



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.07.2017
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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C.M.A (MD) Nos. 683 and 843 of 2013

C.M.A (MD) No. 683 of 2013

The Branch Manager,
New India Assurance Company Limited,
2nd Floor, Neyyattinkara Taluk,
Thiruvananthapuram District,
Kerala State.

... Appellant / 3rd respondent

Vs.

1.Prasanna Kumari
2.Minor.M.Manu
3.Minor.Sreenu
4.Lakshmi Pillai Thankachi alias Radhamma

... 1st to 4th Respondent/Petitioners

5.Selvaraj	... 5 th Respondent/1 st Respondent
6.A.Grace	... 6 th Respondent/2 nd Respondent
7.C.Kumar	... 7 th Respondent/4 th Respondent

(The minor 2nd and 3rd respondents are represented
through their mother, the 1st respondent as guardian)

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.23 of 2005 dated 07.08.2012 on the file of the Motor
Accident Claims Tribunal, Subordinate Court, Padmanabhapuram.

For Appellant	: Mr.J.S.Murali
For R1 to R4	: Mr.V.M.Balamohan Tambi
For R6	: Mr.S.Ramakrishnan
For R-5 & R-7	: No appearance

C.M.A (MD) No. 843 of 2013

The Branch Manager,
New India Assurance Company Limited,
2nd Floor, Neyyattinkara Taluk,
Thiruvananthapuram District,
Kerala State.

... Appellant / 3rd respondent

Vs.

1.Latha
2.Minor.Archana



3.Santha
4.Baskara Pillai
Respondent/Petitioners
5.Selvaraj
6.A.Grace

... 1st to 4th

... 5th Respondent /1st Respondent
... 6th Respondent /2nd Respondent

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(The minor 2nd respondent is represented
by her mother the 1st respondent as guardian)

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.24 of 2005 dated 07.08.2012 on the file of the Motor Accident Claims Tribunal, Sub Ordinate Court, Padmanabhapuram.

For Appellant	: Mr.J.S.Murali
For R1 to R4	: Mr.V.M.Balamohan Tambi
For R6	: Mr.S.Ramakrishnan
For R5	: No Appearance

COMMON JUDGMENT

Since both the Civil Miscellaneous Appeals are arising out of a same accident, they have been heard together and disposed of by this common judgment.

2.These Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company against the award, dated 07.08.2012 made in M.C.O.P.Nos.23 and 24 of 2005 by the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram.

3. It is a case of fatal accident, which took place on 25.03.2004 at about 01.00 p.m., in Kaliyal to Arumanai Road near Kilathoor.

4. It is the case of the claimants before the Tribunal that on the date of accident, the deceased persons along with their friend travelled in a two wheeler M.80 Bajaj and when they reached Kilathor in Arumanai Alancholai road, the lorry bearing registration No.KEF 3882 which came from the opposite direction was driven by its driver rashly and negligently and dashed against the two wheeler and in the said accident, the deceased persons sustained injuries and thereafter succumbed to the injuries.

5. The claimants filed applications in M.C.O.P.Nos.23 and 24 of 2005, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram.

6. In both the claim petitions, before the Tribunal, the claimants examined one witness as P.W.1 and marked ten documents as Ex.P.1 to Ex.P.10 and on the side of the appellant/Insurance Company, three witnesses were examined as R.W.1 to R.W.3 and four documents were marked as Ex.R1 to R4.



7. 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 appellant/Insurance Company and directed the appellant/Insurance Company to pay the compensation at the first instance and then, recover the said amount from the sixth respondent/owner.

8. Against which, the appellant/Insurance Company has filed these present appeals challenging the liability as well as quantum.

9. Though these appeals have been filed challenging the liability as well as quantum, at the time of making arguments, the learned counsel for the appellant restricted his argument only to the aspect of liability and submitted that the accident occurred in the middle of the road and two vehicles were involved in the accident and therefore, the Tribunal ought to have fixed the liability on both drivers of the vehicle. Further, the lorry, which is insured with the appellant/Insurance Company is permitted to ply only in the State of Kerala and therefore, there is clear violation of policy conditions and therefore, the Tribunal ought to have absolved the liability of the appellant from indemnifying the owner of the vehicle.

10. The learned counsel appearing for the respondents 1 to 4 would draw the attention of this Court to paragraph Nos.6 and 10 of the award, wherein it has been rendered as follows:

"6.Points No.1 and 2:

The 1st petitioner was examined as P.W.1 and she has stated in her evidence that the accident happened only due to the rash and negligent driving of the 1st respondent. The copy of the F.I.R is marked as Ex.P1 and the charge sheet is marked as Ex.P.6. The 1st respondent did not come and contest the case of the petitioners. The police also investigated the case and laid charge sheet against the first respondent. Hence, I hold that the accident was happened only due to the rash and negligent driving of the 1st respondent

10. Considering the evidence of R.W.2 and R.W.3, the vehicle driven by the first respondent bearing Regn.No.KEF - 3883 did not have valid permit to drive the lorry in the Tamil Nadu State. Hence, I hold that the 3rd respondent is directed to pay the compensation amount to the petitioner and recover the same from the



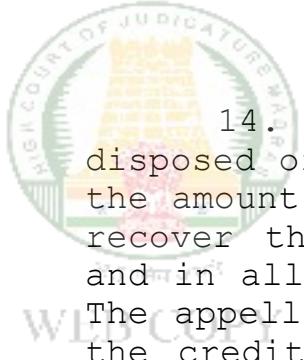
Therefore, in view of the above finding, the award passed by the Tribunal does not require interference and the appeals are to be dismissed.

11. Heard the learned counsel appearing on both sides and perused the materials available on record.

12. A perusal of the award passed by the Tribunal clearly shows that the Tribunal has discussed in detail about the manner of the accident and found that the driver of the lorry was the cause for the accident and 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.

13. At this juncture, the learned counsel for the appellant submitted that though the Tribunal ordered pay and recovery, in the decree, the same has not been incorporated and therefore, the award of the Tribunal may be confirmed, following the judgment in ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS reported in 2004(2) CTC 464, wherein the mode of recovery has been clearly dealt in paragraph 8 of the judgment, which reads as follows:-

"Therefore, while setting aside the judgment of the High Court, we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no orders as to costs."



14. In the result, these Civil Miscellaneous Appeals are disposed of and the appellant/Insurance Company is directed to pay the amount awarded by the Tribunal at the first instance and then, recover the same from the owner of the vehicle/sixth respondent and in all other aspects, the award of the Tribunal is confirmed. The appellant Insurance Company shall deposit the award amount to the credit of M.C.O.P., on the file of claims Tribunal within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and in the later stage, the appellant Insurance Company is entitled to recover the same from the owner of the vehicle/sixth respondent, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in 2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others). 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, are permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. No Costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To,

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Padmanabhapuram.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+2cc to M/S.J.S.Murali, Advocate SR.No. 69402 & 69403

+2cc to M/S.V.M.Balamohan Tambi, Advocate SR.No. 68946 & 68947

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