



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2017

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA(MD)No.399 of 2016
and
C.M.P. (MD)No.5485 of 2016
&
C.M.P. (MD)No.10807 of 2016
in
CROS. OBJ(MD)No.SR30058 of 2016

National Insurance Company Limited,
Having Office at 122/165, Netaji Road,
Manjakuppam,
Cuddalore-607 001.

... Appellant/2nd Respondent

/Vs./

1.M.Parameswari
2.Minor.M.Shantha Shalini
3.Minor.Vinithkumar
4.Veeman
5.V.Kanniammal ... Respondents 1 to 5/Petitioners 1 to 5
6.Therasa
7.M.Esakki Muthu
8.The Oriental Insurance Company Limited,
Office at 6-A, North Cotton Road,
Tuticorin. ... Respondents 6 to 8 / Respondents 1,3 & 4
(Minors 2 and 3 are rep. Through their mother
and Natural/Guardian Parameswari, the 1st Respondent herein)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree of the learned Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi in MCOP No.36 of 2013, dated 31.01.2014.

For Appellant	: Mr.D.Sivaraman
For R-1 to R-5	: Mr.S.Subbiah, Senior Counsel for Mr.N.Subramanian
For R-8	: Mr.K.Bhaskaran
For R-6 & R-7	: No appearance

**J U D G M E N T**

(Judgment of this court was made by **K.KALYANASUNDARAM, J.**)

This appeal arises out of judgment and decree passed by the learned Motor Accident Claims Tribunal (II Additional District Court), Thoothukudi in MCOP No.36 of 2013, dated 31.01.2014.

2.The mother, two children and the parents of the deceased V.Murugesan, who died in an accident on 13.11.2011, approached the tribunal seeking compensation of Rs.50,00,000/- on the ground that when the deceased was proceeding in a two-wheeler TN-69-Q-0649 from Kollambarubu to Tuticorin in National Highway from north to south direction, a Qualis Car TN-07-P-4453, which came from opposite direction in a high speed, dashed against the motorcycle. As a result, the deceased died on the spot. A case in Crime No.219 of 2011 was registered by the Ottapidaram Police Station, Tuticorin under Section 304 of I.P.C.

3.The claimants have further stated that the deceased was working as a Labour in Tuticorin Port Trust Cargo Handling Labour Pool and earned Rs.30,000/- per month and he was having opportunity to get employment in foreign also.

4.The appellant contested the claim by filing counter, disputing the averments made in the claim petition and also stated that the deceased was solely responsible for the accident and therefore, no compensation can be ordered.

5.On the side of the claimants, P.W.2 was examined as an eye witness and Ex.P1 First Information Report, Ex.P.3, Report of the Motor Vehicle Inspector were marked. The Insurance Company examined two witnesses as RW2 and RW3 and the driver of the Qualis Car examined as RW1. They also marked final report (Ex.R.3), rough sketch (Ex.R4) and Ex.R5 Observation mahazer in support of their case.

6.The tribunal, on consideration of the oral and documentary evidence, held that both the drivers of the vehicles were equally responsible for the accident and awarded compensation of Rs.51,18,605/-. Challenging the award, the present appeal is filed by the Insurance company.

7.Heard Mr.D.Sivaraman, learned counsel for the appellant, Mr.S.Subbiah, learned Senior counsel for the claimants/cross objectors and Mr.K.Bhaskaran, learned counsel for the eighth respondent and perused the records.

<https://hcservices.ecourt.gov.in/hcservices> mainly contended by the learned counsel for the appellant that the accident occurred only due to the negligence of the deceased and therefore, the entire negligence should be



fastened on the deceased and the Insurance Company should be exonerated.

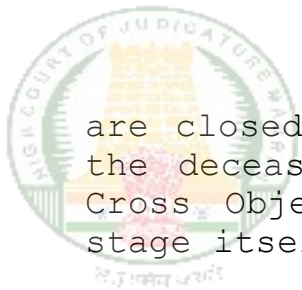
9. The learned Senior counsel for the claimants, by placing reliance on the decisions reported in **2007-2-L.W.-194** (*United India Insurance Co., vs. K.V. Prama and others*) and **(2014) 4 SCC 511** (*Meera Devi and another vs. Himachal Pradesh Road Transport Corporation and others*) contended that when both the parties are found to be careless, the party which has the last opportunity of avoiding the results of other carelessness is alone liable and if the theory is applied to the facts of this case, when there is no evidence to fix the contributory negligence, the finding of the tribunal fixing 50% negligence on the deceased has to be set aside.

10. It is seen from the records that the accident had taken place on 13.11.2011 at 09.15 p.m. Perusal of Ex.1 First Information Report would show that the case was registered on the complaint given by the brother of the deceased, wherein it is stated that the deceased after having Swami Dharshan at Valasamuthiram, was proceeding to Tuticorin. When he entered into the main road in Kollambarumbu to Thoothukudi National Highway, the accident had taken place. The wife of the deceased has given evidence as PW1 and in her evidence, it is stated that when the deceased was proceeding from north to south direction on Kollambarumbu-Thoothukudi National Highway on the left side of the road, the driver of the vehicle, who came in a rash and negligent manner dashed against the deceased. The driver of the Car (RW1) deposed that when he was proceeding from south to north direction, the deceased came from the opposite direction and dashed against the car. The tribunal disbelieved the evidence of P.W.2, who was examined as an eye witness of the occurrence.

11. From the perusal of evidence of PW1 and Exs.R3 to R5, it is categorically made clear that when the Qualis Car proceeding to north to south direction on the National Highway, the deceased without noticing the vehicle, had suddenly entered into the National Highway and invited the accident. In the light of the above materials available on record, with great respect, we are not able to follow the decision cited by the learned Senior counsel for the claimants and the negligence is fixed 70% on the deceased and 30% on the driver of the Qualis Car.

12. As regards quantum, the tribunal has awarded Rs.51,18,605/- based on the legal evidence and it appears to be reasonable and the same is confirmed. The negligence is modified as stated above.

13. In the result, the appeal is partly allowed. The claimants are awarded for **Rs.15,35,581/-** along with interest @ 7.5% p.a. No costs. Consequently, the connected Miscellaneous Petitions



are closed. Since this court fixed the negligence on the part of the deceased at 70% and 30% on the part of the Car driver, the Cross Objection filed by the claimants is dismissed in the SR stage itself.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar

To

The II Additional District Judge,
Motor Accident Claims Tribunal,
Thoothukudi.

Copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.D.Sivaraman , Advocate in SR No. 87857
+ 1 cc TO Mr.N.Subramanian , Advocate in SR No. 87979
+ 1 cc TO Mr.K.Bhaskaran , Advocate in SR No. 87860

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