

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2049 of 2015
and M.P.No.1 of 2015

Royal Sundaram Alliance Insurance Co.Ltd.,
Sundaram Towers,
45 & 46, Whites Road,
Chennai 14.

... Appellant / 2nd Respondent

Vs.

1.Sulochana
2.Nithya
3.Govindaraj
4.Karuppusamy Gounder
5.Saraswathi

... Respondents 1 to 5 /
Petitioners

6.M/s.Sri Sabari Constructs
142, NG Narayanasamy street
New Sithapudur
Coimbatore-641 044.

... 6th Respondent /
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2014 made in M.C.O.P.No.682 of 2006 on the file of the Motor Accident Claims Tribunal (I Additional District Court) at Tirupur.

For Appellant : Mr.M.Krishnamoorthy

For R1 to R5 : Mr.Ma.P.Thangavel

For R6 : Exparte vide EB.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 19.12.2014 made in M.C.O.P.No.682 of 2006 on the file of the Motor Accident Claims Tribunal (I Additional District Court) at Tirupur.

2.The appellant/Insurance Company is second respondent in M.C.O.P.No.682 of 2006 on the file of the Motor Accident Claims Tribunal (I Additional District Court) at Tirupur. Originally, one Mohanasundaram filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.05.2006.

3.According to the said Mohanasundaram, he was driving the car on the left extreme side of the road and at that time, a lorry belonging to the sixth respondent was driven by its driver in a rash and negligent manner and dashed against the car driven by the said Mohanasundaram. Due to the said impact, he sustained severe injuries. The appellant is insurer of the said lorry and sixth respondent is owner of the lorry. The said Mohanasundaram claimed compensation against both the sixth respondent as well as the appellant.

4.The appellant filed counter statement and denied all the averments made in the claim petition and contended that it is only the said Mohanasundaram was responsible for the accident and he only caused accident. An F.I.R. was registered in Crime No.346/2006 on 21.05.2006 against the said Mohanasundaram. The owner and insurer of the car driven by the said Mohanasundaram are necessary parties. On the above pleadings, the appellant contended that the appellant is not liable to pay compensation and prayed for dismissal of the claim petition.

5.Before the Tribunal, Mohanasundaram was examined himself as PW1 and marked five documents as Exs.P1 to P5. After Mohanasundaram was examined as PW1, he died and the respondents 1 to 5, who are wife and children of the said Mohanasundaram were brought on record. The appellant examined RW1 and marked two documents as Exs.R1 and R2, the petition and award passed in M.C.O.P.No.122 of 2007 filed by one Poomathal (died) and three others, for the same accident.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the negligence of the driver of the lorry belonging to the sixth respondent and directed the appellant to pay compensation to the respondents 1 to 5 and awarded a sum of Rs.2,65,500/- as compensation to the respondents 1 to 5. Further, the Tribunal held that the said Mohanasundaram did not die due to the injuries suffered by him in the accident, as he died after six years of accident.

7.Against the said award dated 19.12.2014 made in M.C.O.P.No.682 of 2006, the appellant/Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant contended that in respect of very same accident, the legal heirs of one of the occupants of the car, who died due to the injuries sustained in the very same accident, filed M.C.O.P.No.122 of 2007 alleging that the accident occurred due to rash and negligent driving by Mohanasundaram, driver of the car. The first information report was lodged only against the said Mohanasundaram. The Tribunal considering the evidence let in in the said M.C.O.P.No.122 of 2007 held that Mohanasundaram was responsible for the accident and awarded compensation against the owner of the car as well as Insurance Company of the car. The first respondent herein, who is wife of the said Mohanasundaram, is owner of the car and first respondent in the said M.C.O.P.No.122 of 2007. No appeal was filed against the said award and the same has become final.

9.In support of his contentions, the learned counsel appearing for the appellant relied on the following judgment of this Court reported in 2007 (2) TN MAC 147 (S.Palaniswamy and another vs. Chinnakali and others) and contended that on the same set of facts, there cannot be two findings by different Courts.

