



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.07.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)Nos.1075 and 1076 of 2013

CMA(MD)No.1075 of 2013

The Oriental Insurance Company Ltd.,
Rep. by its Branch Manager,
68, Vallal Patchaiappan Street,
Kanchipuram-631 501.

... Appellant/2nd Respondent

vs.

1)Sulochana

2)Lakshmi

3)Bharathy

4)Minor Deepika

(Minor 4th respondent is represented by her mother
and guardian 1st respondent Sulochana)

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

5)Bhavudan Dugar Finance Limited,
335, B.G.S.D.Road,
Meenambakkam,
Chennai-600 017.

... 5th Respondent/1st Respondent

6)Premkumar

... 6th Respondent/3rd Respondent

7)National Insurance Company Limited,
Rep by its Branch Manager,
189, Anna Salai,
Chennai-600 002.

... 7th Respondent/4th Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the decree and judgment made in M.C.O.P.No.320/2006 dated
29.06.2012 on the file of the Motor Accident Claims Tribunal cum
Additional Sub Judge, Kumbakonam.

For Appellant : Mr.K.Bhaskaran

For R1 & R3 : Mr.A.Thiruvadikumar

For R6 : Mr.K.Veilmuthu

For R7 : Mr.R.Srinivasan

CMA(MD)No.1076 of 2013

The Oriental Insurance Company Ltd.,
Rep. by its Branch Manager,
68, Vallal Patchaiappan Street,
Kanchipuram-631 501.

... Appellant/2nd Respondent



vs.

1) Sulochana

2) Minor Karthikeyan

3) Minor Manivannan

(Minors 2nd & 3rd respondents are represented by their mother and guardian, 1st respondent Sulochana)

... 1 to 3 Respondents/1 to 3 Petitioners

4) Bhavudan Dugar Finance Limited,
335, B.G.S.D.Road,
Meenambakkam,
Chennai-600 017.

... 4th Respondent/1st Respondent

5) Premkumar

6) National Insurance Company Limited,
Rep by its Branch Manager,
189, Anna Salai,
Chennai-600 002.

... 5 & 6th Respondents/3 & 4th Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment made in M.C.O.P.No.324/2006 dated 29.06.2012 on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Kumbakonam.

For Appellant : Mr.K.Bhaskaran
For R1 & R3 : Mr.A.Thiruvadikumar
For R5 : Mr.K.Veilmuthu
For R6 : Ms.P.Malini

COMMON JUDGMENT

These appeals have been filed against the decree and judgment made in M.C.O.P.Nos.320 and 324/2006 dated 29.06.2012 on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Kumbakonam.

2.It is the case of the respondents/claimants in both the cases that on 04.02.2006, while the deceased persons namely, Mathialagan and Chandran along with others were returning from Chennai to Kumbakonam in a Tata Sumo Car bearing registration No.TN-49-U-0999 at ECR road between Chetty Nagar and Koondimedu, a Lorry bearing registration No.TN-22-Q-1555 which was proceeding in front of the Car was suddenly stopped without any signal, due to which, the Tata Sumo which was proceeding in the back side of the Lorry hit the Lorry, in which, the said Mathialagan and Chandran sustained grievous injuries and died on the spot and others received injuries. Wives and Children of the deceased persons filed M.C.O.P.Nos.320 and 324/2006 on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Kumbakonam, claiming compensation of RS.25,00,000/- each. The appellant insurance company filed counter disputing the manner of accident contending that the driver of the



Tata Sumo without giving sufficient gap drove the same in a rash and negligent manner and hit the Lorry from behind. Therefore, the driver of the Lorry was not responsible for the accident.

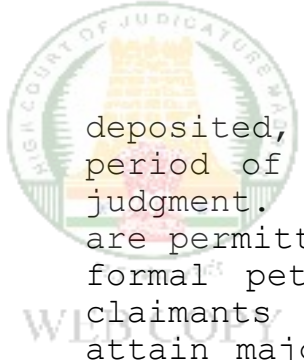
3. Considering the oral and documentary evidence adduced on either side, the Tribunal held that the driver of the Lorry was responsible for the accident and awarded compensation of Rs.10,42,000/- and Rs.9,30,000/- respectively. Aggrieved by the said award, the appellant has filed these appeals challenging negligence and quantum. However, learned counsel for the appellant restricted his submission only to the aspect of negligence.

4. Learned counsel for the appellant would submit that the Tata Sumo hit the Lorry from behind and therefore, contributory negligence has to be fixed on the drivers of the respective vehicles. He further contended that the Tribunal solely relying on the FIR, has fixed negligence on the driver of the Lorry which is erroneous.

5. Perusal of the record shows that on the side of the claimants, wives of the deceased persons examined themselves as witnesses and reiterated the averments made in the claim petitions. They also marked FIR, reports of the motor vehicle inspector and other documents. On the side of the appellant, investigating officer was examined as RW1 and no document was marked. RW1 has deposed that when the driver of the Lorry drove the same carefully, the driver of Tata Sumo drove the same in a rash and negligent manner without giving sufficient gap and hit the Lorry from behind thus, the accident occurred solely due to the negligence of the Tata Sumo driver. However, during cross examination, RW1 deposed that it is not stated in the FIR as, the Tata Sumo was driven in high speed and it is stated in the FIR as, the Lorry which was proceeding in the front side of Tata Sumo, was suddenly stopped and thus the accident occurred. The evidence of RW1 was not supported with any other witness nor documents. On the contra, the witnesses on the side of the claimants were corroborated by documents namely, FIR, motor vehicle inspector's report etc.

6. Perusal of the record further shows that it is not known on what basis, RW1 came to the conclusion that the driver of Tata Sumo was negligent in causing the accident. Needless to say, the evidence of investigating officer of the appellant company cannot be relied upon unless persons whom he enquired, were examined to support the same. No other evidence or documents have been produced by the appellant to support their case. In the absence of rebuttal evidence let in by the appellant, the plea of the learned counsel for the appellant to fix contributory negligence cannot be accepted. Hence, the findings of the Tribunal regarding negligence is sustained.

7. The appellant is directed to deposit entire award amount in both the cases with interest and costs, less the amount already



deposited, if any, to the credit of the claim petitions, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants in both the cases are permitted to withdraw their respective shares without filing any formal petition before the Tribunal. The shares of the minor claimants shall be deposited in a Nationalised Bank till minors attain majority and interest accruing on such deposit is permitted to be withdrawn by the guardians of minors once in three months directly from the bank.

Accordingly, these Civil Miscellaneous Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Additional Sub Judge,
Motor Accident Claims Tribunal,
Kumbakonam.

COPY TO:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.A.Thiruvadikumar, Advocate SR.No. 73103
+2cc to M/S.R.Srinivasan, Advocate SR.No. 73189 & 73190
+2cc to M/S.K.Bhaskaran, Advocate SR.No. 73229 & 73230

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