



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.643 of 2015
and
MP (MD) No.1 of 2015

The General Manager,
National Insurance Company,
No.378, Mint Street,
Chennai - 600 079.

... Appellant

Vs.

1.Viji
2.Hemalatha
3.Minor Purushothaman
4.Minor Pon Agalya
5.C.Rajalakshmi

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1989, against the judgment and decree dated 03.07.2014 and made in MCOP.No.3834 of 2013 on the file of Motor Accident Claims (Special District Judge, Trichy).

For Appellant	: Mr.S.Srinivasha Raghavan
For Respondents	: Mr.P.Arun Jayatram for R5
	No appearance for R1 and R2

JUDGMENT

The insurance company has filed this appeal questioning the impugned award on the ground of liability.

2.One A.Sekar was going on padhayatra to worship Vayaloor Murugan temple. The accident in question took place on 30.10.2003. An unknown vehicle had hit the said A.Sekar at about 07.30 PM on the said date. He suffered serious injuries and succumbed to the same and died on 13.11.2003. Crime No.612 of 2003 was registered on the file of Somarasampettai police station. One Gopal, brother in law of the deceased Sekar was the defacto complainant. In the FIR, it was mentioned that the accident was a hit and run case. FIR was lodged on 13.11.2003. But final report was filed and it was mentioned therein that the Ambassador car belonging to the fifth respondent herein and insured with the appellant was responsible for the accident. The Tribunal passed an award dated 03.07.2014 awarding a sum of Rs.4,61,100/- as compensation in favour of the claimants.

Questioning the same, this appeal has been filed.

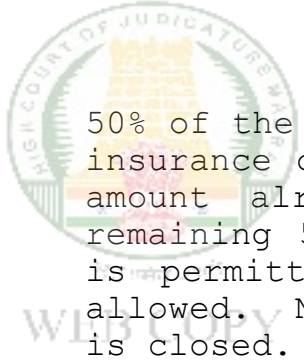
3.The learned counsel appearing for the appellant contended that there was absolutely no basis for establishing the involvement of the car insured by them in the accident. The investigating officer was examined as PW.5. He was cross examined at length. It is evident from a mere reading of his deposition that the involvement of the vehicle was fixed based on the information given by one P.Sekar. The said P.Sekar was examined as PW.3. But for the information given by the said P.Sekar, the police obviously could not have arrived at the conclusion that the Ambassador car bearing Registration No.TMI 0099 was involved. But a mere reading of the deposition of the said Sekar would show that he is obviously a set up witness. If really the said Sekar had witnessed the occurrence , he would have definitely been the informant.

4.A reading of his examination in chief indicates that he voluntarily went to the police station on 28.11.2003 and given all the details. This is highly improbable in respect of an accident that took place on 30.10.2003. Information containing all the registration number details are furnished on 28.11.2003 by PW.3. The said PW.3 had also given a letter dated 28.12.2007 to the insurance company stating that he has not witnessed the accident. When he was confronted with it, the said Sekar admitted that he issued such a letter. The version projected by the said PW.3 is highly improbable and does not inspire the confidence of this Court.

5.This Court has to come to the conclusion that for the sake of getting compensation, the claim petition was filed by the claimants. Even though all these aspects were projected by the appellant insurance company before the Tribunal, the Tribunal chose to mechanically go by the fact that the police have filed the final report implicating the vehicle. It is well settled that the Tribunal has to independently assess the material on record and come to proper inferences regarding fixing negligence and liability. It cannot mechanically adopt the police version.

6.In the present case, the investigating officer was also examined as PW.5 and he had frankly stated that the police went solely by the information given by the said Sekar PW.3. As already pointed out, the testimony of the said Sekar does not inspire the confidence of this Court. Therefore, this Court has to necessarily come to the conclusion that the Ambassador car belonging to the fifth respondent bearing Registration No.TMI 0099 was not at all been involved in the accident. It was clearly a case of hit and run. Therefore, the award dated 03.07.2014 and made in MCOP.No.3834 of 2013 on the file of Motor Accident Claims (Special District Judge, Trichy) is set aside.

7.The learned counsel appearing for the appellant submits that they had already deposited the entire compensation amount. It is also seen that the wife and children of the deceased have withdrawn



50% of the compensation amount. It is made clear that the appellant insurance company shall not take any steps for recovery of the said amount already withdrawn by the claimants. As regards the remaining 50% of the award amount, the appellant insurance company is permitted to withdraw the same. This appeal is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Trichy.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 89036

SKM

TE/SKN-RSK/SAR-1 : 12/12/2017 : 3P/4C

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