



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.931 of 2015

and

MP(MD)No.2 of 2015

The Divisional Manager,
M/s.The Oriental Insurance Company Ltd.,
Sivasakthi Shopping Complex,
No.24/E12/A, S.N. High Road,
Tirunelveli.

: Appellant/2nd respondent

Vs.

1.Seethai

2.Kavitha

3.Ananthi

4.Minor Ganesh Murugan

: R1to R4/claimants

[Minor 4th respondent is represented by
his mother and next friend-1st respondent
herein]

5.Sudalaimani

: R5/1st Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree, dated 29.12.2011 in MCOP No.564 of 2011 on the file of the Motor Accident Claims Tribunal/Fast Track Court No.II, Tirunelveli.

For Appellant : Mr.C.Jawahar Ravidinaran

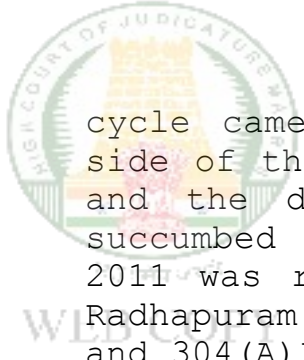
For R1to R4 : No appearance

For 5th Respondent : Mr.S.Vinayak

JUDGMENT

This appeal is directed against the award passed by the Motor Accidents Claims Tribunal (Fast Track Court No.II), Tirunelveli, passed in MCOP No.564 of 2011, dated 29.12.2011.

2.The respondents 1 to 4 herein have preferred the claim petition alleging that the wife of the first respondent and the father of the respondents 2 to 4, namely Raja, died in a motor vehicle accident on 30.04.2011, due to the rash and negligent driving of the driver of the motor cycle bearing registration No.TN-72-F-2215. According to the claimants, on 30.04.2011, at 10.30 pm, the deceased was travelling in an Auto bearing registration No.TN-72-F-2215 and at the time, the offending motor



cycle came from opposite direction in a high beam on the wrong side of the road and hit the Auto, as a result, the auto capsized and the deceased sustained fracture injuries and thereafter, he succumbed to the injuries. A criminal case, in Crime No.75 of 2011 was registered against the rider of the motor cycle by the Radhapuram Police Station, for the offences under Section 297, 337 and 304(A) IPC.

3.The appellant herein resisted the claim by filing a counter stating that the driver of the auto had caused the accident, so they are not liable to pay any compensation. The appellant also disputed the age, income and occupation of the deceased.

4.The claimants in order to fortify their case, examined two witnesses and marked Exs.P1 to P10. On the side of the appellant, RW1 and RW2 examined and Exs.R1 to R9 have been produced.

5.The tribunal, after considering the oral and documentary evidence, came to the conclusion that both the drivers were equally responsible for the accident and directed the appellant to pay 50% of the award amount of Rs.2,35,000/- with interest at the rate of 8% p.a. Further, the tribunal having held that the insurer had violated the policy condition, directed the appellant to pay the amount and thereafter, recover from the owner of the vehicle. Challenging the award, the present appeal has been filed.

6.Mr.CJawahar Ravindran, learned counsel appearing for the appellant has vehemently contended that the tribunal ought to have exonerated the appellant Insurance company, since at the time of the accident, the driver of the insured did not possess a valid and effective driving licence and that in the auto more persons were permitted to travel, so the tribunal ought not to have fixed the negligence at the ration of 75%: 25%.

7.On the other hand, Mr.S.Vinayak, learned counsel appearing for the 5th respondent would submit that the tribunal after analysing the material evidence fixed the negligence and the direction of pay and recovery has been passed in the light of the decision of the Hon'ble Apex Court and this court, so prayed for the dismissal of the appeal.

8.Heard the rival submissions and perused the materials available on record.

9.It is seen that the claimants have marked Ex.P1 the copy of the First Information Report, Ex.P3 is the observation magazar, Ex.P4 rough sketch, Ex.P5 report of the Motor Vehicle Inspector and Ex.P6 copy of the charge sheet. In paras 9 and 10 of its judgment the tribunal discussed the documentary evidence produced on either side and thereafter, it has been held that both the drivers are equally responsible for the accident. Since the



finding is based on the evidence, this court is of the opinion that the ratio fixed by the tribunal has to be confirmed.

10. The appellant has issued Exs.R5 and Ex.R6 notices to the owner as well as the rider of the motor cycle for production of the driving licence. Exs.R7 and R8 are the acknowledgement cards. RW1 and RW2 have deposed that the driver of the motor cycle did not have valid driving licence. The tribunal, accepting the documentary evidence of the appellant, held that the vehicle was driven by a person, who was not having valid driving licence, which is in violation of the policy condition. The finding of the tribunal is not challenged by the owner. Further, it is not in dispute by the appellant that the deceased is the 3rd party and therefore, the tribunal has rightly issued the direction of pay and recovery. This court is of the considered view that the award of the Tribunal is fair and reasonable and the direction to the appellant Insurance Company to pay and recover the award amount from the owner of the vehicle, is in consonance with the settled position of law.

11. In the result, this appeal is dismissed. The appellant Insurance Company is directed to deposit the entire amount together with interest, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimants are permitted to withdraw the entire amount without filing any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle as per the direction of the Tribunal, by following the mode prescribed in **Nanjappan's case [(2004)13 SCC 224]**. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(cs ii)

/True copy/

Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal/
Fast Track Court No.II, Tirunelveli.

+1cc to Mr.C.Jawahar Ravindran, Advocate SR.No.43697

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