No.DN-09-9273 said to have caused the accident due to the rash and negligent driving were set exparte by the learned Tribunal. Finally, the learned Tribunal, coming across the arguments advanced by the Appellant Insurance Company advanced before it that the First Information Report dated 4.10.2003 in FIR.No.402/2003 was filed on the file of the Mayilam Police Station, Villupuram District, implicating the driver of the Car R.Ramesh as an offender inviting trouble, while driving his Car without even looking into the road, on which the lorry bearing Reg.No.DN 09 9273 was heading towards him and hence, he was responsible for the accident, has awarded the compensation, fixing the rash and negligent driving on the part of the driver of the offending lorry, resultantly fixing the liability on the Appellant Insurance Company since the Insurance Company coverage has been taken for the lorry, which had caused the accident taking away the lives of two innocent persons, namely, R.Ramesh and R.Sudharshan, who were proved, by valid evidence, to be the bread winners of their respective families. Aggrieved by the approach adopted by the learned Tribunal, in fixing the negligence on the part of the driver of the offending lorry, bearing Reg.No.DN-09-9273, resultantly fastening the liability on the Insurance Company, these civil

miscellaneous appeals have been filed by the Appellant Insurance Company.

5. Mr.J.Chandran, the learned counsel for the Appellant Insurance Company placed before this court two fold submissions. Firstly, it is his contention that when the claim petition was laid before the learned Tribunal, stating that on the fateful day, when the deceased R.Ramesh was driving his Car in the GST Road going from Chennai to Mettupalayam on 4.10.2003 at about 20.00 hours, one lorry bearing Reg.No.DN-09-9273 driven by its driver in a rash and negligent manner coming in the same road in the opposite direction dashed against the Car, as a result of which, both the deceased persons sustained fatal injuries, which had taken away their lives, nowhere they have pleaded that the driver of the offending lorry, while overtaking the transport bus, has caused the accident rashly and negligently, hitting the Car driven by the deceased R.Ramesh, but only in the cross examination, a clever argument was advanced adding new facts to the accident as though a transport bus was overtaken by the driver of the offending lorry bearing Reg.No.DN-09-9273 without seeing the Car, in which the deceased persons R.Ramesh and his friend R.Sudharshan, were travelling, coming towards the lorry on the same road. Therefore, when the claim petition has miserably failed to mention about the presence of the transport bus going in front of the lorry, namely, it was coming in the opposite direction of the Car driven by the deceased R.Ramesh before the learned Tribunal, it is pleaded by the learned counsel for the Appellant Insurance Company that the learned Tribunal should have accepted the contents registered in the FIR.No.402/2003 made by a third party, who has nothing to do with the accident, saying that R.Ramesh was the tortfeasor and a reading of the said First Information Report clearly shows as to how the accident had taken place in a clear and categorical terms. When the First Information Report is speaking in enough lines on the negligence on part of the deceased R.Ramesh, the driver of the Car, the learned Tribunal wrongly, without any basis or justification, has overlooked the First Information Report. Adding further, he would submit that when the First Information Report rightly speaks that R.Ramesh is the offending driver of the Car, inviting trouble, as a result, the First Information Report has also been dropped by closing the criminal case booked against R.Ramesh, it is not necessary on the part of the Appellant Insurance Company to further carry forward the case of the Insurance Company, who had registration of the First Information Report at the earliest point of time on 4.10.2003 by a third party and it is a best piece of evidence which ought to have been accepted by the Tribunal. As it has not been done, the finding given by the learned Tribunal on both the issues, namely, on the question of negligence and the liability, should be set aside.

counsel for the Appellant Insurance Company placed reliance on the decision of the Division Bench of this court reported in 2005 1 TNMAC 200 Division Bench (Rangasamy Gounder and another Vs. R.Rajendran and another), wherein, the Division Bench, while dealing with the question of fastening the liability on the deceased himself, has held that if any First Information Report is lodged and when it is the earliest document and the same is brought into existence before the Tribunal while deciding the compensation, the Tribunal has to believe the same document to reach a firm conclusion with regard to the occurrence of the accident.

7. In the light of the above said decision of the Division Bench of this court, it is the claim of the Appellant Insurance Company before this court that in view of Ex.P1 First Information Report, the Tribunal was not correct in fastening the entire liability on the Insurance Company instead of saddling the same on the deceased himself for the reason that when the First Information Report marked before the Tribunal clearly shows that the accident had occurred due to the rash and negligent driving of the Car by R.Ramesh, the learned Tribunal has gone beyond the scope of the claim petition and deliberately fixed the liability on the Insurance Company. Therefore, the findings of the learned Tribunal are completely going against the First Information Report, which has found fault with R.Ramesh, who has driven the Car inviting the trouble and therefore, the impugned award is liable to be interfered with by this court. The learned counsel for the Appellant Insurance Company also placed reliance on the decision of the Honourable Supreme Court reported in 2014 1 TNMAC 254 SC (Lachoo Ram and others Vs. Himachal Road Transport Corporation) for the same ratio.

8. The learned counsel for the respondents/claimants would submit that although the claim petitions were filed before the learned Tribunal claiming compensation citing the reason that the accident had occurred due to the rash and negligent driving of the driver of the lorry bearing Reg.No.DN-09-9273 on 4.10.2003 at about 8.00 p.m. in the evening on the premise that the driver of the offending lorry, which was coming in the opposite direction in the GST Road going from Chennai to Mettupalayam has caused the accident, severely damaging the Car, in which both the deceased R.Ramesh and his friend R.Sudarshan were travelling, but, in the proof affidavits filed and subsequently in the cross examination, the case of the claimants were consistent and uniform. In the proof affidavits, both the claimants have specifically made out their case stating that on 4.10.2003 at about 8.00 p.m. in the evening in the GST Road, at the time when the Car driven by the deceased R.Ramesh was hit, it has been specifically mentioned that the offending lorry coming in the opposite direction, only by overtaking a transport bus, has hit the Car driven by the deceased R.Ramesh. This has been once again restated in the cross examination.

