



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2017

CORAM

WEB COPY

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.M.A(MD)No.1785 of 2013

The Manager,
National Insurance Company Ltd.,
63, West Pradhakshanam Road,
Karur.

... Appellant/Respondent No.2

Vs.

1.P.Palaniyammal
2.K.Palaniyappan
3.C.Natarajan

... Respondent No.1/Petitioner No.1
... Respondent No.2/Petitioner No.2
... Respondent No.3/Respondent No.1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19th day of November, 2012 made in MCOP.No.220 of 2011 on the file of the Motor Accidents Claims Tribunal, District Judge, Karur.

For Appellant : Mr.N.Murugesan
For R1 & R2 : Mr.T.Selvakumaran
For R3 : Mr.B.Saravanan

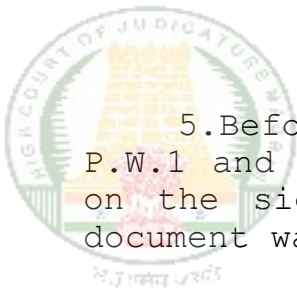
JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellant/respondent-2, against the judgment and decree dated 19.11.2012 made in MCOP.No.220 of 2011, on the file of the Motor Accidents Claims Tribunal (District Judge) Karur.

2.It is the case of fatal accident, which took place on 05.04.2011 at about 08.15 p.m, near Minnampalli, at Karur

3.It is the case of the claimants before the Tribunal that on the date of accident, when the deceased P.Murugan was riding his two wheeler, bearing Registration No.TN-47 F-6766, near Minnampalli, Karur, the driver of the Tractor bearing Registration No.TN-33 AZ-4496 with Trailor bearing Registration No.TN-47 H-4597, drove the vehicle in a rash and negligent manner and dashed against the two wheeler and due to which the deceased sustained multiple grievous injuries all over his body and died on the spot.

4.The claimant filed an application in M.C.O.P.No.220 of 2011 on the file of the Motor Accidents Claims Tribunal, (District Judge) Karur, seeking compensation.



5. Before the Tribunal, the claimants examined two witnesses as P.W.1 and P.W.2 and marked seven documents as Ex.P.1 to Ex.P.7 and on the side of the respondents, no witness was examined and no document was marked.

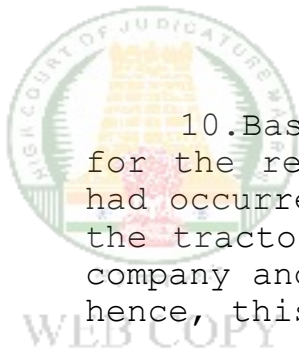
6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to rash and negligent driving of the driver of the tractor and therefore directed the respondents to pay a sum of Rs.5,82,060/- to the claimants as compensation.

7. Against which, the appellant/Insurance Company filed the present appeal, to set aside the award of the Tribunal. Though the present appeal has been filed on various grounds, at the time of arguments, the learned counsel for the appellant restricted his argument 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 appearing for the respondents would draw the attention of this Court, to the findings of the Tribunal, to paragraph No.10 and wherein it has been discussed as follows:

"10. Ex.P.1 is the F.I.R in which one Rajendran has been shown as complainant. As per Ex.P.1, he gave complaint, after coming to know the accident, in which he has stated as by P.W.2. Ex.P3 is the rough sketch, in which the place of occurrence has been shown on the western side of north-south road. Ex.P.4 is the Motor Vehicles Inspector's report for tractor and trailer in which, in column 12, it has been stated that no damage caused to the vehicle and in column 19, the Motor Vehicle Inspector has given opinion that the accident has not happened due to the mechanical defect. Ex.P.5 is the Motor Vehicles Inspector's report for the two wheeler in which, in column 12, the damages have been noticed as i) front wheel rim twisted, ii) front both shock absorber, handle bar damaged iii) head light assembly broken and iv) hand brake lever damaged and in column 19, the Motor Vehicles Inspector has given opinion that the accident has not happened due to any mechanical defect. Ex.P.6 is the final report filed against the first respondent. As per the evidence of P.W.2 and Ex.P.1, P3 to P6 and non examination of first respondent, this Tribunal holds that the accident has occurred due to rash and negligent driving of the tractor-trailer by the first respondent. If he was not responsible for the accident, definitely, he would have contested the case, but after receiving notice, he did not appear and remained ex-parte. So considering the evidence and documents, this Court holds that the accident had taken place due to rash and negligent driving of the first respondent".



10. Based on the above finding, the learned counsel appearing for the respondents 1 and 2 /claimants submitted that the accident had occurred only due to rash and negligent driving of the driver of the tractor-trailor, which was insured with the appellant/insurance company and the finding of the Tribunal deserves no interference and hence, this appeal has to be dismissed.

11. A perusal of the award passed by the Tribunal clearly shows that the Tribunal has discussed in detail and considering the evidence of P.W.2 and also Ex.P.1 and Ex.P3. to Ex.P6, rightly concluded that the accident had occurred only due to rash and negligent driving of the driver of the tractor-trailor and since the offending vehicle was insured with the second respondent/Insurance Company, directed the Insurance Company to pay the compensation to the claimants. Therefore, there is no infirmity in the award passed by the Tribunal and the same does not require interference at the hands of this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 19.11.2012, passed in M.C.O.P.No.220 of 2011, on the file of the Motor Accidents Claims Tribunal/District Court, Karur is hereby confirmed. The appellant/second respondent 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. On such deposit being made, the claimants are permitted to withdraw their respective shares, with accrued interests and costs, without filing any formal petition before the Tribunal. No Costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The District Judge,
Motor Accidents Claims Tribunal, Karur.

Copy To:-

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

- + 1 CC TO Mr.E.K.KUMARESAN, ADVOCATE IN SR No. 79966
- + 1 CC TO Mr.N.MURUGESAN, ADVOCATE IN SR No. 79382
- + 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 79980