



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.568 of 2017
and
CMP(MD)No.6046 of 2017

P.Parthiban ... Appellant/1st Respondent
Vs.

1.Pandiammal @ Thangapandiammal

2.Minor. Rajeshkannan
(2nd respondent rep.by his
mother and next friend,
the 1st respondent)

... Respondents 1 & 2/Claimants

3.The Manager,
HDFC ERGO General Insurance
Company Ltd,
248-B, B1, C&C4 1st floor,
Rekha Towers, Kamarajar Salai,
Madurai - 625 009.

... 3rd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 11.02.2014 made in MCOP.No.2028 of 2009 on the file of the District and Sessions Court (Communal Clash Cases Court), Madurai.

For Appellant : Mr.D.Sadiq Raja
For Respondents : Mrs.Shivashankari for
Mr.S.Srinivasa Raghavan for R3
R1-No appearance.
(R2 minor rep.by R1)

JUDGMENT

Heard the learned counsel on either side.

2.The owner of the offending vehicle has filed this appeal questioning the impugned award dated 11.02.2014 made in MCOP.No.2028 of 2009 on the file of the District and Sessions Court (Communal Clash Cases Court), Madurai principally on the ground of negligence.

3.One Rajadurai, the son of the claimant was travelling in an Auto on 22.05.2009 in Pannappatti - Usilampatti main road. The Tractor belonging to the appellant herein and insured with the third



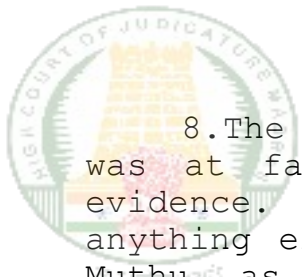
respondent herein collided with the said Auto. In the ensuing accident, the said Rajadurai died. The mother and younger brother of the deceased filed MCOP.No.2028 of 2009 on the file of the District and Sessions Court (Communal Clash Cases Court), Madurai. The mother examined herself as PW.1. Exs.P1 to P9 were marked. On the side of the respondents, the one Arun Prasath was examined as RW1. Exs.R1 to R7 were marked. The Tribunal came to the conclusion that the claimants are entitled to a sum of Rs.4,18,000/- with interest.

4.Admittedly, the Tractor was driven by a person who did not possess a valid driving licence. Therefore, even though the offending vehicle enjoyed insurance coverage, HDFC ERGO General Insurance Company, the third respondent herein was directed to satisfy the award and thereafter recover the paid amount from the appellant vehicle owner by applying pay and recover principle. It is this award dated 11.02.2014 that is under challenge in this appeal.

5.The learned counsel appearing for the appellant would strongly contend that the Tribunal ought have dismissed the claim petition. It is seen that the necessary parties were not impleaded. He would submit that this is a case of an accident involving an Auto and the Tractor belonging to the appellant herein. The owner of the Auto ought to have been made as a party. This submission cannot be accepted. Because, it is left to the choice of the claimants to proceed against any one of the offending vehicle.

6.The learned counsel appearing for the appellant would also contend that a criminal case is still pending. The Tractor driver against whom final report was laid is yet to be found guilty by the Criminal Court. This submission also does not impress me. This is because, the issue regarding negligence will have to be arrived at by the Tribunal independently on its own and the proceedings before the criminal Court cannot bind the Tribunal. In other words, even if the criminal Court acquits the driver, the Tribunal can find him guilty. Therefore, pendency of trial in the criminal case is not a bar for the Tribunal to have rendered a finding with regard to the negligence of the driver of the Tractor in question.

7.The learned counsel appearing for the appellant contended that the Tribunal did not take into account Ex.P5, inspection report of the Motor Vehicle Inspector. If the said Ex.P5 was taken into account, the Tribunal would definitely not have come to the conclusion that the said driver was principally at fault. Even though this submission is attractive, I am of the view that this would not make any difference to the outcome of the proceedings. It is a fact that the appellant did not take any step to implead the owner of the other offending vehicle, namely, Auto as a party to the proceedings.



8.The finding of the Tribunal is that the driver of the Tractor was at fault. It is based on relevant material and credible evidence. It does not call for any interference. More than anything else, the appellant did not chose to examine his driver Muthu, as a witness in the claim proceedings. He was the best person to speak about the manner of occurrence of the accident. For reasons best known, the appellant chose to withhold him. In these circumstances, it does not lie in the mouth of the appellant to contend that it was the Auto driver who alone was at fault. I see no reason to interfere with the impugned award.

9.The award dated 11.02.2014 made in MCOP.No.2028 of 2009 on the file of the District and Sessions Court (Communal Clash Cases Court), Madurai is confirmed.

10.The third respondent insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. Thereafter, the insurance company is permitted to recover the paid amount from the appellant/vehicle owner, by filing execution petition before the Tribunal, in this very proceeding. On such deposit, the first respondent/mother is entitled to withdraw her share as apportioned by the Tribunal by filing proper application, less the amount already withdrawn by her, if any. The share of the minor claimant shall be deposited in any one of the nationalised bank and the natural guardian is permitted to withdraw the interest accrued thereon once in three months directly from the bank.

11.This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The District and Sessions Judge,
District and Sessions Court
(Communal Clash Cases Court), Madurai.

COPY TO:

The Record Keeper,
V.R.Section,

<https://hcservices.ecourts.gov.in/hcservices/>
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**



+1cc to M/S.D.Sadiq Raja, Advocate SR.No. 90798
+1cc to M/S.S.Srinivasa Raghavan, Advocate SR.No. 90480

WEB COPY

C.M.A. (MD) No.568 of 2017
and
CMP (MD) No.6046 of 2017
29.11.2017

skm
JM/JC/SAR 3/27.04.2018/4P/6C