



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :16.07.2018
DELIVERED ON : 14.09.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.898 of 2017
and
CMP(MD)Nos.9609 of 2017 and 2509 of 2018

The Branch Manager,
M/s.United India Insurance Co.Ltd,
148,Navaladiyar Complex,
2nd Floor, Thanthonimalai Main Road,
Karur.

... Appellant/Respondent No.2

Vs

1.Tamilarasi
2.Pappayee

...Respondent Nos.1&2/
Petitioner Nos.1&2

3.Thambithurai
4.A.K.Ganesan

...Respondents No.3&4/
Respondents No.1&3

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree passed by the Motor Accident Claims Tribunal/Principal District Judge, Karur in M.C.O.P.No.324 of 2012 dated 28.01.2016.

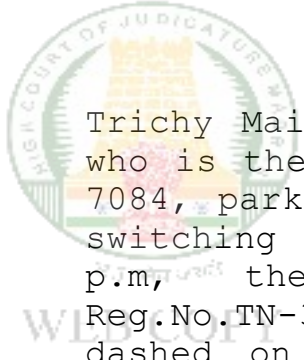
For Appellant : Mr.N.Dilipkumar
For R.1 & 2 : Mr.K.Sureshkumar
For R.3 and 4 : No appearance

J U D G M E N T

The appellant has filed this Civil Miscellaneous Appeal against the judgment and decree passed by the Motor Accident Claims Tribunal/Principal District Judge, Karur in M.C.O.P.No.324 of 2012 dated 28.01.2016.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The facts of the case is that on 06.02.2012, on Karur-



Trichy Main Road, near Selvanagar, the first respondent therein, who is the owner-cum-driver of the tractor bearing Reg.No.T.N.27-7084, parked his tractor on the middle of the metal road without switching on the parking light and at that time, at about 9.45 p.m, the deceased Kannan was driving T.V.S.50 moped bearing Reg.No.TN-33-L-2463 belonging to the third respondent therein and dashed on the tractor from behind, as a result of which, he sustained grievous injuries. Due to the accident, initially, he was taken to a private hospital and later, to the Rajaji Hospital, where he succumbed to his injuries. The tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also appreciating the evidence on record, held that the first respondents vehicle therein, which was insured with the insurance company, was cause for the accident and directed to pay compensation to the claimants therein. Against which, the present appeal has been filed by the insurance company.

3. The learned counsel appearing for the appellant/insurance company would submit that as far as the negligence aspect is concerned, the accident had taken place in the night hours and that the deceased hit his two wheeler on the trailer which was parked on the left side of the road. He would further submit that the trailer was not insured and that the trailer should be used only for agricultural purpose or forestry purpose and not for commercial business or any other purpose and therefore, the liability ought not to have been fixed on the insurance company or on the alternative, at least pay and recovery should have been ordered. However, it has not been done so. Hence, he prays for appropriate orders.

4. *Per contra*, the learned counsel for the respondents/claimants contented that the Tribunal awarded a just and reasonable compensation after analysing the evidence on record and the same does not require interference by this Court and hence, this appeal is liable to be dismissed. Further, though the trailer was stated to be parked on the left side of the road, the driver of the vehicle had not been examined. It is the further submitted that the vehicle was parked on the middle of the road without switching on the parking light. To sum up, he prays for dismissal of this Civil Miscellaneous Appeal.

5. Heard the learned counsel appearing on both sides and perused the materials available on record.

6. In the case on hand, P.W.2 is an eye witness to the occurrence and he has categorically deposed that the accident took place only due to the negligent parking of the tractor on the road. Though the insurance company had stated in the counter that the tractor was parked on the extreme left side of the road, on evidence, it has not been substantiated by them.



Further, the offending driver of the tractor has also not been examined since he is the author of the accident. In a given situation, the Court below has rightly sailed on the judgment of Andhra Pradesh High Court in the case of **Branch Manager, United India Insurance Co.Ltd Vs Myakala Sulochana and others**, reported in **2009 ACJ 1675** in which, it is stated that where the driver or any independent witness was not examined to rebut the oral testimony of the eyewitnesses, the finding of the tribunal on the basis of the ocular evidence that the driver of the tractor-trailer was responsible for the accident should be accepted.

6.1. The tribunal also right in not placing contributory negligence on the part of the deceased for the simple reason neither the driver of the tractor nor any independent witness to prove that the deceased drove the vehicle in a rash and negligent manner. The specific contention of the claimants that the lorry was parked without switching on the parking light. Nowhere in the counter or before this Court, the insurance company has pleaded that the parking light was switched on by the driver of the tractor to draw the attention of the drivers of other vehicles. The accident took place in the night hours. Therefore, parking light is very much important so that the other vehicles passing by in that area would come to know that the vehicle is parked. Back in the '60s, and even earlier, the streets were not as broad as they are today, and street lights too were scarce. Therefore, it became absolutely essential to keep the parking lights of one's car switched on whenever it was parked on the side of a narrow road at night, so as to ensure that it was visible to other drivers passing by. But, in the case on hand, the driver of the vehicle had failed to put on the parking light which is not denied by the insurance company. Hence, the entire episode evolved for non-compliance of the motor vehicle norms by the offending vehicle belonging to the insurance company. Therefore, I have no hesitation that the accident took place due to negligent parking of the tractor of the driver of the offending vehicle.

6.2. The other contention of the insurance company that trailer was not insured with any insurance company, as it is noted to be here that the trailer is pulled only by a tractor and it cannot move independently. Further, the purpose of using the tractor in the agricultural operations only to tilt the sand for which definitely, the trailer is required. Since the tractor is a goods carriage vehicle attached with the trailer, nobody would insure the vehicle only for the tractor alone, since it will not serve any purpose. Needless to mention that tractor and trailer are interconnected to each other. Above all, the object of the Motor Vehicles Act, which is a benevolent provision or social welfare legislation under which compensation is paid, has to be considered liberally and the intention of the Legislature enacting such provisions to achieve the said object has to be considered.



7. In the light of the facts and circumstances of the case, I am compelled to conclude that the decision of the tribunal made in M.C.O.P.No.324 of 2012 dated 28.01.2016 fastening liability on the insurance company and pay compensation to the claimants is sustained in all respects. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

Sub Assistant Registrar(CS-I)

To

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

Copy to:-

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- + 1 CC TO MR.N.DILIPKUMAR, ADVOCATE IN SR NO.84565
- + 1 CC TO MR.K.SURESHKUMAR , ADVOCATE IN SR NO.84838

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BU/SKN/SAR-I :12.10.2018 : 4P/6C

order made in
C.M.A (MD) No.898 of 2017
14.09.2018