

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2019
PRONOUNCED ON : 05 .08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos. 1485, 1486, 1487 & 1488 of 2011
and
M.P.Nos.1, 1, 1 & 1 of 2011

CMA.No.1485 of 2011

M/s.United India Insurance Company Limited.,
The Divisional Manager,
No. 45, Katpdi Street,
Vellore.Appellants/2nd Respondent

.. Vs ..

1.Annamalai1st Respondent/Petitioner
2.Sundari2nd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 08.04.2010 made in M.C.O.P.No.198 of 2003, on the file of the Motor Accidents Claims Tribunal, learned Principal Sub-ordinate Judge, Thiruvannamalai.

For Appellant : Mr.J.Chandran
For R1 : Mr.F.Terry Chellaraja
For R2 : No appearance

CMA.No.1486 of 2011

M/s.United India Insurance Company Limited.,
The Divisional Manager,
No. 45, Katpdi Street,
Vellore.Appellants/2nd Respondent

.. Vs ..

1.Ravi1st Respondent/Petitioner
2.Sundari2nd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 08.04.2010 made in M.C.O.P.No.278 of 2003, on the file of the Motor Accidents Claims Tribunal, learned Principal Sub-ordinate Judge, Thiruvannamalai.

For Appellant : Mr.J.Chandran

For R1 : Mr.F.Terry Chellaraja

For R2 : No appearance

CMA.No.1487 of 2011

M/s.United India Insurance Company Limited.,
The Divisional Manager,
No. 45, Katpdi Street,
Vellore.

...Appellants/2nd Respondent

.. Vs ..

1.Chakrapani ...1st Respondent/Petitioner

2.Sundari ...2nd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 08.04.2010 made in M.C.O.P.No.283 of 2003, on the file of the Motor Accidents Claims Tribunal, learned Principal Sub-ordinate Judge, Thiruvannamalai.

For Appellant : Mr.J.Chandran

For R1 : Mr.F.Terry Chellaraja

For R2 : No appearance

CMA.No.1488 of 2011

M/s.United India Insurance Company Limited.,
The Divisional Manager,
No. 45, Katpdi Street,
Vellore.

...Appellants/2nd Respondent

.. Vs ..

1.Palani

2.Devi

3.Sundari

...Respondents 1 & 2/Petitioners

...3rd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 08.04.2010 made in M.C.O.P.No.631 of 2004, on the file of the Motor Accidents Claims Tribunal, learned Principal Sub-ordinate Judge, Thiruvannamalai.

For Appellant : Mr.J.Chandran

For R1 & R2 : Mr.F.Terry Chellaraja

For R3 : No appearance

JUDGMENT

The Insurance Company is the appellant in all the appeals. Challenging the common award passed in the batch of MCOPs on the file of the Motor Accidents Claims Tribunal, learned Principal Sub-ordinate Judge, Thiruvannamalai, and questioning the same as to the involvement of the vehicle insured with the Insurer, the Insurance Company has come up with the present appeals.

2 Before the Tribunal, four claim petitions were filed being MCOP Nos. 198 of 2003, 278 of 2003, 283 of 2003 and 631 of 2004. The Tribunal, by a common award dated 08.04.2010, awarded a sum of Rs.59,000/-, Rs.90,000/-, Rs.44,000/- and Rs.4,78,000/- respectively to the claimants. Aggrieved by the same, these appeals are preferred by the Insurance Company questioning the liability imposed on them to pay the compensation amount to the claimants as also the quantum of compensation awarded by the Tribunal.

