



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1178 of 2010

and

M.P(MD)No.3 of 2010

Divisional Manager,
National Insurance Co., Ltd.,
175A, Great Cotton Road,
Tuticorin.

... Appellant/Respondent No.2

vs.

1.Nagarathinam
2.Balamurugan
3.Gopi

...Respondent Nos 1 to 3/Petitioners

4.Kandasamy

...Respondent No 4/Respondent No 1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award dated 06.11.2008 made in M.C.O.P.No.50 of 2004 on the file of the Motor Accident Claims Tribunal, Sub-Court, Virudhunagar and to set aside the same.

For Appellant	: Mr.R.Rajamani
For R1 to R3	: Mr.V.Sureshkumar
For R4	: Mr.S.Ramasamy

J U D G M E N T

This appeal is directed against the award passed by the Motor Accidents Claims Tribunal, Sub-Court, Virudhunagar made in M.C.O.P.No.50 of 2004.

2. Facts in brief:-

The appellant herein was the second respondent in M.C.O.P.No.50 of 2004, which was filed by the respondents 1 to 3 herein claiming compensation of Rs.4,00,000/-. It is the case of the claimants that they are the legal heirs of the deceased Thiraviyam. The said Thiraviyam along with his son and his relatives Sundarrajan and Kandasamy went to a Temple by walk on Sivakasi-Virudhunagar Road on 16.01.2004. At the time, a Tempo Van bearing Registration No.TN-58-E-6786, which was coming behind them in a rash and negligent manner hit against them. Immediately, the



deceased Thiraviyam was rushed to Shenbagam Hospital at Madurai, unfortunately, he succumbed to the injuries on 20.01.2004.

3. The claimants further stated that the deceased was 63 years and a retired Teacher from Government School and he was paid Rs.2,220/- per month towards pension and he earned another Rs.3,520/- by maintaining milking cows. Since the accident occurred due to the negligence of the driver of the Tempo Van, they are entitled to compensation from the owner as well as the insurer of the vehicle.

4. The claim petition was resisted by the appellant contending that the deceased Thiraviyam and other injured persons travelled in the Tempo Van. Since it was driven in a rash and negligent manner and got capsized and they sustained injuries, therefore, the claimants are entitled for compensation from the Insurance Company.

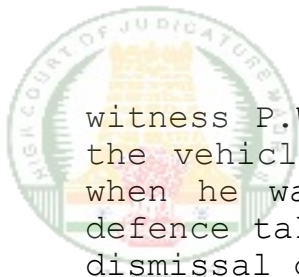
5. Before the Tribunal, P.Ws.1 to 3 were examined on the side of the claimants and also marked 11 documents. On behalf of the respondents in the claim petition, 6 witnesses were examined and 19 documents were marked.

6. After analysing the evidence adduced by the parties, the Tribunal held that the accident had occurred due to the negligence of the driver of the Tempo Van and hence, the claimants are entitled for compensation. The Tribunal awarded compensation of Rs.1,80,000/- along with interest at 7.5% per annum. Questioning the award, the present appeal has been filed.

7. Mr.R.Rajamani, learned counsel appearing for the appellant would argue that the offending vehicle was owned by the fourth respondent, Kandasamy. He was the owner-cum-driver of the vehicle and it was driven by him at the relevant point of time, in which, the deceased travelled as gratuitous passenger, but a false case was filed stating that the deceased was a pedestrian. The delay of 4 days in lodging the complaint was not properly explained. In Ex.P17 and Ex.P19, it is stated that the deceased and the injured Sundarrajan sustained injuries when they travelled in the offending vehicle. It is the submission of the learned counsel for the appellant that the oral and documentary evidence produced by the appellant was not properly appreciated by the Tribunal. In this regard, the learned counsel relied upon the following decision:-

2011(2) TN MAC 78 (DB) (New India Assurance Co. Ltd., Udumalpet Town vs. K.Rameshkumar

8. Per contra, Mr.S.Ramasamy, learned counsel appearing for the fourth respondent would urge that the police registered a case against one Balraj and also filed a final report as against him for his negligent driving. Further, based on the evidence of eye



witness P.W.2 and the documents, the Tribunal has rightly held that the vehicle was driven by Balraj and the deceased sustained injury when he was walking on the road. It is also contended that the defence taken by the Insurance Company was not proved and prayed for dismissal of the appeal.

