

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.367 of 2016

The Divisional Officer
The New India Assurance Co. Ltd.,
No.42, Big Street, 2nd Floor,
Tiruvannamalai. ...Appellant/ 2nd Respondent

/versus/

1. Padmashanthi
2. Minor Govindhakumar
3. M/s.Subburaj Cotton Mills Pvt. Ltd.,
No.462/16, Srivilliputtur Road, Rajapalayam,
Tamilnadu - 626 117. ...Respondents/ Petitioners and
(minor R2 rep by R1) 1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the judgement and decree passed by the Motor Accidents Claims Tribunal (Additional Tribunal Judge, Principal Subordinate Judge) at Tindivanam dated 7.11.2014 made in M.C.O.P.No. 627 of 2011.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Ms.Vasanthamala
for R1 & R2.
R3 - Exparte

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(The case has been heard through video conference)

Heard the learned counsel for the appellant and the respondent.

2. The appeal is filed being aggrieved by fixing the liability on the Insurance Company to pay a compensation of Rs.6,25,000/- for the fatal accident of Ashok Kumar.

3. The case of the claimants is that on 01.11.2011, at about 09.10 a.m., Ashok kumar was walking from his house and when he was in front of Saram B.D.O Office, at G.S.T main road, one Innova Car bearing Registration No. TN-67-AE-6009 came from Tindivanam, in a rash and negligent manner and dashed against Ashok kumar. Claiming that the deceased was working in a Paniyan Company, earning a sum of Rs.300/- per day as wages, petition claiming Rs.20,00,000/- was laid by his wife and minor son.

4. The Insurance Company contested the claim petition on the ground that the vehicle involved in the accident is not the Innova car and the accident occurred due to the negligent of the deceased. Besides, it was contended that the driver of the Innova car is a necessary party.

5. The Police has falsely registered the case against the Innova car driver. On knowing that, the driver forwarded a complaint to the Superintendent of Police, Villupuram regarding the false implication, in the Motor Accident Case. The appellant stated that the deceased Ashok kumar was hit by a unknown van and not the Innova car. The Insurance Company took a specific plea that the Innova Car is not the offending vehicle.

6. The Tribunal considering the evidence let in by either side has held that the Innova car bearing Reg.No.TN67AE60009 is the offending vehicle. The said vehicle is duly insured under the appellant Insurance Company and has awarded a sum Rs.6,25,000/- payable by the Insurance Company.

7. The learned counsel for the appellant contended that the accident was caused by an unknown van, but FIR was lodged belatedly implicating the Innova car which crossed the accident site. Though, the driver of the Innova car had deposed before the Court about the non-involvement of his car, the Tribunal has failed to appreciate his evidence in proper prospective.

8. Referring Accident Register Ex.R1, the learned counsel appearing for Insurance Company would submit that when injured was taken to the Hospital, one Subbaiah PW2, has informed the Doctor that the injured was hit by a van and the same is reflected in Ex.R1, Accident Register. The Doctor was examined as RW1. Subbaiah was examined as PW2 and when cross examined about the offending vehicle mentioned in Ex.R-1, he had conceded that the said information was given to the Doctor by him. On knowing about the false acquisition against him, RW2 had given a complaint with DSP on 02.01.2012 and 04.01.2012. These evidences amply prove that deceased was not hit by the Innova car owned by the first respondent and insured with the second respondent.

9. Per contra, the learned counsel appearing for the claimant would submit that without knowing the difference between a van and a luxuries vehicle. However, the police rightly identified the offending vehicle and called the driver of the Innova Car for producing the vehicle for inspection. The vehicle was inspected by the Motor Vehicle Inspector on 22.11.2011, while so, belatedly, the complaints in Exs.R2 to R4 were created to escape from liability.

10. From the submissions made by the respective learned counsels, this Court finds that the accident occurred on 01.11.2011 between 9.00 A.M. to 10.00 A.M. The injured was taken to the Government Hospital, at Tindivanam in 108 Ambulance. The accident Report Ex.R1 indicates that the injured was taken to the hospital by his friend Subbaiah and the alleged history of the road traffic accident is that, while crossing the road, the injured was hit by a van around 9.45 A.M., near Saram B.D.O Office, at G.S.T main road. The injured was shifted in JIPMER Hospital at Pondicherry, but he died on the same day. The First Information Report came to be registered by the Police on 02.11.2011. There was delay of 24 hours in lodging First Information Report. The First Information Report was given by one Selvam a relative of the deceased. The Identity of the offending car has been mentioned in the First Information Report. After nearly 20 days, the vehicle was inspected by the Motor Vehicle Inspector and he has given a report marked as Ex.P2, dated 22.11.2011. Subbaiah, PW2 who took the injured to the Hospital has deposed that, at the time of accident, one Selvam was present and that Selvam is the first informer in this case.

