



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2017

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) Nos. 1397 of 2011
and
M.P. (MD) No.3 of 2011

The National Insurance Company Limited,
Represented by its
Branch Manager,
Coimbatore.

... Appellant/2nd Respondent

Vs.

1.P.Jansirani

... 1st Respondent/Petitioner

2.S.Tamilselvi

... 2nd Respondent/1st Respondent

3.Karuppannan

... 3rd Respondent/3rd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.48 of 2007 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Kulithalai, dated 25.11.2010.

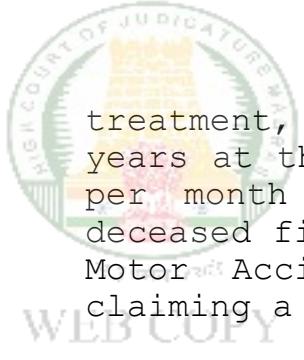
For Appellant	: Mr.J.S.Murali
For Respondents	: Mr.S.Muthukrishnan for R.1
	: Mr.R.Vijayakumar Pandian for R.2
	: Steps due for R.3

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree in M.C.O.P.No.48 of 2017 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Kulithalai.

2. The brief facts of the case are as follows:

It is a case of fatal, which occurred due to the accident which took place on 28.01.2006 at about 16.15 hours. When deceased was walking in Avinasi road, a mobile crane belonging to the first respondent, insured with the second respondent driven by its driver in a rash and negligent manner, hit the deceased and after he fell down, the crane ran over him. Immediately after the accident, the deceased was taken to Kovai Medical centre and inspite of best



treatment, he died on 05.02.2006. The deceased was aged about 45 years at the time of accident and he was earning a sum of Rs.7500/- per month by doing garment business. Hence, the wife of the deceased filed a claim petition in M.C.O.P.No.48 of 2007, before the Motor Accident Claims Tribunal, Subordinate Court, Kulithalai, claiming a sum of Rs.12,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimant, two witnesses viz., P.W.1 and P.W.2 were examined and 20 documents viz., Exs.P.1 to P.20 were marked and on the side of the respondents, two witnesses viz., R.W.1 and R.W.2 were examined and 2 documents viz., Exs.R.1 and R.2 were marked.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing 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 offending vehicle and directed the appellant/Insurance Company to pay a sum of Rs.7,05,000/-

5. Against which, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

6. The learned Counsel for the appellant would contend that the Tribunal ought to have adopted pay and recovery theory, since the driver of the offending vehicle did not possess any valid driving licence at the time of accident. He further submitted that the driver of the offending vehicle has also admitted his guilt. Hence, he seeks interference of this Court to the award passed by the Tribunal.

7. The learned counsel for the respondents would submit that based on the available oral and documentary evidences, the Tribunal has rightly come to the conclusion and arrived at correct compensation under various heads.

8. Heard the learned Counsel for the appellant and the learned Counsel for the respondents and perused the materials available on record.

9. At this juncture, it relevant to extract the finding of the Tribunal regarding negligence and liability:

"The petitioner has produced the judgment of the criminal court and marked it as Ex.A.12. The Criminal Court has come to the conclusion that the driver of the crane was guilty of killing the husband of the petitioner herein by negligence and convicted him. In the criminal court the kind of proof required to prove the negligence of the accused person is more stringent. The negligence should be proved beyond doubts. Such proof is not required in the Tribunal. The negligence of the crane



driver has been proved beyond doubts in the criminal court and he has been convicted. I am of the opinion that the finding of the competent criminal court can also be taken into account. In view of this judgment, I would prefer to accept the evidence of P.W.1 and hold that the deceased died only due to the negligent act of the first respondent's crane driver. The second respondent has not denied the fact that the first respondent's crane was insured with it at the time of the accident. In fact, the policy copy was marked as Ex.B.1 through R.W.2. Hence, the second respondent is liable to pay damages to the petitioner on behalf of the first respondent."

10. On a reading of the finding of the Tribunal, it is very clear that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle. The driver of the offending vehicle himself admitted his guilt before the Criminal Court. Hence, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligence driving of the offending vehicle and hence, the Tribunal has directed the appellant Insurance Company to pay the compensation to the petitioner/claimant. In view of the above, this Court is of the view that there is no error in the finding of the Tribunal and the Tribunal has awarded just and reasonable compensation. Hence, there is no infirmity or irregularity in the award passed by the Tribunal. However, since the driver of the offending vehicle did not possess any valid driving licence at the time of accident as contended by the Insurance Company, this Court is inclined to apply pay and recovery theory in this case as per the decision of the Honourable Supreme Court in **Nanjappan Vs. Oriental Insurance Company Limited and Others**, reported in **2003(1)L.W. 77**.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs in 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 first respondent/ claimant is permitted to withdraw the same, with accrued interests and costs without filing any formal petition before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed. The appellant/Insurance Company is at liberty to recover the same from the owner of the vehicle per the decision of the Honourable Supreme Court in **Nanjappan Vs. Oriental Insurance Company Limited and Others**, reported in **2003(1)L.W. 77**.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Kulithalai.

+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 74359
+ 1 CC TO Mr.S.MUTHUKRISHNAN, ADVOCATE IN SR No. 74549

SSL

TE/MR-KKR/SAR-I : 06/09/2017 : 4P/4C

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