3 All the claim petitions filed before the Tribunal relates to an accident said to have taken place on 22.06.2002. According to the claimants, on 22.06.2002, at about 9.30 pm, when the deceased Bharthy was travelling as a pillion rider in a two wheeler - Hero Honda Splendor motor cycle bearing Registration No. TN 25 X 6630 driven by one Venkatesan, when the vehicle was driven on the Polur to Tiruvannamalai Road, near the Thenpallipattu Sri Lankan Reguge Camp, a lorry bearing Registration No. TN 25 0585 came behind the motor cycle and rammed it. At that time, one Annamalai and Ravi were proceeding on a bicycle in front of the motor cycle. The lorry after hitting the motor cycle dashed the cyclists and caused injuries to them as well. Further, one Chakrapani, who was walking on the left side of the road also sustained injuries. All the injured were taken to the hospital, but the pillion rider of the two wheeler had succumbed to the injuries. In connection with the above accident, the aforesaid four claim petitions have been filed.

4 The claim petitions were resisted by the appellant herien/ Insurance Company by contending that the lorry insured with them did not involve in the accident at all. The claim petitions were filed by collusion and fabrication of records. The accident took place only between the Hero Honda Splendor vehicle bearing TN 25 X 6630 and another Suzuki Two wheeler as could be evident from the First Information Report. That apart, the Insurance Company denied the age, income and other particulars furnished by the claimants and prayed for dismissal of the claim petitions.

5 Before the trial Court, common evidence was let in and on behalf of the claimants, PW1 to PW5 were examined and Exs. P1 to P16 were marked. On the side of Insurance Company one C.Kumar was examined as RW1 and Ex. R1/Investigation Report was marked.

6 The Tribunal, considering the oral and documentary evidence, held that the accident had caused as a result of involvement of the lorry insured with the Insurance Company. Therefore, the Tribunal proceeded to assess the compensation payable to the claimants and directed the Insurance Company to pay the compensation amount.

7 According to the learned counsel for the appellant, as per Ex.P8, P9 and Ex.P10/ Accident Register, which had been issued at the earliest point of time, it was indicated that two motorcycles viz., Suzuki and Hero Honda Splendor have involved in a head on collision. In the impact, three persons have sustained injury and they were admitted to the hospital for treatment. When that being the case, a new case was projected in the claim petition, as if, the motorcycle and the pedestrian were hit by a Lorry, which was insured with the appellant/Insurance company and among the injured, one died and three persons suffered injuries in the said accident. When the lorry insured with the appellant/Insurance Company did not involve in the accident at all, the Insurance Company cannot be mulcted with the liability to pay compensation to the claimants. Even as per the Accident Register issued by the Medical Officer, based on the information furnished by the claimants, it was only stated that the claimants sustained injuries in an accident that had taken place between a Hero Honda Splendour and Suzuki Motorcycle.

8 The learned counsel for the respondents/claimants would contend that the compensation awarded to the claimants are meager and not reasonable and they cannot be said to be

excessive. With regard to the involvement of lorry in the accident, the learned counsel for the respondents/claimants placed reliance on Ex.P3/FIR, Ex.P4/Charge sheet and Ex.P6/Judgment copy. According to the counsel for claimants, FIR was registered against the driver of the Lorry and Charge Sheet also filed. During trial, the driver pleaded guilty and paid fine amount. Therefore, in the absence of any contra evidence let in by the Insurance company, the Tribunal is justified in awarding compensation.

9 After hearing both the parties and perusing the documents, it is seen that the questions that has to be decided in all the appeals are that whether the vehicle which belongs to the second respondent viz., Sundari is involved in the accident or not; in other words, involvement of the vehicle owned by Sundari/second respondent herein viz., lorry bearing registration No. Tn-25-0585 as stated supra is in dispute.

10 All the claim petitioners have stated that the accident has taken place due to the rash and negligent driving of the driver of the lorry, which belongs to the second respondent herein viz., Sundari, which was insured with the appellant/Insurance company; as to the manner of the accident, it is stated that when the deceased was travelling as a pillion rider in a two wheeler viz., Hero Honda Splendor motor cycle bearing Registration No. TN 25 X 6630 driven by one Venkatesan on the Polur to Tiruvannamalai Road, near the Thenpallipattu Sri Lankan Reguge, a lorry bearing Registration No. TN 25 0585 owned by the second respondent herein viz., Sundari driven by its driver in a rash and negligent manner, dashed the motor cycle, thereafter dashed against the two persons going in the bicycle, thereafter dashed the another person viz., Chakrapani who is the pedestrian, walking on the left side of the road. The pillion rider of the two wheeler died while four others have sustained injuries.

