



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.02.2020

CORAM:

THE HONOURABLE Mrs. JUSTICE R.THARANI

C.M.A. (MD) .No.494 of 2013

and

CMP (MD) No.1 of 2013

WEB COPY

The Oriental Insurance Co.Ltd.,
represented through its,
Divisional Manager,
Madurai.

...Appellant/2nd Respondent

Vs.

1.P.Sundhanthira Meenakshi
2.R.Pandiyarajan
3.Minor P.Nithya

...Respondents 1 to 3/Petitioners

(Minor respondent No.3 represented by next friend, mother and natural guardian viz., the 1st petitioner P.Suthanthira Meenakshi)

4.C.Rajasekaran
5.Tamilnadu State Transport Corporation Ltd.,
(Division 1)
represented through its
Managing Director,
Madurai.

... Respondents 4 and 5/
Respondents 1 & 3

PRAYER: This appeal filed under Section 173 of M.V. Act, 1988, against the judgment and decree passed in M.C.O.P.No.1964 of 2005 dated 01.04.2008 on the file of the Motor Accident Claims Tribunal cum Additional District Court/Fast Track Court No.II, Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For R1 & R3 : Mr.R.Sevugaraja

For R5 : Mr.M.Prakash

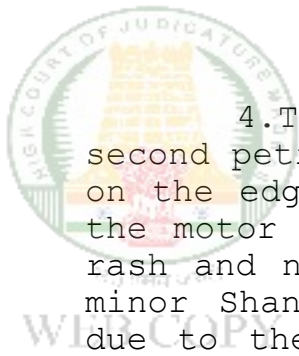
For R2 & R4 : No Appearance

JUDGMENT

This petition has been filed against the award passed in M.C.O.P.No.1964 of 2005 dated 01.04.2008 on the file of the Motor Accident Claims Tribunal cum Additional District Court/Fast Track Court No.II, Madurai.

2.The appellant is the second respondent. The respondent 1, 2 & 3 are the petitioners and the respondents 4 & 5 are the respondents 1 & 3 in M.C.O.P.No.1964 of 2005.

3.The respondents 1 to 3 filed M.C.O.P.No.1964 of 2005 before the Tribunal seeking a sum of Rs.3,00,000/- as compensation from the respondents 1 & 3. The Trial Court awarded a sum of Rs.2,53,000/- as compensation. Against which, the appellant preferred this appeal.



4.The case of the petitioner is that on 10.10.2004, when the second petitioner's sister's daughter one minor Shanthi was standing on the edge of the road carrying minor Karthickumar, the driver of the motor cycle bearing Reg.No.TN-59-N-0719 drove the vehicle in a rash and negligent manner and dashed against them. Hence, the said minor Shanthi and Minor Karthickumar fell down. Karthickumar died due to the accident and the parents of the deceased Karthickumar claimed a sum of Rs.3,00,000/- as compensation.

5.On the side of the second respondent/Insurance Company, it is stated that at the time of accident, when the first respondent drove the vehicle in a normal speed, minor Shanthi carried minor Karthickumar and tried to cross the road. On seeing a bus Reg.No. TN-59-N-0179, the said minor Shanthi returned back and she was hit on the motor cycle. Due to that impact, the minor boy fell down and met with an accident. The accident occurred due to the rash and negligent driving of the third respondent/driver of the Government bus and the petition is to be dismissed.

6.The case of the third respondent is that the petitioner has to prove the case. The accident was not due to the negligent driving of the bus driver. It was due to the negligent driving of the first respondent. Only due to the rash and negligent driving of the two wheeler, a small boy, who was carried by a minor girl fell down and he met with an accident. Only the first and second respondents are liable to pay compensation and the third respondent is not liable to pay compensation.

7.The Tribunal after considering both sides awarded a sum of Rs.2,53,000/- as compensation to be paid by the appellant/Insurance Company. Against which, the appellant preferred this appeal on the following grounds:-

First Information Report was registered against both the vehicles. Charge sheet was laid against the fifth respondent/bus driver. While seeing the fifth respondent bus coming in a rash and negligence manner, the said minor Shanthi suddenly turn back and fell down on the fourth respondent motor cycle. The accident happened due to the fault of both the drivers. P.W.2/minor Shanthi deposed to that effect. The investigation report Ex.R.1 and the evidence of R.W.1 was not considered by the Tribunal. The sketch clearly reveals that the accident occurred due to the negligence of the bus driver.

8.The evidence of P.W.1 & P.W.2 reveals that at the time of accident P.W.2 was standing near the road with a child and the first respondent vehicle hit against her. The bus hit against the child only after the child fell down on the ground. Since, the first respondent and the same is liable for the falling of the child from the hands of P.W., the Trial Court fixing the liability on the first respondent and the same is correct. After the completion of one year

<https://hcservices.echis.gov.in/hcservices/> accident, the evidence of R.W.2 is not helpful and



the report filed by R2 is not believable. There is nothing wrong in the decision of the Tribunal in fixing the liability upon the appellant.

9.The child was four years old at the time of accident and multiplier 15 was adopted. Nominal income was fixed. The fixing of compensation is very reasonable.

10.In the above circumstances, there is nothing sufficient enough to interfere in the award passed by the Tribunal. The award passed by the Tribunal in M.C.O.P.No.1964 of 2005 dated 01.04.2008 on the file of the Motor Accident Claims Tribunal cum Additional District Court/Fast Track Court No.II, Madurai, is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.The appellant / Insurance Company Ltd., is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit, the major claimants 1 & 2 are permitted to withdraw their share in the ratio apportioned by the Tribunal without filing any formal permission petition before the Tribunal. The shares of the claimant 3 /minor claimant shall be deposited in a Nationalised Bank in Fixed Deposit till the minors attains majority. The interest accruing on such minor' deposit is permitted to be withdrawn by the first claimant/ mother of the minor once in three months directly from the bank.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dss

To

The Additional District Judge,
Motor Accident Claims Tribunal cum /Fast Track Court No.II,
Madurai.

Copy to: The Section Officer,V.R.Section,(2 copies)
Madurai Bench of Madras High Court,Madurai.

**C.M.A. (MD) .No.494 of 2013 and
CMP (MD) No.1 of 2013
19.02.2020**

sma/20/05/2020/3p/4c

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