



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) No.1680 of 2013

and

M.P. (MD) .No.1 of 2013

The New India Assurance Company Limited,
Rep. by its Branch Manager,
Tirunelveli District,
Tamil Nadu.

... Appellant / 4th Respondent

Vs.

1.Abdul Rasak

... 1st Respondent/Petitioner

2.Peer Mansoor Hussian

3.The United India Insurance Company Limited,
Rep. by its Divisional Manager,
2nd Floor, Xavier Buildings,
P.W.D.Office Road, Nagercoil,
Nagercoil Village, Agastheeswaram Taluk,
Kanyakumari District.

4.Kamaraj

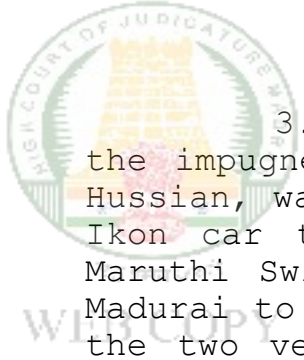
... Respondents 2 to 4/ Respondents 1 to 3

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree dated 19.12.2012 made in M.C.O.P.No.28 of 2011, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Padmanabhapuram.

For Appellant	: Mr.B.Vijay Karthikeyan
For Respondents	: Mr.N.S.Ramakrishnadass - for R1
	Mr.K.A.Thirumalaiappan - for R3
	Mr.S.R.A.Ramachandran - for R4
	No Appearance - for R2

JUDGMENT

Challenging the judgment and decree passed by the learned Subordinate Judge, (Motor Accidents Claims Tribunal), Padmanabhapuram, in M.C.O.P.No.28 of 2011, dated 19.12.2012, this appeal has been preferred by the appellant/insurance company.



3. The Insurance Company has filed this appeal challenging the impugned award on the ground of negligence. One Peer Mansoor Hussian, was travelling from Tirunelveli to Madurai road in his Ford Ikon car that was insured with the third respondent herein. A Maruthi Swift Desire car belonging to one Kamaraj was coming from Madurai to Tirunelveli road. There was a head on collision between the two vehicles, namely, Ford Ikon car and Maruthi Swift Desire Car. The driver of the Ford Ikon car has suffered serious injuries.

4. The Tribunal gave a finding that the Maruthi Swift Desire car was coming in the wrong direction. Since, it is a case of head on collision, negligence was apportioned equally between both the drivers. Liability was also fixed on the appellant accordingly. Challenging the same, this appeal has been filed.

5. The learned counsel for the appellant would contend that FIR was registered against the claimant who had pleaded guilty before the Criminal Court and also paid the fine amount. He would further submit that in view of the closure of the track on the left side of the road, the Maruthi Swift Desire car had moved to the other track in the National Highway. The Ford Ikon car tried to overtake the Transport Corporation bus and that is how the accident in question occurred. He drew my attention specifically to the admission made by the claimant in the cross-examination. I am not able to agree with the said submission of the learned counsel. This is for more than one reason. Though the owner cum driver of the Maruthi Swift Desire car, namely, Kamaraj was made a party in the claim proceedings. He was examined as RW2 before the Tribunal.

6. The learned counsel would now contend that the Four way track was partly closed and that is why the Maruthi Swift Desire Car had to change the track. But, there is absolutely no pleading in this regard before the Tribunal. As already pointed out, Kamaraj, the vehicle owner of the Maruthi Swift Desire car remained exparte before the Tribunal. He did not plead to this effect. Therefore, I am not able to agree with this submission. The Tribunal has only apportioned the liability between the two Insurance companies. The award amount is also meagre. The Tribunal awarded a sum of Rs.1,15,025/- as compensation. I find no merit in this appeal.

7. The award dated 19.12.2012 made in M.C.O.P.No.28 of 2011, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Padmanabhapuram is confirmed.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)



To

1.The Motor Accident Claims Tribunal/
The Subordinate Judge, Padmanabhapuram.

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

+1cc to M/s.B.Vijay Karthikeyan, Advocate, SR.No.61491.
+1cc to M/s.N.S.Ramakrishnadass , Advocate, SR.No.61829.

C.M.A.(MD)No.1680 of 2013
16.04.2018

RM

RAM/KKR/SAR 2/04.06.2018/3P/6C