11 The Insurance Company has filed counter statement before the Tribunal and taking a specific plea, disputing the involvement of the vehicle insured with them that is owned by the second respondent herein. As pointed out by the appellant herein/Insurance Company, in the wound certificate, Exs.P8, P9 and P10, the Doctor had made an endorsement to the effect that the injuries caused as if due to the accident between a two wheeler Suzuki bike and another Splendor bike. However, the said Doctor was not examined before the Tribunal and it also appears that no other details in the Accident Register to show who had furnished such information to Doctor.

12 In this regard, it has to be stated that as per Ex.P1/FIR, Ex.P2/Motor Vehicle Inspector Report, Ex.P5/Charge Sheet and Ex.P6/Judgment Copy of the Criminal Case by the Judicial Magistrate No.1, Tiruvannamalai, wherein, it is specifically stated about the involvement of the lorry owned by the second respondent herein. It remains to be stated that after registration of Ex.P1/FIR, investigation has been done by the Police and they have filed Charge Sheet under Ex.P5 and the driver of the lorry has admitted his guilt and paid the fine.

13 As could be seen from Ex.P6/Judgment copy from the Judicial Magistrate No.1, Tiruvannamalai, the driver of the offending vehicle has already appeared before the Criminal Court and also pleaded guilty to the charges revealed against him and thus, this Court finds that the driver of the offending lorry pleaded guilty and convicted based upon his admission. The judgment of the Criminal Court becomes admissible and relevant before the proceedings in the Motor Accidents Claims Tribunal. It is a document containing admission of the driver of the offending vehicle and hence, the same is the best piece of evidence as per the decision reported in 2007 (2) TN MAC 399 - [The New India Assurance Company Limited, Arcot Woodlands Complex-1, Bharthi Road, Cuddalore Vs. Sekar and other] wherein, this Court has held that,

"the lorry which came beyond the petitioners, had caused the accident and this aspect has been amply proved by the petitioners through oral testimony and documentary evidence. The normal rule is that it is for the victims to prove the negligence but has in some cases, considerable hardships are caused to the victims as the true cause of the accident is not known to him. But it is solely within the knowledge of the driver of the offending vehicle who caused the accident. It is a legal presumption to come to a conclusion that the accident was caused due to rash and negligent driving of the offending vehicle by its driver."

In the Judgment reported in 1977 ACJ 343 SC - [Pushba Bai Purushottam Udeshi Vs. Ranjith Ginning and Pressing Company], the Hon'ble Supreme Court, has held that

"The cause of the accident was primarily and proximately within the knowledge of the driver of the offending vehicle. So applying the above said principles, there is no hardship to come to a conclusion that the accident had caused due to the rash and negligent driving of the lorry driver only."

14 Hence, this Court finds that in the absence of any positive evidence to show the entries in the Wound Certificate that has been made by the Doctor, non examination of the Doctor, who had issued the Accident Register, relied upon by the Insurance Company and in view of the production of the documentary evidence under Exs.P1, P5, P6 respectively and the ratio laid down by this Court in the above referred citation, the Tribunal has come to the conclusion that the involvement of the vehicle is proved in the manner known to the law.

15 As stated supra, the Accident Register cannot be treated as a conclusive proof leading to the manner and cause of the accident. In the case in hand, the involvement of the vehicle has been spoken to by none other than injured viz., PW1, PW2 and PW4 and duly corroborated by the documentary evidence of Ex.P1, P5 and P6. It also appears that the driver of the offending vehicle has appeared before the Criminal Court, admitted his guilt, paid the fine, coupled with non examination of the Doctor, who had issued Accident Register copies as marked by the Insurance Company, this Court is of the considered view that the finding rendered by the Tribunal as to the involvement of the offending vehicle in the accident cannot be interfered with, as the same does not suffered from any irregularity or illegality and consequently, the said finding of the Tribunal is hereby confirmed.

