



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.1341 of 2011

and

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

Divisional Manager,
Oriental Insurance Company Ltd.,
24-E, 1st Floor,
12/A, Sivasakthi Shopping Complex,
12-A, S.N.High Road,
Tirunelveli.

...Appellant/ 2nd Respondent

Vs.

N.Paulraj (Died)

1.Krishnammal

2.Bharathi Raja

3.Muthu Priya

4.Suganya

(4th Respondent declared as
major and discharged from
the guardianship of the 1st
respondent vide order
dated 08.07.2013)

5.Madathi

...1-5 respondents/2- 6 petitioners

6.Dr.S.Premachandran

... 6th respondent/1st respondent

(6th respondent remained
exparte before the lower Court)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award of Rs.3,85,781/ (Rupees Three lakhs Eighty Five Thousand Seven Hundred and Eighty One Only) passed in MCOP.No.213 of 2007, dated 10.05.2011, on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Tirunelveli.



For Appellant : Mr.K.Bhaskaran
For R1 to R4 : Mr.T.Selvakumran
For R5 and R6 : No appearance

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 10.05.2011 made in M.C.O.P.No.213 of 2007 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tirunelveli.

2. It is a case of fatal accident, which took place on 19.11.2006 at about 08.30 a.m., at Thiruvananthapuram road, Jothinagar.

3.It is the case of the claimants before the Tribunal that on the date of accident, while the deceased N. Paulraj, was travelling as pillion rider in a Motorcycle bearing registration No. TN-72- V- 7857, ridden by his friend Malaichamy from South to North, on Thiruvananthapuram road, the driver of the Car bearing registration No.TN-72 - L-1059 belonged to the first respondent, insured with the second respondent, drove the car in a rash and negligent manner and dashed against the motorcycle thereby causing accident. Due to which, the deceased sustained injuries all over his body. Immediately, he was admitted in the Medical College hospital, Palayamkottai and was taking further treatment continuously in several Hospitals as inpatient and outpatient, despite the treatment, he died on 30.11.2008.

4.The claimants filed an application in M.C.O.P.No.213 of 2007 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tirunelveli, claiming a sum of Rs.10,00,000/- as compensation.

5.Before the Tribunal, the Claimants examined three witnesses as P.Ws.1 to 3 and marked fifteen documents as Exs.P.1 to 15. On the side of the Insurance Company, neither witness was examined and nor any document was marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the first respondent and directed the second respondent/Insurance Company to pay a sum of Rs.3,85,781/-as compensation.



7. Against which, the appellant/Insurance Company has filed this present appeal.

8. Though in the grounds of appeal, the appellant has raised various grounds on account of liability as well as quantum, at the time of argument, the learned counsel for the appellant restricted his argument only with regard to liability.

9. This Court heard the submissions made by the learned counsels on either side and perused the materials available on record.

10. In Paragraph No.5 of the award, the Tribunal has given a finding as follows:

"The second petitioner, is the wife of first petitioner, deposed as P.W.1, P.W.2 was rider of the two wheeler, TN 72 V 7857 on the date of accident. He also deposed that the accident was caused due to the rash and negligent driving of the driver of first respondent. There was no contra evidence on the part of the second respondent, though they contended that the driver of the first respondent had driven the car in a slow and careful manner after following traffic rules and there was contributory negligence on the part of P.W.2 also. Ex.P.1 shows that the police registered F.I.R. against the driver of the first respondent. Ex.P.2 shows that the driver admitted the offence and he was convicted by the concerned Magistrate Court. It clearly proved that the accident was caused due to the rash and negligent driving of the driver of the first respondent. It is admitted that the car was insured with the second respondent. So as an insurer, the second respondent is liable to compensate the petitioners. These points are answered in the above manner."

11. From the above, it is clear that the Tribunal has discussed in detail and rightly found that the accident has occurred only due to the rash and negligent driving of the driver of the Car and the second respondent, being the insurer of the Car, was directed 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 10.05.2011 passed in M.C.O.P.No.213 of 2007 on the file of the Motor Accident Claims Tribunal cum Magistrate, Tirunelveli is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of



four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants are permitted to withdraw their respective shares as apportioned by the Tribunal with interests and costs. No Costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(cs-II)

/True Copy/

Sub Assistant Registrar

To,

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Bhaskaran, Advocate Sr.No.79772
+1cc to Mr.T.Selvakumran, Advocate Sr.No.80107

DSK

VB/SKN/RSK/SAR1/25/10/2017/4P/5C

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