



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.12.2020
DELIVERED ON	06.01.2021

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THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A (MD) No.129 of 2011

and

MP (MD) No.1 of 2011

The Branch Manager,
The United India Insurance Company Limited,
Trichy .. Appellant/2nd Respondent
in M.C.O.P

vs.

1.Maria Micheal Raj (Died) .. 1st Respondent/Petitioner
in M.C.O.P
2.Francis Seavier .. 2nd Respondent/1st Respondent
in M.C.O.P

3.Caroline Selvi

4.Rohit @ Jejondro (Minor)
[represented by the mother of R3]

5.Anthonisamy

6.Nambikkai Mary .. Respondents

[RR3 to R6 are brought on record as LR's of the
deceased 1st respondent vide order dated 22.12.2020
made in CMP(MD)Nos.8241 to 8243 of 2017]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act 1988, against the award and decree, dated
25.11.2010 made in M.C.O.P.No.233 of 2007, on the file of the
Motor Accident Claims Tribunal, The Chief Judicial Magistrate,
Pudukkottai.

For Appellant : Mr.G.Prabhu Rajadurai
for Mr.I.Robert Chandrakumar

For Respondents : No Appearance (for R2)

Mr.S.Karthick Subramanian
(for RR3 to 6)



J U D G M E N T

Challenging the award and ex-order passed by the The Chief Judicial Magistrate (Motor Accident Claims Tribunal), Pudukkottai, in M.C.O.P.No.233 of 2007, dated 25.11.2010, the appellant/2nd respondent has filed this appeal.

2.The case of the claimant/first respondent before the Tribunal is that on 09.07.2006, at about 08.00 p.m, the petitioner was riding his bicycle on Pudukkottai to Trichy Main Road and when he was nearing the place of occurrence, a Hero Honda Motor Cycle bearing Registration No.TN-55-M-0796 was driven by its rider in a rash and negligent manner and hit him back, as a result of which, he sustained multiple injuries and he was taken to Government Hospital, Pudukkottai and he took treatment as inpatient from 10.07.2006 to 17.07.2006 and later, shifted to Private Hospital. At the time of the accident, he was working as an agricultural coolie and because of the accident, he is not in a position to perform his work as before. So, he approached the Tribunal claiming compensation amount of Rs.7,00,000/- (Rupees Seven Lakhs Only).

3.The case of the second respondent/appellant herein is that only because of the rash and negligent driving on the part of the two-wheeler, the accident took place. It has also come to understand that the accident did not take place involving the Two-wheeler. So, the police did not take any further action on the criminal case. The First Information Report was registered only after a gap of ten days. The claim amount is very excessive.

4.Before the Tribunal, on the side of the first respondent/claimant, two witnesses were examined and 11 documents marked. On the side of the appellant/1st respondent and the 2nd respondent/1st respondent, two witnesses were examined and two documents marked.

5.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident really took place involving the 2nd respondent/1st respondent's vehicle and assessed the compensation on the basis of the records, at a sum of Rs.89,980/- (Rupees Eighty Nine Thousand Nine Hundred and Eighty only) including the customary amounts for pain and sufferings and transportation.

6.Challenging the same, the appellant/2nd respondent filed this appeal before this Court, mainly on the ground that the 2nd respondent/1st respondent's vehicle was not involved in the occurrence and there is a delay of 10 days in making the complaint.



7. During the pendency of this appeal, the 1st respondent/claimant expired. So, the legal heirs of the deceased were brought on record. So, the only point to be decided in this appeal is whether the accident took place mentioned by the 1st respondent/claimant involving in the 2nd respondent/1st respondent vehicle?

8. P.W.1, who is the 1st respondent/claimant, has stated that when he was riding his bicycle in the main road, a Motor Cycle bearing Registration No. TN-55-M-0796 was driven by its rider in a rash and negligent manner and hit him back. He was examined to the effect that he accidentally fell on the road side milestone and sustained injuries. It was denied by him. But, the presence of the 2nd respondent/1st respondent at the place of occurrence is not denied. It was suggested that the 2nd respondent/1st respondent came to his rescue, when the 1st respondent/claimant accidentally fell on the road side mile stone. Therefore, the 1st respondent/claimant lodged a complaint before the Trichy Navalpattu Police Station in Crime No.165 of 2006. The accident is said to have taken place on 09.07.2006 at about 08.00 p.m. In the complaint, he has stated that he was admitted in the K.M.C. Hospital on 10.07.2006 and was discharged on 17.07.2006. So, there is a delay in lodging the complaint. So, the delay has been properly explained in the First Information Report. He was admitted in K.M.C. Hospital, Trichy and the date of admission is noted as 10.07.2006, which is marked as Ex.P.2. At the time of the admission, he was found with multiple injuries and was discharged on 17.07.2006. So, the information furnished in the medical report shows that on the next day of the occurrence, he was admitted in the hospital with multiple injuries.

