



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.995 of 2011
and M.P. (MD)No.1 of 2011

The Oriental Insurance Co. Ltd.,
through its Branch Manager,
No.158-P C.C.Complex, Ist Floor,
New Road, Kovilpatti.

... Appellant/2nd Respondent

Vs.

1.Gandhimathi

2.Balamurugan

... 1st & 2nd Respondents / 1st & 2nd
Petitioners

3.Ramasamy

... 3rd respondent/1st respondent

4.Chandrasekaran

... 4th respondent / 3rd respondent

(3rd & 4th Respondent remained ex-parte before the Lower Court)

5.National Insurance Company Ltd.,

through its Branch Manager,

Ist Floor, No.135-1,

Rose Building,

Main Road, Kovilpatti.

... 5th 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.1722 of 2007 dated 18.11.2010 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Tirunelveli.

For Appellant : Mr.K.Bhaskaran

For R-1 to R-4 : No appearance

For R-5 : Mr.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 made in M.C.O.P.No.1722 of 2007 dated 18.11.2010 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Tirunelveli.

2. It is a case of fatal accident, which took place on 13.09.2007 at about 05.30 p.m., at Kadalaiyur Main Road near Rajeshwari Mahal.



3. It is the case of the claimants before the Tribunal that on the date of accident, the deceased was riding his motorcycle bearing registration No.TN-69- V-0100 from east to west on the Kalalaiyur Main Road at Kovilpatti near Rajeswari Mahal. At that time the Mini Bus bearing Registration No. TN-41-A-1468 belonging to the first respondent insured with the second respondent came from the opposite direction without sounding horn in a high speed in a rash and negligent manner and hit against the motorcycle. As a consequence the deceased was thrown out of the motorcycle and fell down on the road, and the lorry bearing registration No. TCS 5266 belonging to the third respondent insured with the fourth respondent came from just behind of the motorcycle in a high speed rashly negligently knocked down the deceased. As a result of which the deceased sustained multiple serious injuries all over the body. Immediately after the occurrence, the deceased was taken to Government Hospital at Kovilpatti and after first aid he was transferred to TVMC Hospital at Palayamkottai where he succumbed to his injuries on the next day.

4. The claimants filed an application in M.C.O.P.No.1722 of 2007 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Tirunelveli, seeking compensation.

5. Before the Tribunal, the Claimants examined one witness as P.W.1 and marked ten documents as Exs.P.1 to 10. On the side of the Insurance Company, three witnesses were examined as R.Ws.1 and 3 and no document was marked.

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 respondents 1 to 4 therein 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 various grounds have been raised, at the time of argument, the learned counsel for the appellant restricted his argument only with regard to negligence.

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.7 of the award, the Tribunal has given a

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" The mere admission of P.W.2 that under Ex.P.5 rough sketch the motorcycle was shown as came to the

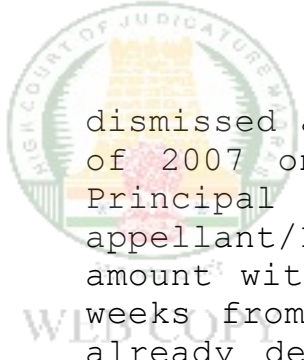


wrong side shall not prove that Ex.P.5 document was prepared as suggested to P.W.2 and that too admitted by P.W.2 that the vehicle i.e., motorcycle came in a wrong side. A close scrutiny of Ex.P.5 along with other documentary evidence marked about the accident after completing the investigation by the investigation agency as a whole reveal that the accident took place due to the rash and negligent driving of the drivers of the Mini Bus as well as Lorry. Apart from the above documentary evidence there is also independent oral cogent, convincing undisturbed candid evidence through P.W.2 about the time, place and manner of the accident. The learned counsel for the respondents 2 and 4 submitted that P.W.1 admitted in her evidence that her son Muthuraj had no driving licence to drive the motorcycle and moreover the Motor Vehicle Inspector's Report for motorcycle T.N.69.V.0100 which is marked through P.W.1 at the time of further re-examination as Ex.P.9 also reveals that Driving Licence for the driver of the vehicle was not produced at the time of examination and insurance for the vehicle also not produced. Further more the learned counsel for the respondents 2 and 4 emphasized since the deceased Muthuraj had no driving licence at the time of the accident the respondents Insurance Company are not liable to pay the compensation amount to the petitioners entirely and there is also contributory negligence on the part of the deceased Muthuraj. As pointed out above there is valid both oral and documentary evidence on the side of the petitioners that the accident took place due to the rash and negligent driving of the drivers of the Mini Bus as well as Lorry and hence the above submissions made by the learned counsel for the respondents 2 to 4 shall not hold good and the same is rejected. Thus through both oral and documentary evidence the drivers of the Mini Bus TN-41-A-1468 and lorry T.C.S.5266 have driven the vehicles in a rash and negligent manner and dashed against the two wheeler TN-69-V-0100 driving by the deceased Muruthuraj and caused the death and not on the negligent driving of the drivers of 1 and 3 respondents individually and accordingly this point is answered"

11. From the above, it is clear that the Tribunal has discussed in detail and found that the drivers of the Mini Bus and the lorry, insured with the 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

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12. In the result, this Civil Miscellaneous Appeal is



dismissed and the award dated 18.11.2010 passed in M.C.O.P.No.1722 of 2007 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Tirunelveli, is hereby confirmed. The appellant/Insurance Company is directed to deposit the 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 claimants are permitted to withdraw their respective shares with proportionate interests and costs. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To,

1. The Principal District Judge,
Motor Accident Claims Tribunal
Tirunelveli.

Copy to:

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

+ 1 cc TO Mr.K.Bhaskaran , Advocate in SR No. 76807

+ 1 cc TO Mr.j.S.Murali , Advocate in SR No. 77367

CM

AE/SKN RSK/SAR3/11.10.2017/4P/5C

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