



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2017

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CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1072 of 2011

and

M.P. (MD) No.1 of 2011

National Insurance Co. Ltd.,
Branch Office,
33, Promenade Road,
Contonment, Trichy.

... Appellant/2nd Respondent

Vs.

1.Avuli
2.Pappathi
3.Dhanam
4.Ayyavu
5.Anna Pottu
6.M.Ravichandran

... Respondents 1 to 5/Petitioners
... 6th Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 31.03.2008 made in M.C.O.P.No.2162 of 1994 on the file of the Motor Accidents Claim Tribunal, Principal District Court, Tiruchirappalli.

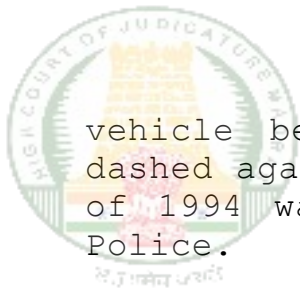
For Appellant : Mr.N.Murugesan

For Respondents : Mr.K.Govindarajan,
for RR1 to 5
R6 dismissed vide Court
order dated 26.03.2013

JUDGMENT

This civil miscellaneous appeal has been filed by the National Insurance Company Limited questioning the award dated 31.03.2008 made in M.C.O.P.No.2162 of 1994 on the file of the Motor Accidents Claim Tribunal, Principal District Court, Tiruchirappalli.

2.The respondents 1 to 5 herein are the claimants. Their case is that their brother Annadurai was walking on the Lalgudi - Ariyalur main road on 19.06.1994 at about 16.00 hours when the



vehicle belonging to Ravichandran, the sixth respondent herein dashed against Annadurai causing him fatal injuries. Crime No.439 of 1994 was registered at the instance of one Kumar by Lalgudi Police.

3.The petition was opposed by the appellant insurance company on the ground that the deceased was a gratuitous passenger in the vehicle bearing registration No.TN 45 C 5317 belonging to the sixth respondent herein. The specific stand of the appellant insurance company is that the deceased was standing in between the Tractor and the Trailor and when the vehicle was in motion, he fell down accidentally and died. Inasmuch as he was a gratuitous passenger and since he ought not to have travelled in a Tractor, which is not a passenger vehicle, the insurance company cannot be made liable.

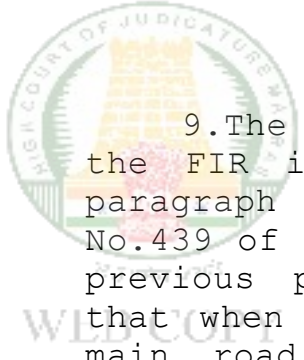
4.The specific stand of the insurance company is that there has been a fundamental breach of the policy condition. An additional counter was filed stating that the vehicle was not even insured with the appellant. But, the Tribunal rejected both the contentions and passed an award for a sum of Rs.1,75,000/- with interest against the insurance company. Aggrieved by the same, this appeal has been filed.

5.Heard the learned counsel for the parties.

6.The learned counsel for the appellant primarily placed reliance on Ex.A1 dated 19.06.1994. It is a photocopy of the F.I.R. given by one Kumar. The F.I.R. reads that the deceased fell down from the moving vehicle. But, in support of the contention that the deceased was actually a pedestrian when the vehicle came and hit him, the claimants examined P.W.2, who is said to be an eye witness. The Court below believed the version of the eye witness and fastened the liability on the offending vehicle and consequently on the appellant insurance company.

7.Before me, the learned counsel for the appellant laid considerable emphasis on the fact that the FIR was marked by none other than the claimants themselves. He would also place reliance on the decision of the Hon'ble Supreme Court reported in **2007 ACJ 1928 (Oriental Insurance Co. Ltd. Vs. Premalata Shukla and others)**. The Hon'ble Supreme Court held that if reliance is placed on a part of the contents of the document, which is admitted in evidence, the party bringing the same on record cannot be permitted to turn-round and contend that the other contents contained in the remaining part thereof had not been proved.

8.This Court gave its anxious consideration to the rival contentions.



9. The claimants no doubt marked Ex.A1 FIR. But, reference to the FIR is found place in the original petition itself. In paragraph 2 of the petition, the claimants have stated that crime No.439 of 1994 was registered by the Lalgudi Police. But, in the previous paragraph, the claimants have categorically contended that when the deceased was proceeding on the Lalgudi - Ariyalur main road, the offending vehicle was driven in a rash and negligent manner and dashed against the deceased. Therefore, it cannot be stated that the claimants wanted to selectively rely on the FIR. As held by this Court in the decision reported in **2013**

(1) TNMAC 415 (New India Assurance Company Limited Vs. K.Udayakumar), in a road accident case, the observation mahazer, sketch map and MVI report are important documents. They however only reveal that an accident had taken place involving certain vehicles. They cannot be the sole evidence to depict the manner of road accident, which is mainly a matter of evidence of witnesses, who have seen the accident. In the present case, P.W.2, an eye witness was examined. He categorically deposed that the offending vehicle came and dashed against the deceased, who was walking on the road. The Tribunal believed his testimony. The appellant insurance company did not examine the author of FIR. As already pointed out, the claimants have marked the said document more to show that an accident occurred and that it is being investigated.

10. In this case, Ex.A1 at best shows that Annadurai, the brother of the claimants passed away in an accident. Under these circumstances, the burden was on the appellant insurance company to have examined the author of the FIR. They have not done so. Therefore, I do not find any reason to interfere with the findings of the Tribunal that the deceased was a pedestrian when the accident took place.

11. According to the claimants, the deceased was earning a sum of Rs.1,500/- per month. The Court below quantified the annual loss of dependency at Rs.9,000/-. His age at the time of death was 25 years. By adopting the multiplier 17, the compensation payable was finally arrived at Rs.1,75,000/- with interest. The quantum of compensation is not excessive. It has been rightly fixed. The claimants are sisters and they are entitled to equal share in the compensation amount. I find no reason to interfere with the award passed by the Court below.

12. The appellant 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 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. On such deposit, the claimants are entitled to withdraw their share as apportioned by the Tribunal, less the amount already



withdrawn by them, if any, by filing proper application.

13. The appeal is therefore dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

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/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Motor Accidents Claim Tribunal,
Tirunelveli.

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

+ 1 cc TO Mr.K.Govindarajan , Advocate in SR No. 81525

Arul

AE/JC/SAR3/27.12.2017/4P/4C

ORDER MADE IN
C.M.A. (MD) No.1072 of 2011
and
M.P. (MD) No.1 of 2011
04.10.2017