9. So, the contention on the part of the appellant that the 2nd respondent/1st respondent's vehicle was not involved in the occurrence, is not acceptable and with regard to the very nature of the occurrence, efforts were taken by the appellant/Insurance company to verify the same by appointing an investigator. The investigation report is marked as Ex.R.2. He has stated that the police after investigation found that only the claimant fell on the road side mile stone and sustained injuries. When the rider-cum-owner was enquired by him, it was stated by him that the accident took place, when the claimant/1st respondent suddenly crossed the road. If really the vehicle was not involved in the occurrence, the rider would not have given any such statement to the investigator. Ex.P.7 is the final report filed by the police before the Jurisdictional Magistrate, wherein, it has been stated that further action was dropped. It appears that only on this ground, the investigation report has been prepared that in the police investigation, the occurrence was found to be false. Simply because the police has filed a final report before the



learned Judicial Magistrate that further action is dropped, no inference can be drawn to the effect that the accident did not happen. The Police Officer, Navalpattu Police Station was also summoned and examined as R.W.1 and he would say that the claimant/1st respondent sustained injuries, due to accidental fell on a mile stone. It is also admitted by R.W.1 that after filing the closure report before the Magistrate Court, no notice was issued to the claimant/1st respondent.

10.It is a settled law that whenever, a closure report is filed by the police before the Jurisdictional Magistrate, notice must be issued to the complainant/informant. It appears that no such notice was also issued to him. So, the closure of the criminal case cannot be given any importance. The appellant/insurance company has not taken any steps to examine the rider of the two-wheeler, but on the contra, as mentioned earlier, the rider himself admitted the accident. So, the contention on the part of the appellant deserve, no approval and I find that the accident as mentioned in the petition, took place involving in the 2nd respondent/1st first respondent. From the nature of the occurrence, it is established that only the 2nd respondent/1st first respondent was negligent in his riding.

11.The next point is the quantum. P.W.2 is the Doctor, who assessed the disability of the claimant/1st respondent. He would say that the claimant suffered grievous injuries and assessed partial permanent disability at 35%, which is marked as Ex.P.8. Ex.P.2, the Wound Certificate also corroborates the evidence of the Doctor with regard to the hemorrhage in the brain area. Ex.P.3 is the discharge summary, wherein, he found that he was admitted on 10.07.2006 and discharged on 17.07.2006. Ex.P.4 and Ex.P.5 are the medical bills. The evidence of P.W.2 and P.W.1 is that because of the accidental injuries, he suffered partial permanent disability. So, the Tribunal, after taking into account, the discharge summary, the Wound Certificate and the disability assessed the partial permanent disability at 35% and by adopting the multiplier method and by adding the medical expenses, customary amounts, fixed the same at Rs.89,980/-. Even though the multiplier method should not have been adopted, the nature of the injury suffered by the claimant, the argument advanced by the appellant on this ground, that even if the percentage basis is adopted for 35%, it comes to Rs.70,000/- for partial permanent disability. So, the final conclusion and assessment requires no interference, even though the method adopted by the Tribunal is not correct.

12.So, the liability as well as the quantum requires no interference at the hands of this Court and accordingly, this Civil Miscellaneous Appeal is liable to be dismissed. Even though



the injured died, the compensation awarded has become the estate of the injured. The legal heirs are entitled to that amount.

13. In the result, the Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is closed. The appellant-Insurance Company is directed to deposit the compensation amount awarded by the Tribunal with interest at 7.5 % p.a. from the date of petition, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The respondents 3 to 6 are permitted to withdraw the amount in equal share.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

SJI

To

The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Pudukkottai.

Copy to

The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-480[F] dated 07/01/2021)

Judgment Made in
C.M.A(MD) No.129 of 2011
06.01.2021

KM (05.02.2021) 5P 5C