



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2018  
Pronounced on : 06.12.2018

CORAM  
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.876 of 2007  
and C.M.P.No.1247 of 2007

M/s.Oriental Insurance Co., Ltd.,  
Simmakal, Madurai

... Appellant/4th Respondents

Vs.

1.S.Halidhu ...1<sup>st</sup> respondent/Petitioner  
2.Lathifa Bivee ...2<sup>nd</sup> Respondent/1<sup>st</sup> respondent  
3.M/s.United India Insurance Co., Ltd.,  
No.12-A, Kojai road, Karur,  
Karur Taluk and District. ...3<sup>rd</sup> respondent/1<sup>st</sup> respondent  
4.Shakilaabanu ...4<sup>th</sup> Respondent/3<sup>rd</sup> Respondent  
5.Ayisha Bivee ...5<sup>th</sup> Respondent/4<sup>th</sup> Respondent  
6.Kuppusamy  
7.S.Palaniammal  
( Respondents 4, 5 and 7 were absent  
and hence remained exparte  
before the Tribunal)  
...6&7<sup>th</sup> Respondent/6<sup>th</sup>, 7<sup>th</sup> Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act to set aside the fair and decretal order dated 27.01.2004 made in M.C.O.P.No.168 of 2003 on the file of the Motor Accident Claims Tribunal, ( District Court), Nagapattinam.

For Appellant : Mrs.R.Sreevidhya  
Mr.A.Shanmugaraj

For 3<sup>rd</sup> Respondent : Mr.S.Arunkumar



Respondents 4,5&7: Set exparte before the Tribunal

#### JUDGMENT

This appeal is directed against the impugned judgment and decree, dated 27.01.2004, passed by the Motor Accident Claims Tribunal (District Judge) at Nagapattinam in O.P.No.168 of 2003. (Herein after referred as impugned order and the Tribunal).

2.By the impugned order, the Tribunal has awarded a sum of Rs.3,05,100/- to the claimants-Respondent No.1 and 2 herein, who are the dependents of the deceased driver Shaik Naiynar Mohamed, aged about 34 years in terms of Ex.P.6 driving license at the time of his death. The appellant insurance company has challenged the impugned order.

3.In the claim petition it was stated that the petitioner was 35 years and in the post-mortem report, the age of the deceased was declared as 32 years. The brief facts of the case are as follows:

4.On 06.04.2002, around 1.45 p.m. when the car bearing registration TN 49 B2905 driven by the deceased driver Shaik Naiynar Mohamed with passengers was proceeding from Karur to Dindugal (NH7), a lorry bearing Registration No.TN 47 B 8787 of the deceased Balusamy coming from opposite direction collided with the car and injured the passengers and the driver Shaik Naiynar Mohamed driving the car. The driver Shaik Naiynar Mohamed later succumbed to injuries on his way to hospital.

5.The lorry belonged to one Balusamy is the Respondent No.1 before the Tribunal and the Respondents No.6-7 are the legal heirs of the owner of the lorry viz., Balusamy.

6.The accident car belonged to one Shakilaabanu-4<sup>th</sup> respondent herein (the 3<sup>rd</sup> respondent in proceedings before the Tribunal).

7.The 5<sup>th</sup> respondent is the second wife of the deceased - Shaik Naiynar Mohamed whom he had allegedly divorced on 05.09.1999 as per the claim statement.

8.In the proceedings before the Tribunal, it was stated that the deceased - Shaik Naiynar Mohamed did not have any issue and therefore only his parents i.e. Respondent Nos.1 and 2 are the dependents and owing to the loss on account of the death of the deceased - Shaik Naiynar Mohamed, they had lost their only source of financial support and were therefore entitled to get compensation.



10. While assessing the compensation under the Workmen Compensation Act, the Tribunal has concluded that in absence of accident sketch (diagram), mahazer of the Police and photograph of the accident site, it cannot be concluded as to who was responsible for the accident. The Tribunal has also held that both the vehicles were damaged on the front right side.

12.The aforesaid compensation has been arrived after considering the income of the deceased - Shaik Naiynar Mohamed Rs.3,000/- (100X30) per month. In all a sum of Rs.3,05,000/- was awarded as compensation payable by the appellant along with the owner of the car.

14. In the appeal, the appellant states that though oral evidence is categorical to the effect that the accident was caused on account of the rash and negligent driving by the van driver coming from the opposite direction, yet the appellant has been made liable to pay compensation to the legal heirs of the deceased driver Shaik Naiynar Mohamed of the car.

16. Heard, the learned counsel for the appellant and the respondents and perused the pleadings, documents and evidence on record.



17.Ex.P.1-First Information Report (FIR) dated 06.04.2002 filed by Moideen Basha who was travelling in the accident car with his family has narrated the events proceeding and leading to the accident.

18.Ex.P.1 FIR states that a van bearing Registration No.TN 47 B 8787 coming from the opposite direction was driven in a rash and negligent manner and collided with the car and resulted in the accident.

19.P.W.2 Dawood Moideen in his deposition claims to have witnessed the accident in front of him while travelling in a car from behind, has more or less confirmed the facts narrated in Ex.P.1 FIR.

20.The impugned order of the Tribunal is assailed on the ground that the Tribunal erred in not fixing the liability on the driver of the van and that the Tribunal erred in awarding compensation in accordance with Schedule IV of the Workmen Compensation Act and thereby fastening liability on the appellant.

21.It is submitted that since the deceased driver was not negligent, the compensation awarded by fixing liability on the appellant was not as per law.

22.The further challenge to the impugned order of the Tribunal is that the evidence on record clearly suggests that the van driver was negligent and therefore there is no justifiable cause for fastening liability on the appellant-insurance company.

23.In this connection strong reliance has been placed on deposition of P.W.2 who is said to have witnessed the accident while travelling in a car from behind and Ex.P-1 FIR.

24.The learned counsel for the appellant submitted that P.W.2 (Eye Witness) has expressly stated in his deposition that the car was proceeding from north to south on the correct side of the road and the accident occurred on the eastern side road which establishes that the accident occurred due to the rash and negligent act of the driver of the van.

25.The counsel submitted that this was a fit case for invoking the legal maxim re-ipsa-loquitur as the facts speaks for themselves. Since there was no rebuttal evidence in this case, especially on the part of the PW-2, the liability ought not to have been fastened against this appellant insurance company.

26.Having considered the facts on record, it has to be stated that the Tribunal is the ultimate fact finding





entitled to compensation after verifying the legal heirship certificate and status of the marriage between the deceased driver Shaim Naiynar Mohammed and the respondent No.4.

35. This civil miscellaneous appeal is disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,  
( District Court), Nagapattinam.

2. The Section Officer,  
VR Section, High Court,  
Madras.

+1cc to Mr. M. Govindaraju, Advocate, S.R.No.84852

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KJ (CO)  
GSP (27/02/2019)