



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.12.2020

Pronounced On : 16.12.2020

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CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

C.M.A (MD) No.205 of 2015

and

M.P. (MD) No.1 of 2015

Branch Manager,  
The Oriental Insurance Company Ltd.,  
1<sup>st</sup> Floor, Town Hall Road,  
Kumbakonam.

.. Appellant / 2<sup>nd</sup> Respondent

Vs.

1.Palaniammal

.. 1<sup>st</sup> Respondent/Petitioner

2.M/s.Veerappan Traders,  
S.F.No.991, Veetaiyar Palayam,  
Aravakkurichi Taluk,  
Karur District.

.. 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

(2<sup>nd</sup> Respondent remained exparte  
before the trial Court)

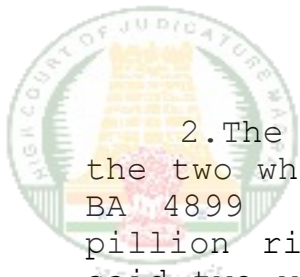
**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Award of Rs.1,85,720/- (Rupees One Lakh Eighty Five Thousand Seven Hundred and Twenty Only) passed in M.C.O.P.No.228/2014, dated 21.11.2014, on the file of the Motor Accidents Claims Tribunal cum Additional Sub Judge, Dindigul.

For Appellant : Mr.K.Bhaskaran

For R-1 : Mr.D.Venkatesh

### **J U D G M E N T**

The Civil Miscellaneous Appeal has been preferred under Section 173 of Motor Vehicle Act, 1988, challenging the award passed in M.C.O.P.No.228 of 2014, dated 21.11.2014, on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Dindigul.



2.The facts not in dispute are that one Annamuthu had driven the two wheeler, namely, TVS XL Super bearing Registration No.TN 39 BA 4899 with the first respondent herein and two children as pillion riders and that there occurred an accident involving the said two wheeler with a Tipper Lorry bearing Registration No.TN-47-AA-4027, which is owned by the second respondent and insured with the appellant/first respondent.

3.The case of the claimant/first respondent is that on 14.10.2012, at about 20.30 hours, at Madurai-Dindigul NH-7 Road, opposite to Gandhi gram College Ladies Hostel, when the two wheeler was proceeding from South to North, the Tipper Lorry, which came behind the two wheeler in a rash and negligent manner, had hit the two wheeler, that the petitioner has fallen down and sustained injuries and that the driver of the Tipper Lorry was solely responsible for the accident.

4.The case of the appellant/Insurance Company is that the rider of the two wheeler Annamuthu had proceeded with three pillion riders and came in a wrong side of the four lane road and invited the accident and that the driver of the Tipper Lorry was not at fault and the two wheeler rider alone was responsible for the accident. It is the further case of the appellant/Insurance Company that though F.I.R was registered against the Lorry Driver, after investigation, the case was referred as 'Mistake of Fact', after coming to know that the Lorry Driver was not responsible for the accident, that RCS Notice was also served on the *defacto* complainant/rider of the two wheeler and that since the Lorry Driver was in no way responsible for accident, the appellant is not liable for the claim.

5.During enquiry, the first respondent / claimant has examined herself as P.W.1 and the Medical Officer and the rider of two wheeler have been examined as P.W.2 and P.W.3 respectively and exhibited eight documents as Ex.P.1 to Ex.P.8. The second respondent herein had remained *exparte*. The appellant/Insurance Company has examined three witnesses as R.W.1 to R.W.3 and exhibited five documents as Ex.R.1 to Ex.R.5.

6.The learned Subordinate Judge, upon considering the evidence both oral and documentary, has passed the impugned award, dated 21.11.2014, holding that the Lorry Driver was responsible for the accident and hence, the appellant/Insurance Company is liable for the claim. Aggrieved by the said award, the Insurance Company has come forward with the present appeal.

7.The points for consideration are ;

(i) Whether the Tribunal erred in mulcting the liability on the appellant/Insurance Company, in spite of producing ample materials to show that the two wheeler rider alone was responsible for the



accident, more particularly, by exhibiting the copy of referred charge sheet and other related records and by adducing evidence therefor; and

(ii) Whether the impugned award is liable to be interfered with?

Points 1 and 2:

8. The learned counsel for the appellant/Insurance Company would contend that the Police official, after investigation, has referred the matter as 'Mistake of Fact' exonerating the lorry driver, that the defacto complainant Annamuthu alone had driven the two wheeler with three pillion riders in a rash and negligent manner and came in a wrong side and caused the accident, that the appellant/Insurance Company has examined the Sub-Inspector of Police attached to the concerned Police Station and exhibited the witness statements, Observation Mahazar, Rough Sketch, Referred Charge Sheet and RCS notice and proved the same and that since the lorry driver is not at fault, the impugned award as against the insurer is liable to be interfered.

