



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.12.2020

Pronounced On : 05.01.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A (MD) No.1062 of 2016

and

C.M.P. (MD) No.9512 of 2016

National Insurance Company Limited,
Branch I, 33, Promenade Road,
Trichy -1.

: Appellant / 2nd Respondent

Vs.

1.Maruthai
2.Ilanjiam
3.Suresh
4.Janaki

:1 to Respondents/Petitioners

5.Kasthuri

:5th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1469 of 2004, dated 23.06.2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Tiruchirappalli.

For Appellant : Mr.J.S.Murali
For R1 to R4 : Mr.N.Sudhagar Nagaraj
For R5 : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, challenging the award, dated 23.06.2011, made in M.C.O.P.No.1469 of 2004, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Tiruchirappalli.

2.The Appellant/Insurer, who was made liable to pay compensation of Rs.4,11,000/- to the claimants for the death of Saravanan, who died in an accident occurred on 04.02.2004, ~~has been held~~ liability mulcted on it and the quantum of



compensation arrived at by the tribunal. Admittedly, the first claimant is the father, the second claimant is the mother, the third claimant is the brother and the fourth claimant is the sister of the deceased Saravanan and that they have laid the above claim petition claiming compensation of Rs.5,00,000/- with interest.

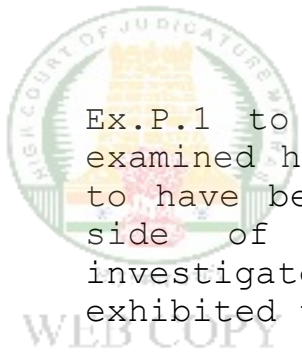
3.The case of the claimants is that on 04.02.2004, at about 07.30 am, when the deceased was riding a two wheeler TVS 50 bearing Registration No.TN 45 F 9056 in Trichy-Karur Main Road at the place near Mukkombu, the lorry bearing Registration No.TDU 5335 owned by the fifth respondent/first respondent came behind the two wheeler in a rash and negligent manner and without sounding horn, dashed against the two wheeler and as a result of which, the said Saravanan sustained multiple injuries all over his body and died on the spot and that the accident had occurred only due to the rash and negligent driving of the lorry driver.

4.It is their further case that the deceased Saravanan was aged about 20 years at the time of accident, that he was working in a poultry farm and was earning Rs.5,000/- per month, that the claimants were depending on the income of the deceased and that since the lorry owned by the fifth respondent, was insured with the appellant at the time of accident, both are jointly and severally liable to pay compensation.

5.The defence of the owner of the lorry and the insurer is of total denial. They have specifically disputed the involvement of the lorry bearing Registration No.TDU 5335 in the alleged accident and according to them, it was only a hit and run case. The main contention of the owner of the lorry is that one Muruganantham alleged to be the driver of the lorry was not at all engaged as a driver at any point of time and was never under the employment of the fifth respondent/owner and that since the driver was not at all involved, he is not liable for the claim.

6.The main contention of the Appellant/Insurer is that the claimants in collusion with the owner and driver of the lorry had substituted the lorry owned by the fifth respondent in the alleged accident, that the claim itself is a bogus one, that the two wheeler rider was not possessing valid driving license at the time of accident and that therefore, the Appellant/Insurer is in noway responsible for the claim. Both the owner and the insurer have also pleaded that the compensation claimed is excessive and out of proportion.

7.During enquiry, the claimants have examined the 1st claimant Maruthai as P.W.1 and two other witnesses, Sekar and Rajendran as P.W.2 and P.W.3 respectively and exhibited seven documents as



Ex.P.1 to Ex.P.7. The fifth respondent/owner of the lorry had examined her son Suresh as R.W.1 and exhibited the letter alleged to have been written by her to the insurer under Ex.R.1. On the side of the Appellant/Insurer, they have examined their investigator and the staff as R.W.2 and R.W.3 respectively and exhibited two documents as Ex.R.2 and Ex.R.3 respectively.

8.The learned trial Judge, upon considering the evidence both oral and documentary, came to the conclusion that the lorry driver was responsible for the accident and fastened the liability on the Appellant/Insurer, directing them to pay compensation of Rs.4,11,000/- with interest at 7.5% per annum. Aggrieved by the said award, the Insurer has come forward with the present appeal.

