



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) No.1076 of 2014

and

M.P. (MD) No.1 of 2014

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The Branch Manager,
The Oriental Insurance Company Ltd.,
No.211, Sekkalai Road 1st Floor,
Sathyamoorthy Illam,
Karaikudi.

... Appellant/2nd Respondent

Vs.

1.Rajalakshmi
2.Harikrishnan
3.Navaneethakrishnan

...1 to 3 Respondents/1 to 3 Petitioners

4.P.Pandi

...4th Respondent/ 1st respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against award made in M.C.O.P.No.1096 of 2012, dated 14.08.2014, on the file of the Motor Accidents Claims Tribunal cum III Additional District & Sessions Judge, (PCR), Madurai.

For Appellant :Mr.K.Baskaran

For R-1 to R-3 :Mr.D.Senthil

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 14.08.2014, passed in M.C.O.P.No.1096 of 2012, on the Motor Accidents Claims Tribunal-cum-III Additional District & Sessions Judge, (PCR), Madurai.

2. It is a case of fatal accident, which took place on 24.02.2012, at about 01.30 p.m., on Kamuthi to Parthibhanoor road near Parthibhanoor State Bank.

3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased was returning from his family temple along with one Rajalakshmi, in his motor cycle bearing Registration No.TN.20-AZ-3813, the the mini lorry bearing Registration No.TN.57-A 7596, which is insured with the appellant-Insurance Company and which was coming from the opposite direction, was driven by its driver in a rash and negligent manner and dashed against the two-wheeler and caused the accident. In the said accident, the deceased was succumbed to the injuries sustained by him.



4. The claimants filed an application in M.C.O.P.No.1096 of 2012 on the file of the Motor Accidents Claims Tribunal-Cum-III Additional District & Sessions Judge, (PCR), Madurai, seeking compensation.

5. Before the Tribunal, the respondents 1 to 3/Claimants examined two witnesses as P.Ws.1 and 2 and marked six documents as Ex.P.1 to Ex.P.6. On the side of the appellant, one witness was examined as R.W.1 and one document was marked as Ex.R.1.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the Mini Lorry and therefore, directed the appellant/Insurance Company to pay the compensation of Rs.4,18,000/-.

7. Against which, the appellant/Insurance Company has filed this present appeal only on the question of liability and to fix contributory negligence.

8. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal erred in fixing the entire liability on the driver of the Mini lorry, when there is negligence on the part of the deceased also.

9. Per contra, the learned counsel appearing for the respondents 1 to 3 submitted that it is well settled law that while the Insurance Company takes a plea of negligence, they can very well examine the witnesses to establish the negligence and unless and until there is a contra evidence, the Court cannot fix contributory negligence. In support of his submission, the learned counsel would draw the attention of this Court to Paragraph No.9 of the award, wherein it has been discussed as follows:

"9. At this juncture, it is pertinent to mention the argument of the learned 2nd respondent's counsel. The learned 2nd respondent's counsel would submit that there is a contributory negligence on the part of the deceased. But to prove the said aspect, except by examining R.W.1, they did not produce any document before this Court by way of complaint to the police or higher officials. Therefore, the said argument cannot be accepted at all. Here on perusal of P.W.1's evidence and in the background of criminal Court records, nothing is there to discredit or disbelieve her evidence. Furthermore, it is settled law that the criminal Court records are prima facie evidence as per the judgment reported in 2012 (1) TNMAC589(DB) National Insurance Company Limited Vs. Rupashanthini and others



case. Hence this Court is of the firm opinion that there was a rash and negligence on the part of the respondent's driver. Therefore, this Court holds that there was a rash and negligence on the part of the 1st respondent's driver. Therefore, the 2nd respondent being the insurer of the 1st respondent's vehicle is liable to pay the award amount and indemnify the 1st respondent."

10. In view of the same, this Court is of the view that there is no infirmity in the award passed by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 14.08.2014 passed in M.C.O.P.No.1096 of 2012 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District & Sessions Judge, (PCR), Madurai, is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To,

The Motor Accident Claims Tribunal cum,
III Additional District & Sessions Judge, (PCR), Madurai.

COPY TO:

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.K.BHASKARAN, Advocate SR.No.76809

+1cc to M/S.D.SENTHIL, Advocate SR.No.76985

smi/pm

MAS/MR-KKR/SAR2:22.09.2017:3P-5C

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