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9. Heard the rival submissions and perused the materials available on record.

10. In the instant case, the claim petition was filed alleging that the deceased was a pedestrian on Sivakasi - Virudhunagar road and on 16.01.2004, when he was walking along with two other persons, they were hit by Tempo Van owned by one Kandasamy and the vehicle was driven by one Balraj at the relevant point of time. Materials were placed before the Court to show that the driver Balraj was also convicted in the criminal case. The Tribunal mainly relying on the finding of the criminal Court and the evidence of P.W.2 arrived at a finding that the accident happened due to the negligence of the driver Balraj and disbelieved the case of the appellant herein.

11. A perusal of Ex.P.14 would reveal that on 16.01.2004, the deceased Thiraviyam was admitted at Shenbagam Hospital, Madurai. At that time, it was informed that he sustained injuries due to the sudden derailment of Auto, in which, he was travelling. Likewise, in Ex.P6, the Accident Register relating to Sundarrajan, it is stated that he met with an accident while travelling in a Mini door van, which got upset down after hitting a man near at Sivakasi-Virudhunagar road on 16.01.2004. R.W.5 is the Manager of the Shenbagam Hospital, Madurai. R.W.4 is the Manager of Lizander Hospital, Virudhunagar. In their evidence, they have categorically stated that the injured sustained injury when they travelled in the Tempo Van.

12. It is an admitted fact that for the accident that had taken place on 16.01.2004, a complaint was given only on 20.01.2004 after the death of said Thiraviyam. No explanation was forthcoming as to why the complaint was lodged belatedly. Even if the said Thiraviyam was in a Coma Stage at the hospital and other two persons, namely, Sundarrajan and Kandasamy who sustained injuries in the same accident, could have lodged a complaint on the same day itself.

13. In **2011(2) TN MAC 78 (DB)** (supra), the Tribunal fixed negligence on the driver of the offending vehicle mainly on the basis of the admission of his guilt in the criminal Court. The matter was taken up to the High Court and the Division Bench following the decision of the Apex Court reported in **2007(2) TN MAC 9 (SC) (Oriental Insurance Co. Ltd., vs. Meena Variyal)**, reversed the finding of the Tribunal, wherein, this Court held as follows:-

"10. In support of his contentions the learned counsel appearing for the appellant relied upon the following



judgments:

(i) 2007 (2) TN MAC 9 wherein the Hon'ble Apex Court held that once the claimants approach the Tribunal under Section 166 of the Motor Vehicles Act, 1988 they are necessarily to take upon themselves, burden of establishing the negligence of the driver or owner of the vehicle concerned, but if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or defence to establish any negligence on the part of the owner of the vehicle or the driver of the vehicle.

(ii) 2004 (2) TN MAC 101 [C.M.A.No.614 of 1995 N.Sathidevi & others V. V.Giridharan & another and C.M.A.No.25 of 1997 M/s.New India Assurance Company Limited, No.66, West Bouliward Road, Trichy V. N.Sathidevi & others] wherein this Court relying upon the decision of the Division Bench of this Court reported in 1995 2 MLJ 317 [The Managing Director, Thanthai Periyar Transport Corporation Limited, Villupuram V. Mohammed Jaffer] held that in the case of confession made by the driver before the Criminal Court and when no evidence was let in to conclude that the vehicle was involved in the accident and the claimants not establishing independently before the Tribunal that the said vehicle was involved in the accident, the Tribunal is not correct in holding that the accident took place due to the rash and negligence of the driver of the vehicle."

"21.In the case on hand, the driver viz., the 2nd respondent pleaded guilty before the Criminal Court and his confession was relied upon by the Tribunal while fastening the negligence on him. In the above referred judgments, this Court categorically held that the confession made by the Tribunal before a Criminal Court can be relied upon by the Motor Accidents Claims Tribunal while fixing his negligence. In the present case, since the 2nd respondent/ driver pleaded guilty before the Criminal Court, the Tribunal held that the 2nd respondent was driving the motor cycle in a rash and negligent manner and was solely responsible for the accident.