9.No doubt, it is evident from the records that though FIR came to be registered against the lorry driver, after investigation, the concerned Police referred the case as 'Mistake of Fact' by holding that the lorry driver was not responsible for the accident. The defacto complainant [P.W.3] would admit the receipt of RCS notice, but, pleaded ignorance about the contents. Whatever it is, it is not the case of the Appellant/Insurance Company that the Referred Charge Sheet has been filed before the Court of the jurisdictional Magistrate and that the same was accepted by him. As rightly contended by the claimant's side, without acceptance by the competent Court, it cannot be said that the case was referred as 'Mistake of Fact'. Even otherwise, if we assume that the Referred Charge Sheet has been accepted by the jurisdictional Magistrate, the same will not bind the Tribunal.

10.It is settled law that the finding of the Criminal Court is not bidding on the Tribunal and the Tribunal is duty-bound to consider the evidence available before it and decide as to who is responsible for the accident. Even if the judgment of acquittal or conviction is passed by the jurisdictional Court, the same will not affect the powers of the Tribunal to decide the issues independently.

11.In the case on hand, the Appellant, in their Memorandum of the Appeal, has elaborated about the procedures to be adopted by the Judicial Magistrate, after the receipt of the Referred Charge Sheet. There is no dispute about the said position. Even if a negative report, i.e., Referred Charge Sheet is filed before the Magistrate,



he is certainly having powers to take cognizance of the case, if he is satisfied with the materials available before him. R.W.2/Staff of the Insurance Company in his evidence would admit that the criminal case against the lorry driver is pending before the concerned jurisdictional Court. R.W.1/Special Sub-Inspector of Police, attached to the Ambadurai Police Station, in his cross-examination, would say that they have not received any notice from the Magistrate Court that the case was closed accepting the final report. As already pointed out, since RCS is pending before the Jurisdictional Magistrate Court, the present argument canvassed by the Insurance Company has to necessarily fail.

12.It is pertinent to mention that the Insurer has not examined the police official, who had investigated the case and prepared the referred charge sheet, who is alone competent to depose about the evidence or materials gathered during the investigation and the reason for deciding that the lorry driver was not at fault. Though the learned counsel for the appellant has given much importance to the Referred Charge Sheet and the decision of the Investigating Officer that the lorry driver was not at fault, the insurer has miserably failed to prove the same through proper and acceptable evidence. But on the other hand, P.W.1/inured would depose in clear terms about the manner of accident and according to her, when their two wheeler was proceeding towards north, the Tipper Lorry, which came in the same direction had dashed against them. P.W.3/two wheeler rider would also reiterate the same version of P.W.1. Though P.W.1 and P.W.3 were cross examined, nothing was elicited by the Insurance Company in their favour. As rightly contended by the first respondent, the evidence of P.W.1 and P.W.3 regarding the manner of accident was not at all shaken during their cross examination.

13.No doubt, the Insurer has examined the Lorry driver and he would reiterate the manner of accident as put forth by the Insurance Company. In his cross examination, he would say that he has not preferred any complaint about the accident, that the occurrence road is wide enough to allow two heavy vehicles to move at a time and that there is a separate Thar road for the two wheelers. As rightly observed by the trial Court, considering the evidence of P.W.1, P.W.3 and R.W.3, the manner of accident, as put forth by the claimants, appears to be believable. On considering the evidence available, I do not find any infirmity in the findings of the Tribunal that the lorry driver was responsible for the accident and consequential mulcting of liability on the insurer.

14.Though the Appellant has taken a stand in the Appeal Memorandum that the trial Court has not specifically decided as to whether the disablement is permanent or temporary and if it is permanent, whether it is total or partial, the same was not pressed into service. As rightly contended by the claimant's side, the learned Subordinate Judge, has not applied the multiplier formula,



but only adopted the percentage method and awarded at the rate of Rs.3,000/- per percentage of disability.

15.The tribunal has awarded Rs.87,000/- towards disability and on considering the nature of injuries and period of treatment, has awarded Rs.20,000/- towards pain and sufferings, medical expenses at Rs.48,720/-, future medical expenses at Rs.20,000/-; transportation expenses at Rs.1,500/- and for extra nourishment at Rs.8,500/- all totally, Rs.1,85,720/-. Considering the above, amounts awarded under various heads by the Tribunal are very much reasonable and not excessive. The Appellant/Insurance Company has not advanced any other arguments to impugn the said award. Considering the above, this Court decides that the above appeal is devoid of merit and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are considered accordingly.

16.In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

To

The Motor Accidents Claims Tribunal  
cum Additional Sub Judge, Dindigul.

Copy to: The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.(2)

+1cc to Mr.K.Bhaskaran, Advocate, SR.No.25972.

**Order made in  
C.M.A(MD)No.205 of 2015 and  
M.P. (MD)No.1 of 2015  
16.12.2020**

KMV (CO)  
CS(21.01.2021) 5P 5C