16 As to the quantum of compensation, after perusing compensation award under the various heads and disability fixed by the Tribunal based upon the disability certificate issued by the PW5/Doctor under Ex.P11, P13, P15, this Court is of the considered view that compensation awarded under the various heads by the Tribunal, appears to be fair and reasonable and hence, the award is hereby confirmed.

17 In the result:

(i) All the Civil Miscellaneous Appeal filed by the appellant herein/Insurance Company stands dismissed and the compensation awarded by the Tribunal in MCOP.Nos.198 of 2003, 278 of 2003, 283 of 2003 & 631 of 2004 is confirmed.

(ii) The award amount will carry interest at the rate of 7.5% per annum.

(iii) The Insurance Company is directed to deposit the award amount as ordered by Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iv) On such deposit, the claimants are permitted to withdraw the amount awarded by this Court with proportionate

interest, less the amount already withdrawn, if any.

(v) No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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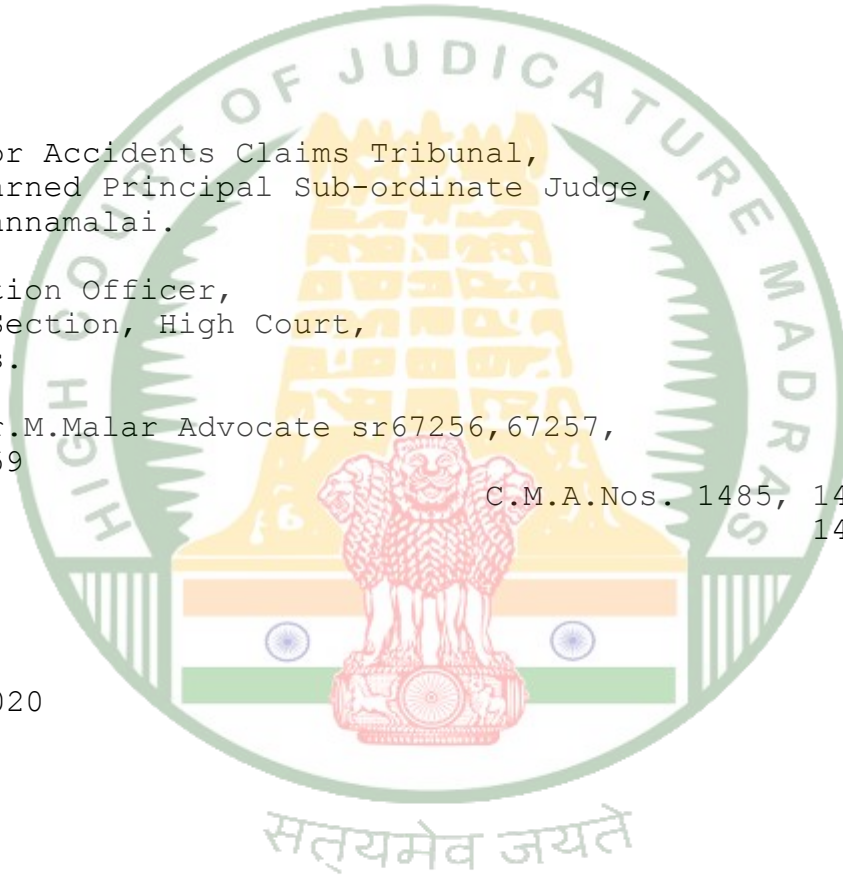
1.The Motor Accidents Claims Tribunal,
the learned Principal Sub-ordinate Judge,
Thiruvannamalai.

2.The Section Officer,
V.R. Section, High Court,
Madras.

+4cc to Mr.M.Malar Advocate sr67256,67257,
67258,67259

C.M.A.Nos. 1485, 1486, 1487 &
1488 of 2011

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