



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :02.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) Nos.155 & 156 of 2016
and

C.M.P. (MD) .Nos.2479, 2980,
2480 & 2981 of 2016

The Oriental Company Limited,
through its Regional Manager,
No.24/2/12/9,
Sivasakthi Shopping Complex,
S.N.High Road,
Tirunelveli.

... Appellant/Respondent No.2 in
C.M.A.No.155 & 156 of 2016

Vs.

1.Thangalaksmi ...1st Respondent/Petitioner in
C.M.A.No.155 of 2016
2.Jeyaraman ...2nd Respondent/Respondent No.1 in
C.M.A.No.155 &156 of 2016
(Respondent No.2 given up)
1.S.Muthulakshmi ...1st Respondent/Petitioner in
C.M.A.No.156 of 2016

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Tribunal of the Motor Accidents Claims Tribunal cum Principal Sub Court, Tirunelveli made in M.C.O.P.Nos.61 & 62 of 2013 dated 18.11.2014.

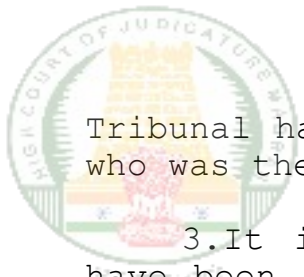
In both appeals

For Appellant : Mr.C.Jawahar Ravindran
For Respondents : Mr.T.Selva Kumaran for R1
R2-Given Up

COMMON JUDGMENT

Heard the learned counsel on either side.

2.The Insurance Company has filed these two appeals questioning the common award made in M.C.O.P.Nos.61 & 62 of 2013 dated 18.11.2014. The claimants were travelling in an auto when the accident occurred. FIR was given and it was alleged that an unknown vehicle had come from the opposite direction and dashed against the auto and died. But in the claim petition, the claimants have proceeded on the footing that the auto driver was at fault. But the



Tribunal has chosen to fasten the entire liability on the appellant who was the insurer of the auto.

3. It is the contention of the appellant that these petitions have been filed under Section 166 of the Motor Vehicles Act, 1988. Therefore unless fault is established on the part of the auto driver, the appellant cannot be made liable. In this case admittedly, some role has been played by the another vehicle. Of course that has not been identified as such. In these circumstances, it would not be proper to fasten the entire negligence on the auto driver in question. He therefore pleaded for setting aside the impugned awards.

4. The Tribunal had carefully examined the testimony adduced by the claimants. While one claimant would state that due to her physical condition she did not lodge any complaint, the other claimant would submit that the police had obtained signatures in blank papers. The claimants have thus completely denied the lodging of the FIR. The auto driver was also examined as DW2. When he was cross examined, he admitted that only when they neared the other vehicle he realized there it was a bigger one. He also stated that since the other vehicle namely tractor was loaded with some agricultural produce, he did not notice it. The Tribunal came to the conclusion that the auto driver was at fault. Thus, the fault is established on the part of the auto driver. If the auto driver had been alert, this accident would not have happened. The Tribunal was justified in fixing the entire negligence on the auto driver. Therefore there is no justification in interfering with the award in question. The compensation awarded by the Tribunal cannot be said to be excessive. There is no merit in these appeals. The awards dated 18.11.2014 made in M.C.O.P.Nos.61 & 62 of 2013 on the file of the Motor Accidents Claims Tribunal cum Principal Sub Court, Tirunelveli is confirmed.

5. The appellant is directed to deposit the entire compensation amount of Rs.80,740/- to the 1st respondent in C.M.A.(MD).No.155 of 2016 and Rs.2,92,140/-- to the 1st respondent in C.M.A.(MD).No.156 of 2016 with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants in each appeals are entitled to withdraw the same, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

6. These Civil Miscellaneous appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar.



To
The Motor Accidents Claims Tribunal cum Principal Subordinate Judge,
Tirunelveli.

Copy to:

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

+2CC to Mr.T.Selvakumaran, Advocate, SR.Nos. 85130, 85129

C.M.A. (MD) Nos.155 & 156 of 2016
and
C.M.P. (MD) .Nos.2479, 2980,
2480 & 2981 of 2016
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