"5.The Tribunal, based on the evidence of P.W.2, the driver of the tanker lorry, which came behind the mini lorry involved in the accident, found that the bus driver was responsible for the accident. But, in view of the fact that another Court of law has decided that both the drivers of the vehicles are responsible for the accident and hence, both Insurance Companies are equally liable for payment of compensation, as evident from the evidence of R.W.2, the administration officer of the appellant/Insurance Company, and as had been repeatedly held by the Apex Court that there cannot be different findings by different Courts in respect of one set of facts, I am of the opinion that the Tribunal has failed to appreciate the evidence in proper manner."

10.The learned counsel appearing for the appellant has also made submissions with regard to quantum of compensation awarded by the Tribunal and relied on the judgments reported in 2017 (2) TN MAC 81 (DB) (The Branch Manager, Oriental Insurance Co. Ltd., Thathuvacheri, Vellore vs. Monohar (deceased), Rukmani and others) and 2008 (2) TN MAC 289 (SC) (Machindranath Kernath Kasar v. D.S.Mylarappa and others).

11.Per contra, the learned counsel appearing for the respondents 1 to 5 contended that in M.C.O.P.No.122 of 2007, Mohanasundaram was not a party. The award in M.C.O.P.No.122 of 2007 was marked as Ex.R2 after the death of the said Mohanasundaram. In view of the fact that the said Mohanasundaram was not a party in M.C.O.P.No.122 of 2007, he did not have any opportunity to rebut the allegations made against him and the said award is not binding on the respondents 1 to 5. The learned counsel for the respondents 1 to 5 further contended that the said Mohanasundaram in his evidence has stated that the accident occurred only due to the rash and negligent driving by the driver of the lorry belonging to the sixth respondent and a false complaint has been lodged against him and after the accident, he became unconscious. Without any independent witness, the Tribunal in M.C.O.P.No.122 of 2007 has fixed the negligence on the part of Mohanasundaram. The learned counsel for the respondents 1 to 5 relied on the following judgment of this Court reported in 2012 (1) TN MAC 742 (New India Assurance Company Limited, Kumaran Shopping Complex, Kumaran road, Tirupur vs. Rathinasabapathy (deceased) and others):

"9.Considering this case as the one filed for compensation for the injuries sustained by the First Claimant and considering that the First Claimant sustained a fracture in his legs and got operated, he is entitled for compensation under the head pain and suffering and for transportation. A surgery was performed on the date of accident and the First Claimant continued to take treatment at Ganga Hospital, Coimbatore for more than one year after the accident, for which the First Claimant would have incurred expenses for transportation. Therefore, I am inclined to award a lump sum compensation of Rs.50,000/- towards pain and suffering and transportation. "

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and perused the materials available on record.

13.It is an admitted fact that the accident occurred on 20.05.2006 involving car driven by Mohanasundaram and lorry belonging to the sixth respondent. F.I.R. was registered against the said Mohanasundaram. The said Mohanasundaram as P.W.1

deposed that F.I.R. has been falsely lodged against him in order to support sixth respondent, owner of the lorry. The said Mohanasundaram has not lodged any complaint either with the concerned police or with the higher officials to prove that F.I.R. was falsely lodged against him. It is an admitted fact that one Velusamy, who was travelling in the car driven by Mohanasundaram, died, due to the injuries sustained in the accident. The legal heirs of the said Velusamy filed M.C.O.P.No.122 of 2007 against M.Sulochana, first respondent herein, who is the wife of Mohanasundaram and owner of the car driven by the said Mohanasundaram. In the said claim petition, both owner and insurer of the car and lorry were parties. It is pertinent to note that M.Sulochana, who is wife of Mohanasundaram, owner of the car remained ex-parte. If really, Mohanasundaram is not negligent in driving of the car and causing accident, the first respondent ought to have examined the said Mohanasundaram in the said M.C.O.P. and also examined independent witness to prove that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to sixth respondent.