11. Not adequately educated, PW2 has not properly mention the identity of the vehicle to the Doctor. The owner of the vehicle and the driver of the vehicle were called to Police Station for production of their vehicle to be inspected by the Motor Vehicle Inspector. By that time, they were aware of the case registered against Sivakumar-RW2 in his cross examination, admit that Police arrested him very next day of the accident and released on own bond. He went to the Police along with his advocate. While that being the fact, belated, complaints Exs.R2 to R4 denying the involvement of the vehicle by the vehicle owner after two months of the occurrence not convincing to the Tribunal. Equally so, to this Court. Therefore, this Court concludes that there is no error in the finding of the Tribunal fixing responsibility on the Insurance Company and directing them to pay the compensation for the dependants of the victim. Hence, the Civil Miscellaneous Appeal is dismissed. No order as to costs.

12. The learned counsel for the claimant would submit that the Insurance Company has already deposited the entire amount

and the claimants have already withdrawn 50% of the award. The balance 50% of the award amount shall be withdrawn by the claimants with interest, on proper application, excluding the minor share and the same may be deposited before the Tribunal till the minor attends majority as directed by the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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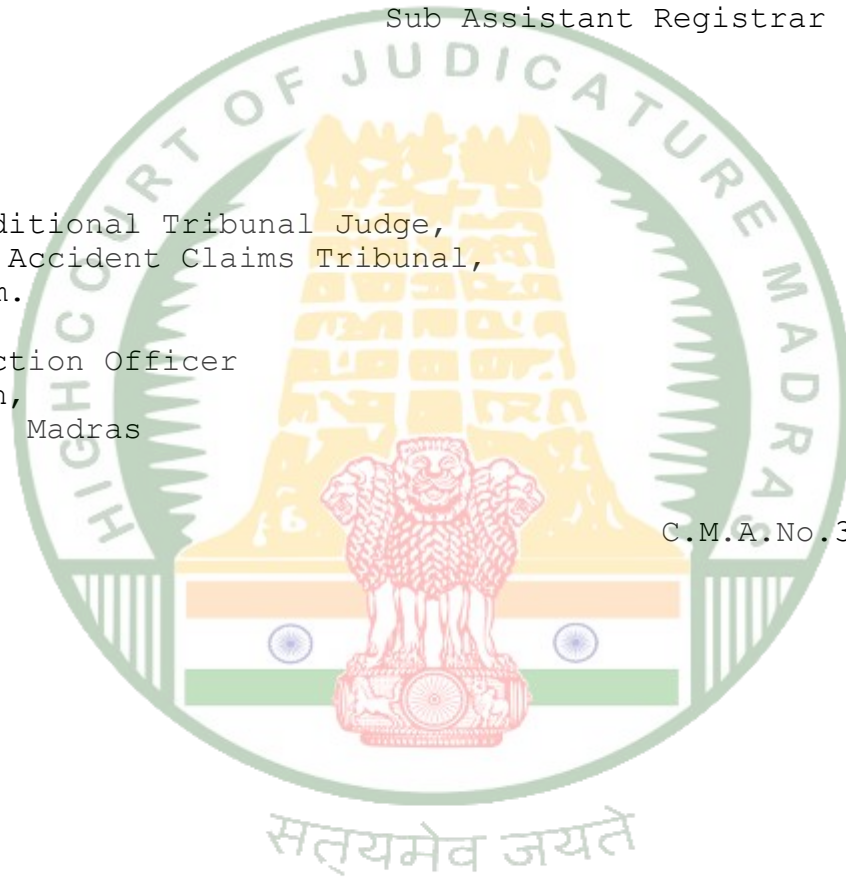
To

1. The Additional Tribunal Judge,
The Motor Accident Claims Tribunal,
Tindivanam.

2. The Section Officer
VR Section,
High Court, Madras

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