9. Secondly, it is the contention of the learned counsel for the respondents/claimants that the Insurance Company has not even raised any such new plea either in the counter or in the cross examination, asking for at least a mere suggestion with regard to the question raised before this court that there was no such transport bus coming before the offending lorry. Therefore, when the Insurance Company has not put any relevant question to the claimants while they were in the witness box, stating that the offending lorry had not overtaken any transport bus, it is too late on the part of the Appellant Insurance Company to raise a new plea trying to wriggle out from the liability. This court also finds merit in the said contentions of the learned counsel for the respondents/claimants.

10. Admittedly, in the claim petitions, the claimants have made unambiguous claims that when the deceased R.Ramesh was driving his Car, at about 8.00 p.m in the evening on 4.10.2003 in the GST Road going from Chennai to Mettupalayam, the Car was hit by the offending lorry bearing Reg.No.DN-09-9273, coming in the opposite direction, but however, when proof affidavits filed before the trial were taken up, they have made it clear that the offending lorry, while overtaking another transport bus, without knowing the car driven by the deceased R.Ramesh coming in the opposite direction, rashly and negligently dashed against the same, as a result of which, the lives of two innocent persons were terminated.

11. As rightly indicated by the learned counsel for the respondents/ claimants, the Insurance Company has not even placed a suggestion before the learned Tribunal against the claimants that the case was wrongly cooked up against the Insurance Company, stating in the proof affidavits that the offending lorry, while overtaking another transport vehicle, had caused the accident. Therefore, when the aforesaid two arguments were not placed before the learned Tribunal, this court is not inclined to entertain the said belated defence placed before this court. Therefore, the finding of the learned Tribunal fastening liability on the driver of the offending lorry, resultantly fixing the liability on the Appellant Insurance Company does not warrant interference by this court. Further, considering yet another fact that the lives of two innocent persons have been lost in the accident took place on 4.10.2003, the impugned award, in so far as the quantum of compensation awarded by the learned Tribunal is concerned, is also required to be upheld as it is just and proper compensation and accordingly, it is upheld.

12. In the result, these civil miscellaneous appeals are dismissed. No costs. Since the learned counsel on either side are not aware of the deposit of the award amount, the Appellant Insurance Company is directed to

deposit the entire award amount with interest from the date of the claim petition till the date of deposit, as awarded by the Tribunal within a period of two weeks from today. On such deposit being made, the respondents/claimants are permitted to withdraw their respective and proportionate shares with interest as apportioned by the Tribunal, by moving appropriate applications before the Tribunal.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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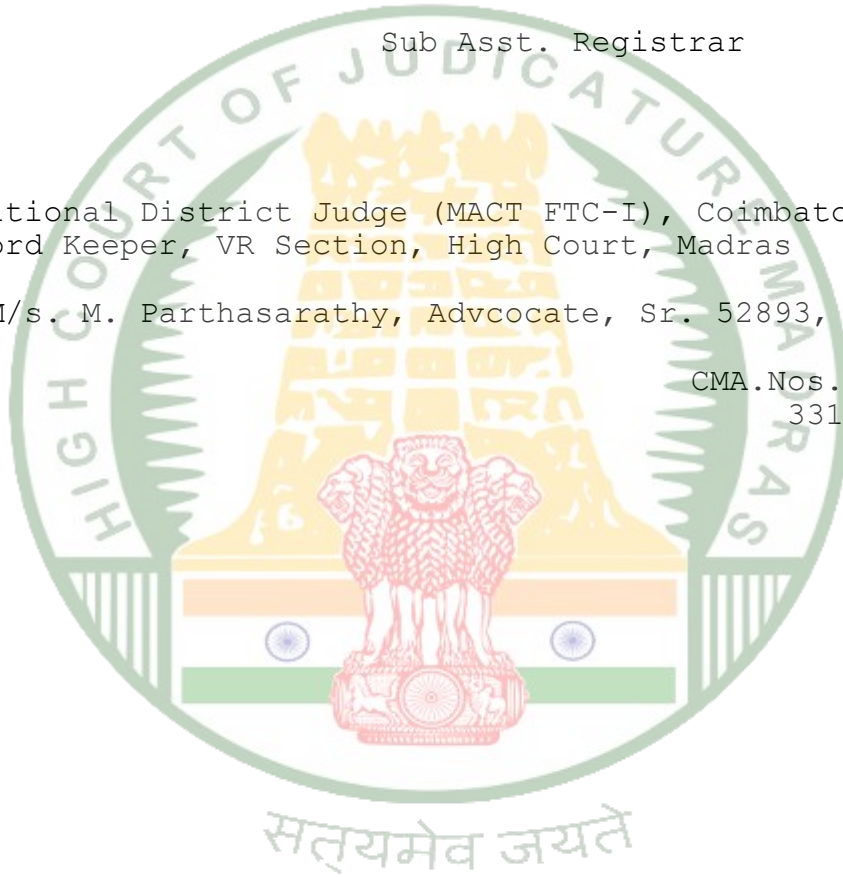
To:

- 1.The Additional District Judge (MACT FTC-I), Coimbatore
- 2.The Record Keeper, VR Section, High Court, Madras

2 ccs to M/s. M. Parthasarathy, Advocate, Sr. 52893, 52892

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3313 of 2006

SAI (CO)
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