14. From the copy of the award in M.C.O.P.No.122 of 2007 produced by the appellant, which is marked as Ex.R2 before the Tribunal, it is seen that one Nachimuthu, eye witness to the accident was examined as P.W.2 in M.C.O.P.No.122 of 2007 and he deposed that the accident occurred only due to the rash and negligent driving by Mohanasundaram, driver of the car and Nachimuthu only lodged the complaint against Mohanasundaram in Palladam Police Station. In view of the fact that the first respondent was a party to M.C.O.P.No.122 of 2007, the contention of the learned counsel for the respondents 1 to 5 that the same is not binding on respondents 1 to 5 as Mohanasundaram was not a party to M.C.O.P.No.122 of 2007, is without merits. There is nothing on record to show that appeal was filed by M.Sulochana, first respondent herein or the Insurance Company of the car against the award passed in M.C.O.P.No.122 of 2007. From the impugned award dated 19.12.2014 made in M.C.O.P.No.682 of 2006, it is seen that the Tribunal has not considered the award passed in M.C.O.P.No.122 of 2007 and has not given any reason for not accepting the same. In view of the same, the judgment relied on by the learned counsel for the appellant reported in 2007 (2) TN MAC 147 (S.Palaniswamy and another vs. Chinnakali and others), is squarely applicable to the facts of the present case. It is not the case of the respondents 1 to 5 that they objected to marking of Exs.R1 and R2, the claim petition and award passed in M.C.O.P.No.122 of 2007.

15.For the above reason, this Civil Miscellaneous Appeal is allowed setting aside the award of the Tribunal holding that driver of the lorry belonging to the sixth respondent is responsible for the accident. The respondents 1 to 5 are not entitled to claim compensation from the appellant or 6th respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

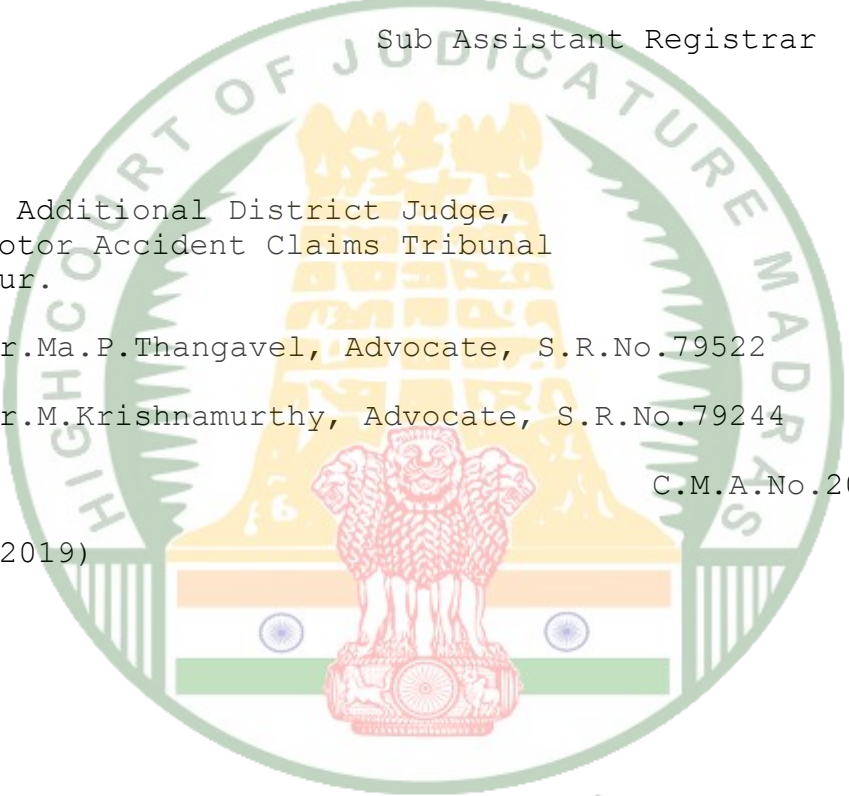
1) The I Additional District Judge,
The Motor Accident Claims Tribunal
Tirupur.

+1 cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.79522

+1 cc to Mr.M.Krishnamurthy, Advocate, S.R.No.79244

C.M.A.No.2049 of 2015

SJ(CO)
SSM(22/02/2019)



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