



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2017

CORAM

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1532 of 2011

and

M.P.(MD)No.1 of 2011 and 1 of 2015

The General Manager,
The New India Assurance Company Ltd.,
Promenade Road, Cantonment,
Trichirappalli - 1.

... Appellant / 2nd Respondent.

Vs.

1.Nainammal
2.Thamarai
3.Chandiraleka

... Respondent No.1 to 3/ Petitioners

4.Eswarakumar

... Respondent No.4 / 1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.07.2011 passed in M.C.O.P.No.1349 of 2004, on the file of the Motor Accident Claims Tribunal (Additional District Judge), (Fast Track Court No.II), Trichirappalli and set aside the same.

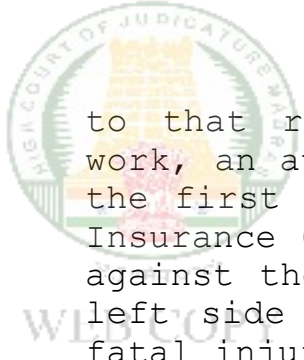
For Appellant	: Mr.G.Prabhu Rajadurai
For Respondents	: Mr.N.Sudhagar Nagaraj
	for R.1 to R.3
	: No appearance
	for R.4

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company Limited against the judgment and decree, dated 28.07.2011, passed in M.C.O.P.No.1349 of 2004, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.II, Trichirappalli.

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

It is the case of a fatal injury which occurred in the accident that took place on 16.09.2001. On 16.09.2001 at about 05.30 a.m., when the deceased was walking in the mud path adjacent



to that road in Trichy-Pudukottai main road for attending his work, an auto bearing Registration No. TCI 9865, which belonged to the first respondent and which insured with the second respondent Insurance Company, came in a rash and negligent manner and dashed against the deceased. The deceased who was walking on the extreme left side of the road due to the said impact, sustained severe fatal injuries and died on the spot. At the time of the accident, the deceased was aged about 49 years and was earning a sum of Rs.5,000/- p.m. The legal heirs of the deceased filed an application in M.C.O.P.No.1349 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.II, Trichirappalli, seeking a sum of Rs.4,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, two witnesses as P.Ws.1 and 2 were examined and four documents were marked as Ex.P.1 to Ex.P.4 and on the side of the respondents two witnesses were examined as R.Ws.1 and 2 and two documents were marked as Ex.R.1 to Ex.R.2. P.W.1 is the First Information Report, P.W.2 is the Post Mortem Report, P.W.3 is the Legal Heirship Certificate, P.W.4 is the Certificate copy of the Judicial Magistrate and R.W.1 is the Investigation Report, R.W.2 is the Motor Vehicle Inspector's Report.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments on either side and also on appreciating the evidence on record, held that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent and directed the appellant/Insurance Company to pay a sum of Rs.3,54,000/-, as compensation to the claimants.

5. Against the accident, the appellant/Insurance Company has filed this present appeal on the ground of negligence as well as quantum.

6. The learned counsel appearing for the appellant/Insurance Company contended that the admission made in the criminal proceedings cannot be relied upon by the claimants and the claimants should be established their case independently. Further the learned Counsel submitted that in the absence of any evidence before the Tribunal that the accident took place due to Act of the driver of the auto, the Tribunal ought not to have fixed the liability on the Insurance Company and directed to pay the compensation. In support of his contention, he relied upon the Judgment **N.Sathidevi and others vs. V.Giridharan and others** reported in **2004 (2) TNMAC 101** is relevant portion of the judgment is extracted here under:

<https://hcservices.ecourts.gov.in/hcservices/>

"In view of the judgment of the Division Bench, it is clear that the admission made in the criminal



proceedings, cannot be relied on. But the case of the claimants have to be established independently, before the Tribunal. In the present case, except the admission made by the driver before the Criminal Court, absolutely, there is no evidence to conclude that the auto bearing registration No. MDG 1948 involved in the accident. P.Ws.1 and 2 had not stated about the same. The Tribunal also decided the basis of the copy of the judgment in C.C.No1098 of 1991 marked as Ex.A2 and the admission made by the driver in the Criminal Court. So it is clear that the claimants have not established independently before the Tribunal that the said vehicle involved in the accident, though such a dispute had been raised. In the absence of any evidence before the Tribunal, the Tribunal is not correct in holding that the accident took place due to the driving of the driver of the auto bearing registration No. MDG 1948 and thereby, the respondents in the claim petition, are liable to pay the compensation."

7. Per contra, the learned counsel for the respondents/claimants contended that the Tribunal awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is to be dismissed. In support of his contention, the learned counsel for the respondents/claimants relied upon the Judgment of this Court in **United India Insurance Company Ltd. vs. Revathy and others** reported in **AIR 2012 MADRAS 25**, wherein this Court has held as follows:

"I am unable to accept the submission made by the learned counsel. Firstly, the report of the Investigator cannot be relied upon on the sole ground that two years after the accident took place, the Insurance Company deputed one Surveyor/Investigator to visit the spot where the accident took place and submit a report. First of all, I am of the opinion that the report submitted by the Investigator is not admissible in evidence for deciding the question as to which vehicles were involved in the accident. Secondly, it will appear from the impugned judgment that the Tribunal has discussed and analysed the entire evidence of the witnesses and also considered the First Information Report lodged against the driver of the auto-rickshaw immediately after the accident. A criminal case was also registered against the auto-rickshaw driver. The manner in which the accident took place as narrated in the F.I.R. is fully supported by the witnesses who had seen the occurrence. Hence, the finding of fact recorded by the Tribunal on the factum and the manner of the accident cannot be disturbed. I do not find any conclusive evidence to differ from the



13. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Motor Accident Claims Tribunal (Additional District Judge), (Fast Track Court No.II), Trichirappalli, made in M.C.O.P.No.1349 of 2004, dated 23.06.2004, is hereby confirmed. It is submitted by the learned Counsel for the appellant/Insurance Company that the Insurance Company has already deposited 50% of the award amount with accrued interest and costs. Therefore, the appellant/Insurance Company is directed to deposit the balance 50% of award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the respondents/claimants are permitted to withdraw their entire share amount along with proportionate interest and costs as apportioned by the Tribunal, without filing any formal petition before the Tribunal. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (WRITS)

/True copy/

Sub Assistant Registrar

To

1. The Additional District Judge,
The Motor Accident Claims Tribunal
(Fast Track Court No.II),
Trichirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.G.PRABHU RAJADURAI, ADVOCATE IN SR No.83942

+ 1 CC TO MR.N.SUDHAGAR NAGARAJ, ADVOCATE IN SR No.83986

gsp

AE/MR KKR/SAR-2/20.12.2017/5P/5C

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