



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2017

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) .No.1074 of 2016
and
C.M.P. (MD) No.9675 of 2016

The Branch Manager,
New India Assurance Company Limited,
Opposite Anna Stadium,
Agasteeswaram Taluk,
Kanyakumari District.

... Appellant/2nd Respondent

Vs.

1.P.Johnson
2.J.Kala Rani
3.J.John Benjamin
4.J.Edwin Joseph

... 1to 4 Respondents/Petitioners 1 to 4

5.J.Gnanathasan

... 5th Respondent/1st Respondent

Prayer:- This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.17 of 2015, dated 10.03.2016, on the file of the Motor Accident Claim Tribunal (Special Court), Nagercoil.

For Appellant	: Mr.S.Natarajan
For R1 to R4	: No appearance
For R5	: Mr.K.Samidurai

JUDGMENT

The Insurance company has filed this appeal questioning the impugned award on the ground that the claim itself is a fraudulent one.

2.One Thilagam, met with an accident on 14.01.2014 and died on 11.02.2014. The legal heirs of the said Thilagam filed M.C.O.P.No.17 of 2015, on the file of the Motor Accident Claims Tribunal (Special Court), Nagercoil, claiming compensation. They made one Gnanathasan, as the first respondent in his capacity and as the owner of the vehicle, which allegedly caused the accident. The appellant herein was made as a second respondent as the insurer of



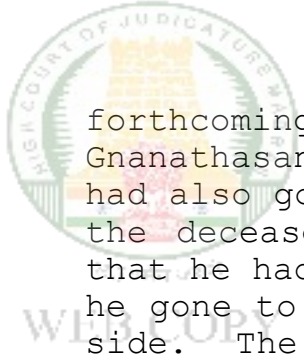
the said vehicle.

3. According to the averments set out in the claim petition, the said Thilagam was walking with her neighbour one Bellal, in Pallayadi-Nesarpuram main road on the right side, when the vehicle belonging to Gnanathasan hit her from behind. The deceased Thilagam sustained head injuries. She was rushed to one Isaac hospital at Marthandam,. First aid was given. Then, she was taken to Ananthapuri Medical College Hospital, Tiruvandrum for further treatment and after three days, she was admitted in the Government College Hospital. There was no improvement in her condition. She finally died on 11.02.2014.

4. The claimants contended that even though the deceased was aged about 65, she was hale and healthy. She was engaged in business. They therefore claim a compensation to the tune of Rs.30,00,000/- with interest. The Tribunal awarded a sum of Rs.5,33,000/- with interest. This award is questioned by the insurer principally on the ground that the vehicle insured by them was not at all involved in the accident.

5. Heard the learned counsel appearing for the appellant. There was no representation on the side of the claimants. The matter was taken up yesterday i.e. on 07.12.2017 and partly heard. Even today, there is no appearance on the side of the claimants.

6. The deceased met with an accident on 14.01.2014. The question is whether the accident was caused by the vehicle insured by the appellant. To sustain their defence that the vehicle was not at all involved, the learned counsel appearing for the appellant pointed out that the insurer not only filed counter opposing the claim, but also examined the vehicle owner as R.W.1. It was RW.1, who admitted the deceased Thilagam in Isaac Hospital. After she was admitted, the hospital had sent an intimation to the police vide Ex.P7. In the said intimation letter, the cause of injury to the deceased has been explained as a fall from a certain height. Column RTA(Road Traffic Accident) was specifically struck off by the doctor who administered first aid to the deceased. Interestingly Dr.Isaac, who sent Ex.P7, the police intimation was examined on the side of the claimants themselves. In fact, in the chief examination itself, Dr.Isaac owned up the contents of Ex.P7. He was cross examined both by the vehicle owner as well as the insurer, only because there was a contradiction as to who gave the information with regard to the cause of the injury. Even though, Dr.Isaac deposed that the cause of injury was due to fall from a certain height, he was not re-examined by the claimants. This failure to re-examine their witness who had given a completely different cause for the injury is fatal to the case of the claimants. Even though, the accident or incident took place on 14.01.2014, FIR was given only on 27.01.2014. There is simply no explanation for this long delay. If the accident had been caused by a motor vehicle, FIR will be registered either immediately or at any rate on the next day. There is no explanation



forthcoming for the inordinate delay in lodging the FIR. R.W.1 Gnanathasan is not a stranger. He is related to the deceased. He had also gone to Nesarpuram to attend the very same function, which, the deceased was to attend. The specific plea of Gnanathasan is that he had parked his vehicle on the left side of the road and that he gone to attend the function. There was a deep ditch on the road side. The said Thilakam had accidentally fallen into the said ditch. Since Ganathasan had come in a car for attending the function and he was a relative, he took her in his car and admitted in Isaac Hospital. The deposition of R.W.1 is clear and convincing.

7.Except the interested testimony of the claimants, there is absolutely no material to show that the car insured by the vehicle hit the deceased from behind and caused the accident in question. There is no medical evidence. The post-mortum report merely states that the deceased died due to head injury.

8.I therefore come to the conclusion that the claimants have chosen to rope in the car only for the purpose of claiming compensation. In this case, the insurer had also lodged a complaint with the Superintendent of Police, Kanniyakumari, seeking CBCID investigation. Ex.R.3 and Ex.R4 have been marked in this regard. The Tribunal did not appreciate the defence taken by the insurer from a proper perspective.

9.I come to the conclusion that the car belonging to Gnanathasan and insured with the appellant was not at all involved. It has been falsely implicated.

10.Therefore, the award dated 10.03.2016, made in M.C.O.P.No.17 of 2015, on the file of the Motor Accident Claim Tribunal (Special Court), Nagercoil, is set aside.

11.The learned counsel appearing for the appellant submits that the award amount has been deposited. Pursuant to the direction of this Court. Since the appeal itself has been allowed, it is open to the appellant to withdraw the said amount, by filing proper application before the Tribunal.

12.This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (AD-II)

/True copy/

Sub Assistant Registrar



To

1. The Special Judge,
Motor Accident Claim Tribunal ,
Special Court, Nagercoil.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

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+ 1 CC TO Mr.S.NATARAJAN, ADVOCATE IN SR No. 91754
+ 1 CC TO Mr.K.SAMIDURAI, ADVOCATE IN SR No. 91835

TSG/IS

TE/SKN-RSK/SAR-4 : 13/03/2018 : 4P/10C

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