



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.552 of 2013

and

M.P(MD)No.1 of 2013

National Insurance Company Limited,
Karur.

... Appellant / Respondent-2

Vs.

- 1.Palaniammal
- 2.Minor Rajeswari
- 3.Minor Naveen Kumar
- 4.Minor Suresh Raju
- 5.Ponnan
- 6.Saroja(deceased)
- 7.Valliponnu

(Minor respondents 2 to 4 herein are
Rep. by mother and guardian 1st respondent)

... Respondents 1 to 7/Petitioners

- 8.Sudakar
- 9.Palanichamy

- 10.United India Insurance Company Limited
12A, Kovai Road, BLA Building
Karur.

...Respondents 1, 3 & 4 / Respondents 8-10

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 25.09.2007 and made in MCOP No.1998 of 2003 on the file of Motor Accident Claims Tribunal/ Fast Track Court No.2/Additional District Judge, Trichy.

For Appellant

: Mr.S.Srinivasa Raghavan

For Respondents 1 to 5 & 7 :Mr.N.Mohan

For 8th Respondent : No appearance

For 10th Respondent : Mr.N.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the judgment and award of the Motor Accident Claims Tribunal (Fast Track Court No.2/Additional District Judge), Trichy in M.C.O.P.No.1998 of 2003 , dated 25.09.2007.

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2. It is a case of fatal accident took place on 31.01.2003 at about 14.15 hours on Trichy to Dindigul Main Road, Velugoundar Garden at Vaiyampatti.

3. It is the case of the claimants before the Tribunal that when he was travelling in the Tractor bearing Registration No.TN 28 B 0288, which belongs to the ninth respondent from Trichy to Dindigul, when they reached Vaiyampatti, the lorry bearing Registration No.TN 55 E 0929, which belongs to the eighth respondent came in a rash and negligent manner and dashed against the Tractor and in the said accident, the deceased on the spot.

4. The claimants filed an application in M.C.O.P.No1998 of 2003 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.2/Additional District Judge), Trichy, seeking compensation.

5. Before the Tribunal, the Claimants examined two witnesses as P.Ws.1 and 2 and marked two documents as Ex.P.1 to Ex.P.2. The appellant/Insurance Company did not let in any oral or documentary evidence.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants 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 lorry and therefore, directed the appellant/Insurance Company to pay a sum of Rs.3,60,000/-, as compensation.

7. Against which, the appellant/Insurance Company has filed this present appeal only on the question of liability and to fix contributory negligence.

8. It is well settled law that while the Insurance Company takes a plea of negligence, they can very well examine the driver to establish the negligence and unless and until there is a contra evidence, the Court cannot fix contributory negligence.

9. At this juncture, the learned counsel for the appellant fairly conceded that in this case, there is no contra evidence to prove the contributory negligence.

<https://hcservices.ecourts.gov.in/hcservices/> 10. In view of the same, this Court is of the view that there is no infirmity in the award passed by the Tribunal.



11. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 25.09.2007 made in M.C.O.P.No1998 of 2003 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.2/Additional District Judge), Trichy, is 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. On such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To,

1.The Motor Accident Claims Tribunal
The Additional District Judge,
(Fast Track Court No.2),
Trichy

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

+One cc to Mr.N.Sivakumar, Advocate, SR.No.72482

+One cc to Mr.S.Srinivasa Raghavan, Advocate, SR.No.72282

pm

RL/5C/3P/SV/MMS/SAR1/12/9/2017

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