



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 22.12.2020]

[ORDERS PRONOUNCED ON : 11.01.2021]

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1742 of 2012

M/s.The National Insurance Company Limited,
Branch Office,
No.614, Mettur Main Road,
Karthikeya Complex, Bhavani - 638 302.
Erode District.

... Appellant/2nd Respondent

Vs.

1.Kozhi @ Nagaraj

2.P.Palanisamy

... Respondents/Claimant
& 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.04.2011 made in M.C.O.P.No.287 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari, Salem District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.C.Kulanthaivel

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 29.04.2011 made in M.C.O.P.No.287 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari, Salem District.

2.The learned counsel appearing for the respondent had submitted that connected C.M.A.No.189 of 2012 was already disposed of by a Hon'ble Division Bench of this Court consisting of their Lordships Mrs.Justice R.Banumathi and Mr.Justice



R.Subbiah on 16.09.2013, that appeal was also filed by the same Insurance Company. The learned counsel for the respondent further submitted that the case arose out of the accident involving a two wheeler Hero Honda motorcycle and Private Bus on Sankari - Bhavani Main Road at Mekkadu on 13.05.2008 at about 06.45 P.M., based on which the Sankari Police had registered a case in Crime No.417 of 2008 under Section 279, 338, 304 of IPC.

3.As per the claim petition, there were two claim petitions one preferred by the legal heirs of the deceased Murugesan who had driven the two wheeler Hero Honda motorcycle bearing Registration No. TN-30 R 3966 and the pillion rider injured Kozhi @ Nagaraj who is the 1st respondent in this appeal. This respondent Kozhi @ Nagaraj was examined as P.W.1 before the Motor Accident Claim Tribunal, Sankari. He was an eyewitness to the accident. He had preferred M.C.O.P.No.287 of 2008 for the grievous injuries and the permanent disability suffered by him. The legal heirs of the deceased Murugesan, who had driven the two wheeler and who died in the accident, had preferred M.C.O.P.No.276 of 2008.

4.The Tribunal had awarded compensation of Rs.16,25,000/- under various heads for the fatal accident claim. The M.C.O.P.Nos.276 & 287 of 2008 were taken together for enquiry and the evidence was recorded common for both the cases. P.W.1 was the injured claimant Kozhi @ Nagaraj and P.W.2 was the claimant in M.C.O.P.No.276 of 2008 the wife of the deceased Murugesan. The learned Trial Judge had apportioned 90% negligence on the driver of the bus bearing Registration No. TN-36 L 7679 and 10% on the rider of the two wheeler Hero Honda motorcycle bearing Registration No. TN-30 R 3966 and had reduced the compensation award by reducing 10% of the claim for the negligence of the motorcycle rider.

5.The arguments of the appellant in the appeal preferred against the Award passed by the Tribunal by common order in M.C.O.P.No.287 of 2008 and M.C.O.P.No.276 of 2008 was assailed by the Insurance Company, the 2nd respondent before the Tribunal. The arguments of the appellant/Insurance Company was rejected by the Hon'ble Divison Bench of this Court consisting of their Lordships Mrs.Justice R.Banumathi and Mr.Justice R.Subbiah dated 16.09.2013. Therefore, the appeal preferred by the Insurance Company in C.M.A.No.1742 of 2012 against M.C.O.P.No.287 of 2008 also has to be dismissed.

6.The learned counsel appearing for the appellant conceded to the common order passed by the learned Trial Judge in M.C.O.P.No.287 & 276 of 2008 and the fact that the Hon'ble Divison Bench of this Court consisting of their Lordships Mrs.Justice R.Banumathi and Mr.Justice R.Subbiah dismissed the



appeal in C.M.A.No.189 of 2012 arising out of the order passed in M.C.O.P.No.276 of 2008.

7. Therefore, the same holds good in this appeal also.

WEB COPY

8. The Single Judge of the Hon'ble High Court cannot have a different view and he/she is bound by the judgment/order passed by the Hon'ble Division Bench of this Court. In view of the same, this Civil Miscellaneous Appeal has to be dismissed and the Award passed in M.C.O.P.No.287 of 2008 has to be confirmed.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed and the Award passed in M.C.O.P.No.287 of 2008 is confirmed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Motor Accident Claims Tribunal,
Subordinate Judge,
Sankari, Salem District.

2. The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.1690

C.M.A.No.1742 of 2012

SSI (CO)
CB(27/08/2021)