9.The points for consideration are :

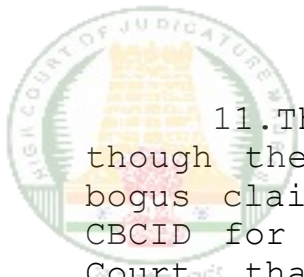
(i) Whether the Tribunal erred in fastening the liability on the insurer by holding that the lorry driver was responsible for the accident, despite the production of ample materials and evidence to show that it was hit and run accident that the fifth respondent lorry was not at all involved in the accident, that the alleged Muruganandam was never engaged as a driver for the fifth respondent's lorry and that the claimants have not produced any independent witness to prove that the said lorry was involved in the accident?

(ii) Whether the quantum of compensation arrived at by the tribunal is proper and is in accordance with law?

(iii) Whether the impugned award dated 26.06.2011 is liable to be interfered with?

Point No.1:

10.The learned counsel for the Appellant/Insurer would strongly contend that the above case is a hit and run accident and a bogus claim was made by the claimants in collusion with the police officials, that the lorry owned by the fifth respondent was not at all involved in the accident allegedly occurred on 04.02.2004 and that though original FIR was registered as a case of hit and run accident, subsequently, so as to enable the claimants to get compensation, the fifth respondent's lorry was substituted. He would further contend that R.W.1, son of the fifth respondent/owner of the lorry would depose specifically before the Tribunal that they have never engaged Muruganandham as driver for their lorry, that the Tribunal has failed to consider that the alleged eye witness P.W.2 is a close relative and P.W.3 is a close friend of the deceased Saravanan and they are the chance witnesses and that the tribunal has failed to consider the evidence of R.W.2 and R.W.3 to the effect that the driver Muruganandham was an invented person for the purpose of making a bogus claim.



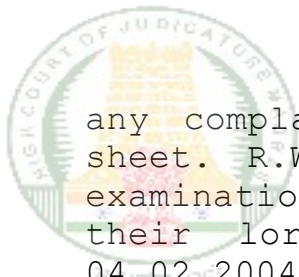
11.The learned counsel for the claimants would argue that though the owner of the lorry had been claiming that it was a bogus claim, they have not chosen to make any complaint to the CBCID for enquiry as per the directions of the Honourable High Court, that the Tribunal, after considering the entire evidence before it, has correctly come to the conclusion that the lorry owned by the fifth respondent was involved in the accident.

12. It is not in dispute that the lorry bearing Registration No.TDU 5335 was owned by the fifth respondent and the same was insured with the Appellant/Insurance Company. No doubt, as rightly contended by the Insurance Company, FIR was lodged as if it was a hit and run accident. It is pertinent to mention that the jurisdictional police after investigation, had laid the final report by showing one Muruganantham as the accused and by alleging that the lorry bearing Registration No.TDU 5335 driven by the said Muruganantham was involved in the accident and that since the accident was occurred due to the rash and negligent driving of the lorry driver, he was responsible for the accident.

13.It is further evident that the charge sheet was taken on file in C.C.No.160 of 2004, on the Court of Judicial Magistrate No.III, Tiruchirappalli and that since the accused Muruganandham had pleaded guilty, he was convicted for the offence under Section 304(A) IPC and was imposed punishment of imprisonment till rising of the Court and fine of Rs.5,000/- , in default to undergo six months simple imprisonment.

14.It is further evident that the lorry bearing Registration No. TDU 5335 was subjected to inspection by the jurisdictional Motor Vehicle Inspector on 11.02.2004 and issued a report marked under Ex.P.3 with their opinion that the accident was not due to any mechanical defect of the vehicle. It is pertinent to note that in Ex.P.3., Motor Vehicle Inspector's Report, in column 6 : the name and address of the driver are given and in Column 5(f), name and address of the owner, the fifth respondent's name and address are noted. Moreover, in Ex.P.3 report, they have specifically mentioned the date and expiry of the fitness certificate, date of expiry of insurance certificate and the name of the insurance company. Though the owner and the insurer have been alleging that the said lorry was not at all involved in the accident and that the accused Muruganantham was never employed as a driver, it is not their case that they have taken action against the said Muruganandham for falsely claiming to be the driver of the lorry owned by the fifth respondent and for admitting the guilty before the criminal Court, so as to support the bogus claim of the claimants.