22.Though it is clear that the confession made by the driver before a Criminal Court can be relied upon by the Tribunal while considering the issue of negligence, in the present case, according to statement made by the



1st respondent to the Doctor, the accident occurred on 01.05.2002 while he was standing near a bus stop with his friends. R.W.2, the Doctor attached to Nankem Hospital, Coonoor deposed that the claimant came for treatment for injuries allegedly sustained by him by falling down from the motor cycle when he was travelling in the CoonoorKothagiri road and that after initial treatment, the claimant was sent to the Coimbatore hospital in an ambulance owned by his hospital. This fact has not been considered by the Tribunal.

23.That apart, though the alleged accident took place on 01.05.2002, even according to the 1st respondent/ claimant he was admitted at Ramakrishna Hospital, Coimbatore on the same day and the police complaint was lodged only on 03.05.2002. There was no explanation for the delay in lodging the police complaint. When the 1st respondent sustained serious injuries, even the hospital authorities could have lodged a complaint with the police. This was not done immediately. Further, the criminal case was closed as mistake of fact. Thereafter, the counsel, who appeared in the Motor Accidents Claims Petition on behalf of the 1st respondent/ claimant filed a petition to reopen the criminal case and the same counsel appeared on behalf of the 2nd respondent/ driver in the criminal case and the 2nd respondent/ driver pleaded guilty before the Criminal Court. It is also pertinent to note that at this juncture that the father of the 1st respondent/ claimant was a Sub-Inspector of Police.

24.In Ex.A.14 Discharge Summary, issued by the Ramakrishna Hospital, Coimbatore, it has been mentioned that the alleged accident occurred on 01.05.2002 at about 05.10 p.m., in the Coonoor-Kothagiri road while travelling in a motor cycle. Ex.A.14 disproves the case of the 1st respondent/ claimant that the accident occurred when he and his friends were standing in Mettupalayam Kallar bus stop. Since the appellant disputed the very involvement of the motor cycle insured with it, the 1st respondent could have examined himself and other eye witnesses to prove the accident, if it had really happened, but neither the 1st respondent nor other eye witnesses have been examined and for their non examination no acceptable explanation is offered.

25.Learned counsel appearing for the respondent submitted that since the 1st respondent was bed ridden, he was not in a position to give evidence. However, the said contention cannot be accepted for the reason that



the 1st respondent being an Advocate could have filed an application for appointment of Advocate Commissioner to examine himself in his house itself, which was not done by the 1st respondent. Not only this, according to the 1st respondent, the accident occurred when he was standing in a bus stop with his friends. When his friends are said to have witnessed the accident, the 1st respondent could have examined his friends to prove the alleged accident. The 1st respondent's father was examined as P.W.1., but he was not a witness to the accident and therefore there is absolutely no evidence to hold that the driver of the motor cycle was responsible for the accident."

14. It is true that the Criminal Case was registered against one Balraj and the Criminal Court convicted him as he pleaded guilty. The finding of the Criminal Court is not binding on the Tribunal, especially, when a defence is taken that the claimant has come with the false case. The Tribunal has to decide the issue based on the evidence adduced by the parties.

15. In the matter on hand, the Tribunal has given weight to the findings of the Criminal Court. It is pertinent to note that Ex.P.14 was recorded even before Registration of the FIR. The Tribunal discarded Ex.P.6 & 7 on the ground that based on the documents negligence cannot be arrived at. A perusal of the records would reveal that the deceased travelled in the offending vehicle at the relevant point of time. Further, in the light of the principles stated in the decision referred above, the findings of the Tribunal is set aside and the appeal is allowed. The Tribunal is directed to refund the amount deposited by the appellant-Insurance Company, if any, lying to the credit of the claim petition.

16. In fine, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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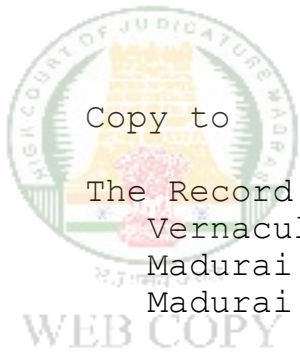
Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge
The Motor Accident Claims Tribunal,
Sub-Court, Virudhunagar.

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The Record Keeper, (2C)
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Madurai Bench of Madras High Court,
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+1 CC to M/s.R.RAJAMANI, Advocate (SR-15888[F] dated 15/04/2021)

+1 CC to M/s.N.V.SURESHKUMAR, Advocate (SR-15903[F] dated
15/04/2021)

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KB(06.07.2021) 7P 6C