



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD)No.1628 of 2007

The Branch Manager,
Oriental Insurance Company Limited,
Branch Office,
Lodge President Complex,
33-C/10, Tanjore Road,
Thiruvarur,
Thiruvarur District.

... Appellant /Respondent No.2

Vs.

1.Roke G.Loordhu

2.Estar Philomine Marie

... Respondents 1 & 2/Petitioners

3.V.Ravichandran

... Respondent No.3/Respondent No.1

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree passed in M.C.O.P.No.687 of 2003, dated 04.11.2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.I, Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For R3 : Mr.Singaravelu

for M/s. Veera Associates

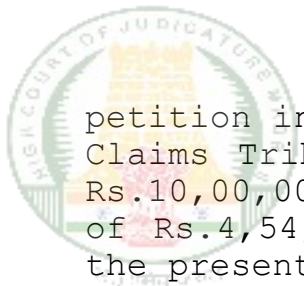
For R2 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed challenging the liability fixed by the Motor Accident Claims Tribunal, Fast Track Court No.I, Madurai in M.C.O.P.No.687 of 2003, dated 04.11.2006.

2. The brief facts of the case is as follows:

On 14.11.2001, at about 12.15 hours, the deceased viz., Loordhu Prabaharan was riding a TVS 50 motorcycle bearing Registration No.PY 01K 9960 along with his friend one Mani on the road of Devar Palam towards North, at that time, the Jeep bearing Registration No.TMJ 643 belonging to the first respondent was driven by its driver in a rash and negligent manner and hit against the motorcycle and caused the accident. Due to the said impact, the rider and the pillion rider of the motorcycle sustained grievous injuries and died on the spot. Hence, the parents of the Loordhu Prabaharan filed a claim



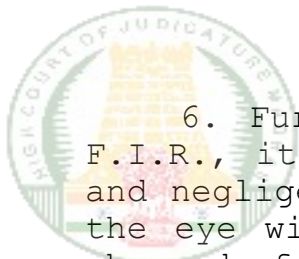
petition in M.C.O.P.No.687 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.I, Madurai claiming a sum of Rs.10,00,000/- as compensation. But, the Tribunal has awarded a sum of Rs.4,54,000/-. Challenging the liability fixed by the Tribunal, the present appeal has been filed.

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3. The only issue required to be decided in the appeal is whether the fixation of the liability by the Tribunal is correct. The Tribunal fixed the entire liability on the part of the driver of the Jeep bearing Registration No.TMJ 643 and two eye witnesses were examined in the present case. One is P.W.2, who is an independent witness and another one is D.W.2, who is the driver of the offending Jeep. P.W.1 in his evidence has clearly deposed that he has seen the occurrence and due to the rash and negligent driving of the driver of the Jeep, the Jeep hit against the TVS 50 motorcycle and the rider and the pillion rider sustained grievous injuries. Further, in the F.I.R., it has been stated that the accident had occurred due to the rash and negligent driving of the driver of the Jeep. Consequently, considering all these aspects, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the jeep and fixed the entire liability on the owner of the Jeep. In the present case, the owner of the offending vehicle insured the vehicle with the appellant/Insurance Company. Therefore, the entire liability is fixed only on the Insurance Company.

4. According to the appellant/Insurance Company, the rider of the two wheeler did not possess any driving licence. Further, the criminal Court acquitted the driver of the Jeep. Therefore, he contended that the liability cannot be fixed against the owner of the Jeep.

5. On perusal of the order passed by the Court below in C.C.No.355 of 2002, which was also marked as Ex.D2, it appears that the driver of the Jeep was acquitted giving benefit of doubt. Therefore, based on the said acquittal order, this Court cannot come to the conclusion that the accident was not occurred due to the rash and negligent driving of the driver of the Jeep. With regard to the second point that the rider of the two wheeler did not possess licence is not an issue to be decided here, because due to the rash and negligent driving of the driver of the Jeep, the accident had occurred. Therefore, this Court need not go into the aspect whether the rider of the two wheeler had possessed valid driving licence or not. In case, the driver of the Jeep did not possess valid driving licence, the same can be considered for the purpose of fixing the liability against the owner of the Jeep. Since the entire liability is fixed on the owner of the Jeep, the issue as to whether the rider is possessing driving licence need not be looked into by this Court as there was no negligence on the part of the rider of the two wheeler.



6. Further, on perusal of the evidence of P.W.2 and also the F.I.R., it is clear that the accident had occurred due to the rash and negligent driving of the driver of the Jeep and the evidence of the eye witness cannot be given weightage, since he is the person charged for the negligence and the Tribunal fixed the entire liability on the owner of the Jeep as well as insurance company jointly and severally. Therefore, the Tribunal has rightly come to the conclusion, based on the evidence of P.W.2 eye witness and also the F.I.R. and fixed the liability and therefore, there is no need to interfere with the order passed by the Tribunal and there is no merit in the appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed.

7. In view of the dismissal of the appeal, the appellant/Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit, to the credit of the claim petition, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the said amount directly to the Personal Savings Account Number of the claimants by way of RTGS/NEFT system, after getting their Account Details, within a period of three weeks thereafter. In case, if the award amount is already deposited, the Tribunal is directed to transfer the entire amount to the claimant account by way of RTGS/NEFT within a period of three weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.I,
Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-96729[F] dated 07/11/2019)

+1 CC to Mr.C.JAWAHAR RAVINDRAN, Advocate (SR-96816[F] dated 07/11/2019)

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VB(07.02.2020) 3P 4C

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