



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.599 of 2011

and

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

The Oriental Insurance Co. Ltd.,
Rep. By its Branch Manager,
Branch Office,
Near Vadasery Bus-Stand,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Appellant/3rd Respondent

Vs.

1.Maniammal
2.Pazhanivelan

3.Minor Rahini Devi
(Minor 3rd respondent rep. By
natural guardian/mother the
first respondent Maniammal
W/o.Late.Krishnan)

4.Pazhani Achi

... Respondents 1 to 4/
Petitioners 1 to 4

5.Ramu Asar

... 5th respondent/1st respondent

6.Ashok Kumar

... 6th respondent/2nd respondent

(5th and 6th respondents remained
ex-parte before the lower Court)

7. The New India Assurance Company Ltd.,
Rep. By its Branch Manager,
Branch Office, Opposite to Anna Stadium,
Anna Stadium,
Nagercoil.

.... 7th respondent/4th respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.218
of 2005 dated 10.12.2010 on the file of the Motor Accident Claims
Tribunal cum District Judge, Kanyakumari at Nagercoil.



WEB COPY

For Appellant : Mr.K.Bhaskaran
For R-1 to R-3 : No Appearance
R-5 & R-6 : Ex-parte
R-4 : died
R-7 : J.S.Murali

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 10.12.2010 passed in M.C.O.P.No.218 of 2005 by the Motor Accident Claims Tribunal-cum-District Judge/Tribunal Judge, Kanyakumari at Nagercoil.

2. It is a case of fatal accident, which took place on 30.04.2000 at about 11.30 a.m., at 1 km. South-West of Subramaniapuram.

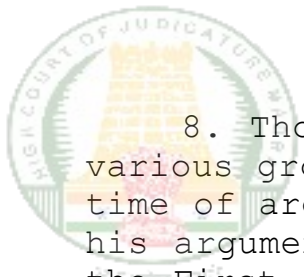
3. It is the case of the claimants before the Tribunal that on the date of accident, while the deceased was proceeding towards Aralvaoimozhy in his two wheeler, another two-wheeler bearing Registration No.TN 74 C 0071 was driven by its rider in a rash and negligent manner and dashed on the backside of the two-wheeler of the deceased and in the said accident, the deceased was thrown out of his vehicle and sustained injuries and thereafter, he succumbed to the injuries.

4. The claimants filed an application in M.C.O.P.No.218 of 2005 on the file of the Motor Accident Claims Tribunal-cum-District Judge/Tribunal Judge, Kanyakumari at Nagercoil, seeking compensation.

5. Before the Tribunal, the respondents 1 to 4/Claimants examined three witnesses as P.Ws.1 to 3 and marked twenty two documents as Ex.P.1 to Ex.P.22. On the side of the appellant, two witnesses were examined as R.Ws.1 and 2 and the Investigation Report was marked as Ex.R.1.

6.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 rider of the appellant/Insurance Company and held that the appellant, respondents 5 and 6 are jointly and severally liable to pay the compensation.

7. Against which, the appellant/Insurance Company has filed this present appeal.



8. Though in the grounds of appeal, the appellant has raised various grounds on account of liability as well as quantum, at the time of argument, the learned counsel for the appellant restricted his argument only with regard to the liability and submitted that the First Information Report was registered without mentioning the offending vehicle and the concerned Doctor, who gave treatment was not examined by the claimants and therefore, the liability fixed on the appellant/Insurance Company is to be set aside.

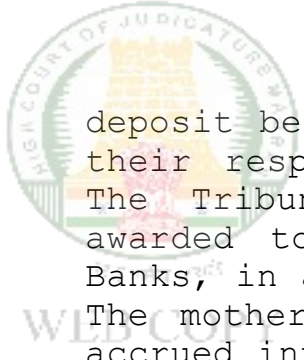
9. This Court heard the submissions made by the learned counsel for the appellant/Insurance Company and perused the materials available on record.

10. In Paragraph No.10 of the award, the Tribunal has given a finding as follows:

...From Ex.P6-Charge Sheet and Ex.P7 Judgment, it is clear that the police investigated the case and filed the charge sheet against the 1st respondent and he was convicted by the Court on pleading guilty. Even though R.W.2, deposed that he filed the Ex.R1-report after enquiry with the deceased and others, no independent witness was examined on the side of the respondents to rebut the evidence produced by the petitioners. In the said circumstances, the above contentions of the learned counsel for the 3rd respondent are not acceptable. The evidence produced on the side of the petitioners clearly established that the accident occurred due to the rash and negligent driving of the offending vehicle by the 1st respondent. Therefore, the 1st respondent is responsible for the accident causing the injuries to the deceased..."

11. From the above, it is clear that the Tribunal has discussed in detail and found that the rider of the two-wheeler, which is insured with the appellant/Insurance company only caused 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.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 10.12.2010 passed in M.C.O.P.No.218 of 2005 on the file of the Motor Accident Claims Tribunal-cum-District Judge/Tribunal Judge, Kanyakumari at Nagercoil, is hereby confirmed. Since the fourth respondent/fourth claimant died, her share of Rs.78,300/- is equally apportioned to the respondents 1 to 3/claimants 1 to 3. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such



deposit being made, the major claimants are permitted to withdraw their respective shares with proportionate interests and costs. The Tribunal is directed to deposit the compensation amount awarded to the minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till the minor attains majority. The mother of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of the minor. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To,

1. The Motor Accident Claims Tribunal cum
District Judge, Kanyakumari at Nagercoil.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Bhaskaran, Advocate Sr.No.68489

+1cc to Mr.J.S.Murali, Advocate Sr.No.68619

PM

VB/KK/SAR4/18/08/2017/4P/5C

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