



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :22.08.2017
PRONOUNCED ON :07.12.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)Nos.912 & 913 of 2013
and
MP.Nos.1 and 1 of 2013C.M.A.No.912 of 2013

P.Karthikeyan

... Appellant/2nd Respondent

Vs.

1.Nallammal
2.Selvaraj
3.Selvi
4.Venkatachalam...Respondents 1 to 3/Petitioners
...4th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 21.11.2012 passed in M.C.O.P.No.427 of 2009 on the file of the Motor Accident Claims Tribunal, District Judge, Karur.

For Appellant	: Mr.S.P.Maharajan
For R-1 to R-3	: Mr.K.Suresh Kumar
For R-4	: No Appearance

C.M.A.No.913 of 2013

P.Karthikeyan

... Appellant/2nd Respondent
Vs.1.Lakshmi
2.Palanivel
3.Venkatachalam... Respondents 1 & 2/Petitioners 1&2
... 3rd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Degree dated 21.11.2012 passed in M.C.O.P.No.428 of 2009 on the file of the Motor Accident Claims Tribunal, District Judge, Karur.

For Appellant	: Mr.S.P.Maharajan
For R-1 & R-2	: Mr.K.Suresh Kumar

For R-3 : No Appearance

COMMON JUDGMENT

Since both the Civil Miscellaneous Appeals are arising out of the same accident, both the appeals are disposed of by this Common judgment.

2. Both the Civil Miscellaneous Appeal are directed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.11.2012 made in M.C.O.P.Nos.427 and 428 of 2009 on the file of the Motor Accident claims Tribunal, District Judge, Karur.

3. It is a case of fatal accident, which took place on 06.09.2009 at about 11.45 a.m., at Karur-Kovai main road near Semmandampalayam Pirivu road.

4. It is the case of the claimants before the Tribunal that on the date of accident, the deceased Karuppasamy was riding his T.V.S.50 Moped bearing Registration No.T.N.47 A 3911 by taking one Subramanian as pillion rider. When they were proceeding from east to west keeping left side of the road on Karur-Kovai main road near Semmandampalayam Pirivu road, the first respondent had driven the car from west to east in a rash and negligent manner and had dashed against the two-wheeler and as a result of which, both the Karuppasamy and Subramanian were thrown out from the two-wheeler and died on the spot.

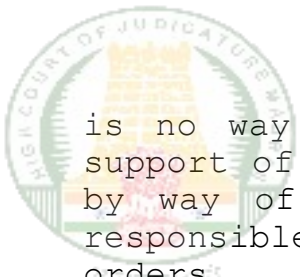
5. The claimants filed separate applications in M.C.O.P.Nos.427 and 428 of 2009 on the file of the Motor Accident claims Tribunal, District Court, Karur.

6. Before the Tribunal, the claimants examined three witnesses as P.W.1 to P.W.3 and marked nine documents as Exs.P1 to P9. On the side of the appellant, three witnesses were examined as R.W.1 to R.W.3 and no documents were marked on the side of the appellant.

7. The Tribunal after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record held that the accident occurred only due to the rash and negligent driving of the car and directed the appellant/second respondent to pay the compensation as the owner of the vehicle at the first instance and then, recover the said amount from the present owner of the vehicle and awarded compensation of Rs.4,34,500/- in M.C.O.P.No.427 of 2009 and a sum of Rs.4,24,500/- in M.C.O.P.No.428 of 2009 respectively.

8. Aggrieved over the findings of the tribunal, the appellant has filed the Civil Miscellaneous Appeals questioning the liability as well as compensation.

9. The learned counsel appearing for the appellant would submit that he already sold the vehicle on 25.03.2009 itself to the fourth respondent in C.M.A.(MD).No.912 of 2013 (Venkatachalam) and the third respondent in C.M.A.(MD).No.913 of 2013 and therefore, he



is no way responsible to pay compensation to the claimants. In support of his contention, he also drew the attention of this Court by way of additional evidence to the effect that he is no way responsible for the accident. Hence, he prays for appropriate orders.

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10.This Civil Miscellaneous Appeal was admitted on 18.04.2013. Notice was duly served on one Venkatachalam. However, there is no appearance on behalf of him either through his counsel or through his Advocate. Hence, this Court proceeded the matter with the materials available on record.

11.The short point involved in both the civil miscellaneous appeal is whether the appellant is liable to pay compensation as held by the Court below?

12.It is the primary contention of the learned counsel for the appellant that the appellant herein is the former owner of the vehicle in question. According to him, the fourth respondent in C.M.A(MD)No.912 of 2013 and the third respondent in C.M.A(MD)No.913 of 2013 is the present owner of the offending vehicle. The case of the appellant before the Court below is that he had already sold the vehicle to the said Venkatachalam and therefore, he is not liable to pay compensation to the claimants. In this connection, it is useful to refer the additional evidence filed before this Court and marked as Ex.R.5, wherein, the original Form of Certificate of Registration is enclosed and it is apparent on the face of the record that as contended by this appellant the name transfer has been effected on 28.03.2009 itself in respect of the offending vehicle, whereas, the accident happened only on 06.09.2009. The Court below has observed (page No.15) that the vehicle in question had insurance coverage upto 11.07.2009. In otherwords, on the date of the accident, the appellant is not the owner of the vehicle and it has duly been transferred to the said Venkatachalam. Therefore, the fastening of liability on the present appellant is incorrect and the said Venkatachalam alone is responsible for the accident caused. Further, the said Venkatachalam has not raised any ground before the Court below or before this Court that the offending vehicle had been properly insured with the insurance company and the policy is in force and therefore, he is not liable to pay compensation and insurance company alone is responsible to pay compensation. He has also not chosen to appear before this Court to defend his case. In such circumstances, this Court has no other option but to fasten the liability on the said Venkatachalam.

13.As regards the quantum of compensation arrived at by the Court below, it is a fatal accident. The tribunal after taking into various factors, has taken a minimum amount of Rs.150/- per day in which after deducting personal expenses, it has arrived at Rs.125/- per day and accordingly, arrived at the quantum of compensation. In the considered view of this Court, the amount so arrived by the Tribunal is quite reasonable and it does not warrant



any interference at the hands of this Court and therefore, the same is confirmed.

14. In the light of the above discussions and observations, both the civil miscellaneous appeals are liable to be allowed. Accordingly, they are allowed. Consequently, the said Venkatachalam, who is the fourth respondent in C.M.A.No.912 of 2013 and the third respondent in C.M.A.No.913 of 2013 is liable to pay compensation to the claimants and he is directed to deposit the entire award amount, along with accrued interest and costs, less the amount already deposited, if any, to the credit in M.C.O.P.No.427 and 428 of 2009 on the file of the Motor Accident Claims Tribunal, District Judge Karur, within a period of **four weeks** from the date of receipt of a copy of this judgment; The award amount shall be paid along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs; The claimants are entitled to get the compensation as apportioned by the Tribunal.

15. The Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the claimants, through RTGS/NEFT system, after getting his Account Details, within a period of **two weeks**, thereafter; and in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar.

To,
The District Judge,
Motor Accident Claims Tribunal, Karur.

+1CC to Mr.K.Suresh Kumar, Advocate, SR.No. 91852

+2CC to Mr.S.P.Maharajan, Advocate, SR.No. 91317 and 91318

judgment made in
C.M.A.No.912 & 913 of 2013
and
MP.Nos.1 and 1 of 2013
07.12.2017

bala/ssm
AM/KKR/SAR 1/29.01.2018/4P/5C