



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.09.2017
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.M.A(MD)Nos.997 and 998 of 2016
and
CMP(MD).Nos.8986 and 8987 of 2016 &
3281 and 3282 of 2017

CMA(MD) .No.997 of 2013

The Royal Sundaram Alliance Insurance CO.Ltd
Through its Branch Manager,
No.176, D & E, Trivandrum Road,
Vannarapettai,
Tirunelveli - 627 003.

...Appellant/Respondent -2

Vs.

1.Jalaludeen

2.Yasin Fathima

...Respondents/Petitioners

3.Ms.Nellai Forms through its partner
No.4, St.Johns College,
North Street, Palayamkottai,
Tirunelveli 627 002.

4.Velmanikandan.

...Respondents/Respondents1&3

CMA(MD) .No.998 of 2013

The Royal Sundaram Alliance Insurance CO.Ltd
Through its Branch Manager,
No.176, D & E, Trivandrum Road,
Vannarapettai,
Tirunelveli - 627 003.

...Appellant/Respondent -2

Vs

1.Mohideen Padhursha @
Mydeen Padhursha

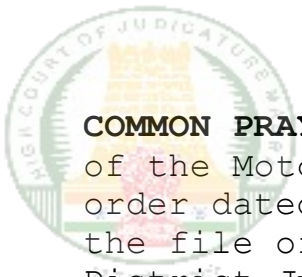
...Respondent/ petitioner

2.M/s.Nellai Forms through its partner
No.4, St.Johns College,
North Street, Palayamkottai,
Tirunelveli 627 002.

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

3.Velmanikandan.

...Respondents/Respondents1&3



COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 21.04.2016, made in MCOP.Nos.973 and 974 of 2013, on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Tirunelveli and allow this appeal.

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For Appellant : Mr.S.Srinivasa Raghavan
in both CMAs

For Respondent -1 : Mr.V.Sasikumar
in both CMAs &
for Respondent -2
in CMA(MD) .No.997/16

For Respondent-3 : No appearance
in CMA(MD) .No.997/16 &
For Respondent -2
in CMA(MD) .No.998/16

For Respondent 4 : Mr.S.Veerasamy
in CMA(MD) .No.997/16 &
For Respondent 3
in CMA(MD) .No.998/16

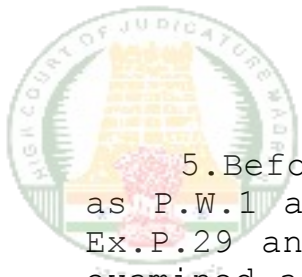
COMMON JUDGMENT

The Civil Miscellaneous Appeals have been filed by the appellant/respondent-2 against the award of the Motor Accident Claims Tribunal (III Additional District Court), Tirunelveli passed in MCOP.Nos.973 and 974 of 2013, dated 21.04.2016.

2. It is the case of fatal accident, which took place on 03.07.2013 at about 04.30 pm near Visuvasapuram bus stop, on Tirunelveli - Nagercoil main road.

3.It is the case of the claimants before the Tribunal that on the date of accident, when the deceased Abubackar Sithik and the injured claimant were travelling along with paper goods in the first respondent's mini lorry bearing Registration No. TN-72 AM-8215, due to poor maintenance of the vehicle, the right tyre got punctured near Visuvasapuram and also due to rash and negligent driving, the vehicle dashed against the tipper lorry, which was coming from the opposite direction. Due to which the deceased sustained serious injuries and immediately, he was hospitalised but, died on 11.07.2013 and the injured claimant sustained injuries and fracture on right leg and became disabled.

4.The claimants filed application in M.C.O.P.Nos.973 and 974 of 2013 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Tirunelveli, seeking compensation.



5. Before the Tribunal, the claimants examined four witnesses as P.W.1 and P.W.4 and marked twenty nine documents as Ex.P.1. To Ex.P.29 and on the side of the respondents, three witnesses were examined as R.W.1 to R.W.3 and two documents were marked as Ex.R.1 and Ex.R.2.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on 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 first and second respondents to pay a sum of Rs.9,30,000/- and Rs.4,14,000/- respectively, to the claimants as compensation.

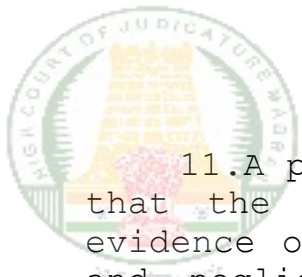
7. Against which, the appellant/Insurance Company filed the present appeals to set aside the award of the Tribunal. Though, the present appeals have been filed on various grounds, at the time of arguments, the learned counsel for the appellant restricted his argument only on the ground of liability.

8. This Court heard the submission of the learned counsel on either side and perused the materials available on record.

9. The learned counsel for the appellant/respondent-2 would submit that the Tribunal ought to have considered the defence of the appellant, in a proper perspective and ought to have found that the deceased and the injured claimant were unauthorised passengers in the insured goods vehicle and as such the appellant is not liable to indemnify the owner of the vehicle and to compensate the claimant.

10. The learned counsel for the claimants would draw the attention of this Court to paragraph 11 of the award, which reads as follows:

"...records are perused. It is the case of the petitioners that the deceased and the injured petitioner have travelled in the vehicle with paper bundles, but no evidence is let in before this Court either the injured petitioner and the deceased have travelled as loadman or owner of the goods, but it is admitted by R.W.1, the Insurance Company Manager in the cross examination that according to the package policy three persons can travel in the first respondent's vehicle and further the injured petitioner and the deceased have travelled in the cabin of the first respondent's goods vehicle and therefore, the second respondent being the insurer of the vehicle liable to pay compensation to the petitioners and therefore it is held that the first and second respondents are jointly and severally liable to pay compensation to the petitioners."



11.A perusal of the award passed by the Tribunal clearly shows that the Tribunal has discussed in detail and considered the evidence of P.W.1 and also Ex.P.6 and found that due to the rash and negligent driving of the driver of the mini lorry, the accident occurred and taking into consideration of the evidence R.W.1, the Manager of the Insurance Company and also Ex.R.1- copy of the Policy, found that the deceased and injured claimant travelled in the cabin of the vehicle and therefore, held that the second respondent, being the insurer of the vehicle, is liable to pay compensation to the claimants. Therefore, the award passed by the Tribunal does not warrant any interference of this Court and these appeals are liable to be dismissed

12. In the result, these Civil Miscellaneous Appeals are dismissed and the award dated 21.04.2016, passed in MCOP.Nos.973 and 974 of 2013, on the file of the Motor Accidents Claims Tribunal/ III Additional District Judge, Tirunelveli are hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the the claimants are permitted to withdraw their respective share award amount with accrued interests and costs, as apportioned by the Tribunal, without filing any formal petition before the Tribunal. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS_III)

/True copy/

Sub Assistant Registrar

To

The III Additional District Judge,
The Motor Accident Claims Tribunal,
Tirunelveli.

+ 2 CC TO MR.S.Srinivasa Raghavan, ADVOCATE IN SR No.79222
+ 2 CC TO MR.V.Sasikumar, ADVOCATE IN SR No.79195&79196
MK/MR KKR/SAR-2/23.10.2017/4P/6C

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