

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 20.03.2019]

[PRONOUNCED ON : 17.07.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3118 of 2011

and

M.P.No.1 of 2011

The New India Assurance Co. Ltd.,
Rep. by its Divisional Manager,
Post Box No.16, First Floor,
Bye Pass Road,
Hosur, Dharmapuri District. ... Appellant

.. Vs ..

1. Allamma
2. Kumar
3. Selvi
4. Anbu
5. Muniamma
6. Suresh
7. N.Radhakrishnan ... Respondents
[7th respondent remained ex-parte and
notice is dispensed with for him]

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.06.2011 made in M.C.O.P.No.301 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Hosur.

For Appellant : Mr.M.Krishnamoorthy

For RR-1 to 6 : No Appearance

For R-7 : Ex-parte

JUDGMENT

The Insurance Company is the appellant herein challenging the Judgment and Decree dated 28.06.2011 passed by the learned Subordinate Judge, Motor Accidents Claims Tribunal, Hosur, in M.C.O.P.No.301 of 2001, on the ground of liability and quantum.

2. Respondents 1 to 6, who are the legal heirs of the deceased Selvaraj, have filed a claim petition in M.C.O.P.No.301 of 2001 before the learned Subordinate Judge, Motor Accidents Claims Tribunal, Hosur, alleging that on 25.07.2001 at about 4.50 a.m., the deceased was get down from bus and walking towards the bus stand in the Krishnagiri - Bangalore Bye pass road, near Hosur Municipality Office and at that time, an Auto Rickshaw bearing Registration No.TN-29-Y-0617 was driven by its driver in a rash and negligent manner and dashed against the deceased. As a result of which, the deceased sustained fatal injuries on his head and all over his body and he died on the spot. For the death of the said Selvaraj, the first claimant/wife of the deceased and claimants 2 to 6/sons and daughters of the deceased have filed the above claim petition claiming a sum of Rs.5,00,000/- as compensation.

3. The second respondent before the Tribunal/insurance company has filed counter statement denying the averments made by the claimants.

4. Before the Tribunal, on behalf of the claimants, the first claimant/wife of the deceased examined herself as P.W.1 and one Mr.Venkatesh was examined as P.W.2 and documents Exs.P.1 to P.3 were marked. On behalf of the second respondent before the Tribunal/insurance company, one Mr.Rajendran, Head Constable, Krishnagiri District, was examined as R.W.1; Mr.Arumugam, Retired Deputy Superintendent of Police was examined as R.W.2; Mr.K.S.Padmanabhan and Mr.R.Venkattaramani, who were working as Assistants in the insurance company, were examined as R.Ws.3 and 4 and Mr.S.Dakshinamurthy, driver of the offending Auto Rickshaw was examined as R.W.5 and documents Exs.P.1 to P.7 were marked.

5. After considering both oral and documentary evidence adduced on either side, the Tribunal has held that the Auto Rickshaw, belonging to the first respondent (before the Tribunal) and insured with the second respondent (before the Tribunal), is involved in the accident and awarded a sum of Rs.1,65,000/- as compensation payable by the insurance company. As against the said award passed by the Tribunal, the insurance company has preferred this appeal before this Court.

6. Learned counsel appearing for the appellant/insurance company would contend that the involvement of the Auto Rickshaw in the accident is in dispute and specifically raised such a plea in the counter statement and they have also filed a complaint before the CBCID. However, even after passing of so many years, no improvement has been taken place in the complaint given by the insurance company.

7. Though notice was served on respondents 1 to 6 and their names also printed in the cause list, they have not chosen to enter appearance either in person or through counsel. Respondent No.7 remained ex-parte before the Tribunal.

8. The sole point for consideration is about the involvement of the Auto Rickshaw in the accident. P.W.2, who is the eye-witness to the occurrence, had deposed regarding the manner of the accident and also stated about the involvement of the Auto Rickshaw which is the subject matter of this case.

9. Learned counsel appearing for the appellant/insurance company would contend that there are two First Information Reports registered, one was registered by the Hosur police station and another was registered by the Hosur Traffic police station and hence, there is a doubt about the alleged accident touching upon the involvement of the Auto Rickshaw.

