



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.04.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.137 of 2011
and M.P(MD)No.1 of 2011

WEB COPY

Branch Manager,
New India Assurance Co., Ltd.,
248-B, Rekha Towers,
Kamarajar Salai,
Madurai-9.

.. Appellant/Respondent-3

vs.

1.Sahul Hameed

2.Kaniammal Begam

.. Respondents 1 & 2 /Petitioners

3.Porselvi

.. Respondent 3/Respondent 1

4.S.Ammaponnu

.. Respondent 4/Respondent 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award dated 12.02.2010 and made in M.C.O.P.No.142 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Sivakasi and praying to set aside the same.

For Appellant : Mr.N.Dilipkumar

For R1 & R2 : Mr.S.Srinivasa Raghavan

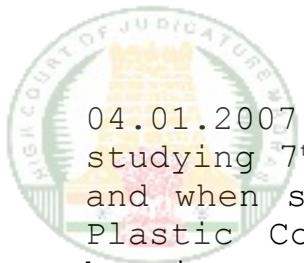
For R3 : Dismissed vide Court Order
dated 29.11.2017

For R4 : No appearance

J U D G M E N T

This appeal arises out of the judgment of the Motor Accident Claims Tribunal, Sub Court, Sivakasi, passed in M.C.O.P.No.142 of 2007, wherein, the Tribunal has awarded a sum of Rs.2,25,000/- against the claim of Rs.6,00,000/-.

2. The respondents 1 & 2 herein filed M.C.O.P.No.142 of 2007 claiming compensation for the death of their daughter Raikana Sani, aged about 13 years in a Motor Vehicle Accident occurred on



04.01.2007 at 1.15 p.m. It is their case that the deceased was studying 7th standard in Muslim Higher Secondary School at Sivakasi and when she returning back to her house in a bicycle, near Arun Plastic Company on Sivakasi-Senkamalanachiarapuram Road, a lorry bearing registration No.TN-25-5067 came behind her in a rash and negligent manner and hit against the bicycle. In the impact, the deceased fell down and the rear-wheel of the lorry ran over her head, by this, she died on the spot.

3. The appellant filed counter stating that the owner has not paid the premium, for the current year of the accident, for renewal of the policy and the cheque issued towards payment of premium was dishonoured for want of fund. Hence, there cannot be any award in favour of the petitioner. It is further stated that the deceased without noticing the following vehicle, suddenly crossed the road and invite the accident. Therefore, the driver of the lorry was not responsible for the accident and prayed for dismissal of the claim petition.

4. In order to prove the case of the parties, they have let in oral and documentary evidence. It is not in dispute that the respondents 3 & 4 herein are the registered owners of the offending vehicle and they have also taken a policy, but the appellant contested the claim petition on the ground that the cheque issued for payment of premium got dishonoured and hence, the policy was also later cancelled. Ex.R3 reveals that the cheque was dishonoured by the Bank for want of fund. Though the appellant communicated the same to the owner of the vehicle, but the policy was cancelled after the accident. So, the Tribunal found that the Insurance Company is liable to pay compensation.

5. It is relevant to note that if the cheque issued towards premium got dishonoured and the same was intimated to the owner, no liability can be mulcted with the Insurance Company. At the same time, admittedly, the policy was cancelled after the accident, so the Insurance Company has to pay the amount to the claimants, who are the third parties and later recovered from the owner of the vehicle. The amount awarded by the Tribunal is reasonable and the same is confirmed. So, the finding of the Tribunal, that the Insurance Company is liable to pay the award amount, is set aside and the Insurance Company is hereby directed to satisfy the award amount at the first instance and thereafter, recover the said amount from the owner of the vehicle.

6. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The appellant respondent-Insurance Company shall deposit the award amount with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any and



thereafter, recover the same from the owner of the vehicle. On such deposit, the claimants are entitled to withdraw the entire amount. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal,
Sub Court, Sivakasi.

COPY TO

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.N.DILIPKUMAR, Advocate SR-15871[F] dated 15/04/2021

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-16116[F] dated 16/04/2021)

JUDGMENT MADE IN

C.M.A(MD) No.137 of 2011

09.04.2021

KUN(CO)

TR(29.04.2021) 3P 6C