10. It is seen from the records that the driver of the Auto Rickshaw has pleaded guilty before the criminal Court and paid the fine amount. It remains to be stated that from the evidence of R.W.1/Rajendran, Head Constable of Hosur Traffic police station, it is clear that after investigation, they have filed a charge sheet. Further, R.W.2, Retired Deputy Superintendent of Police had deposed that the driver of the offending Auto Rickshaw has pleaded guilty and paid the fine before the Judicial Magistrate Court. In fact, R.W.5, the driver of the offending Auto Rickshaw, has specifically elicited in the cross-examination that he has pleaded guilty before the Judicial Magistrate Court and also paid the fine thereof. In view of the answer elicited in the cross-examination of R.W.5, who is undisputably the driver of the offending Auto Rickshaw, the Tribunal has rightly come to the conclusion that the Auto Rickshaw in question is involved in the accident and hence, such a finding is hereby confirmed as the same does not warrant any interference.

11. On the point of quantum, after going through the amount awarded by the Tribunal under various heads, I find that a sum of Rs.1,65,000/- awarded by the Tribunal as compensation is just and reasonable and it does not warrant any interference by this Court. In this view of the matter, this appeal is liable to be dismissed.

12. In the result,

[i] The Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 28.06.2011 passed by the learned Subordinate Judge, Motor Accidents Claims Tribunal, Hosur, in M.C.O.P.No.301 of 2001, is confirmed.

[ii] If the award amount with accrued interest has not been deposited, the appellant-Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 6.5% per annum from the date of claim petition with costs, to the credit of M.C.O.P.No.301 of 2001 on the file of the Motor Accidents Claims Tribunal, (Subordinate Court), Hosur, within a period of eight weeks from the date of receipt of a copy of this Judgment.

[iii] On such deposit, respondents 1 to 6 herein/claimants are permitted to withdraw the award amount along with interest and costs, as apportioned by the Tribunal, less the amount already withdrawn, if any.

[iv] Consequently, connected Miscellaneous Petition is closed.

[v] There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

To

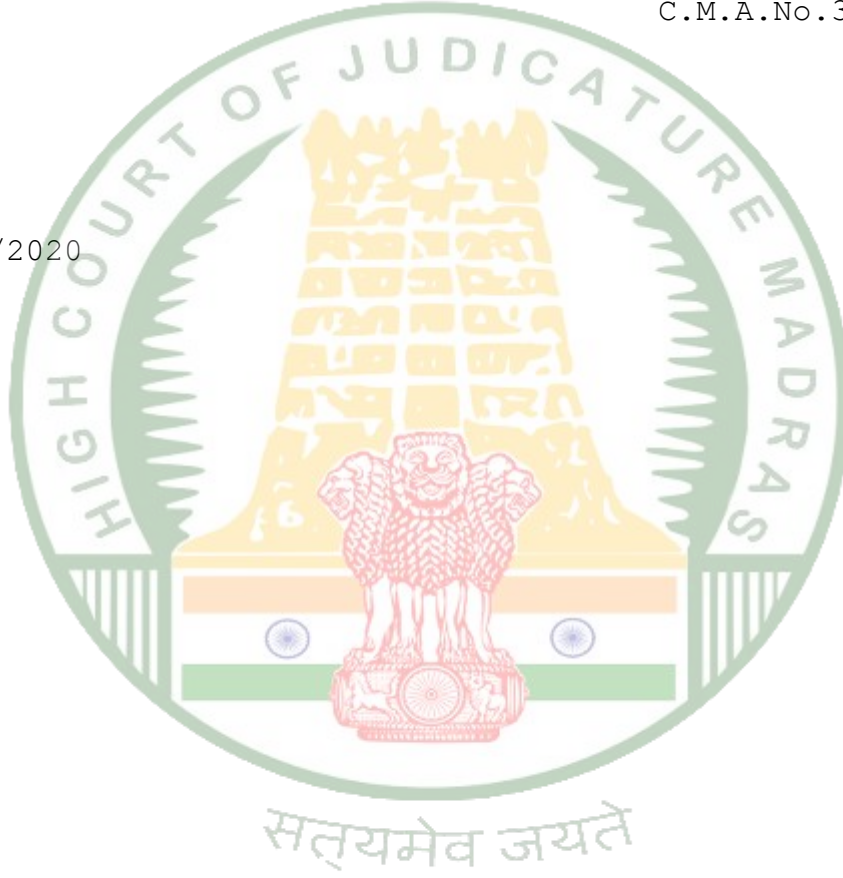
1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Hosur.

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

+1cc to M/s.M.Krishnamoorthy, Advocate Sr.60861

C.M.A.No.3118 of 2011

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srg 05/02/2020



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