15. It is also not their specific case that they have preferred



any complaint for falsely involving their lorry in the charge sheet. R.W.1, son of the lorry owner, would say in his cross examination that they have not produced any documents to show that their lorry was not involved in the accident occurred on 04.02.2004 and the driver Muruganantham was never engaged as a driver, that they have not sent the lorry for motor vehicle inspection on 11.02.2004, that they have not taken any further action to show that their lorry was not at all involved in the accident and that he was not aware as to whether the driver Muruganantham had pleaded guilty and was imposed with fine.

16.During cross examination made on behalf of the insurer, R.W.1 would say that they came to know about the alleged accident only on 20.06.2009 and after investigation, the officer of the insurer came and enquired them, that they given a written statement stating that Muruganandahm was not under their employment and no such Muruganantham was known to them, that himself and his brother Ramesh alone used to drive that lorry and that they have stated while giving their statement before the investigating officer appointed by the insurer that their registration certificate and insurance policy were misused.

17.Admittedly, R.W.1 or owner of the lorry have not taken any steps for allegedly misusing their registration certificate and insurance policy of their own vehicle. R.W.2 investigator appointed by the insurer in his cross examination would say that he did not know the accident directly, that he had visited the occurrence place, that he was not aware about the filing of charge sheet, that he was also not aware as to when the lorry was sent to the motor vehicle inspection, that he was also not aware of the contents of the final report filed by the Police, that though he had visited the address of Muruganandham, he was not available in that address and a false address was given purposely and that he has not produced any certificate from the Village Administrative Officer to show that the Muruganandham was not available in that address.

18.R.W.2 in his report under Ex.R.2 would allege that there was collusion between the claimants, owner and the driver of the lorry bearing Registration No. TDU 5334 and Police. Subsequently, he would say that Mrs.S.Kasthuri/fifth respondent herein had turned hostile and gave a statement alleging non involvement of the vehicle in the accident. But, before the tribunal, the owner and the insurer were sailing in the same boat, but subsequent to the examination of R.W.1 by the owner side, the insurer has taken another stand and is continuing till now, stating that there is collusion between the claimants and the Police. R.W.3/Assistant Regional Manager of the Appellant/Insurance Company would say in his cross examination that he was deposing only on the basis of



the records, that he was not aware as to whether the lorry was sent for motor vehicle inspection, that they have not taken any criminal action against the driver Muruganandham, who had allegedly not driven the said lorry and that they came to know from their records that the final report was filed by the Police and that he does not know as to whether the driver had pleaded guilty and paid the fine.

19.As rightly contended by the respondent's side, the evidence of R.W.2 and R.W.3, does not improve the case of the insurer. But, the claimants in an attempt to prove their case, have chosen to examine two occurrence witnesses P.W.2 and P.W.3. According to the insurer, P.W.2 is a close relative and P.W.3 is a close friend of the deceased Saravanan and as such, they have been deposing only to favour their friend Saravana's family. P.W.2 and P.W.3 in their evidence would reiterate in clear terms about the manner of accident and according to them, on 04.03.2004 at about 07.30 am., when they were talking with their respective friends, a TVS 50 came from west to east and at that time, a lorry which came behind the two wheeler in a rash and negligent manner and without sounding horn, had dashed against the two wheeler and that after the accident, the lorry went to some distance and stopped for a while and then proceeded P.W.2 would say that due to tension prevailing at that time, he was unable to notice the registration number of the lorry, but, he only gave a complaint before the Vijayanagaram Police Station and that subsequently, he came to know about the particulars of the lorry from P.W.3, who was also present at the occurrence place.

20.P.W.3 would not only reiterate the same version, but would also depose about his noticing the registration number of the lorry. Though P.W.2 and P.W.3 were subjected to cross examination at length by the Insurer side, nothing was elicited in their favour and their evidence about the mode of accident and the involvement of the lorry was not at all shaken during the cross examination.

21.As rightly observed by the trial Court, the owner of the lorry has not chosen to produce the trip sheet to show the whereabouts the lorry at the relevant point of time and the particulars of the driver, who had driven the lorry at that time. As rightly contended by the learned counsel for the claimants, simply because that FIR came to be registered as hit and run accident, the same will not take us to conclude that a bogus claim was made by implicating another vehicle. Except pleading that it was a bogus claim, neither the owner of the lorry nor the insurer have adduced any positive evidence to substantiate their allegations.

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23.Regarding the

25. Considering the above, an addition of 25% of the income is to be added towards future aspects and as such the monthly income would come to Rs.4,200/- (Rs.3000/- + 40% of Rs.3,000/-) and annual income would be Rs.50,400 and after deducting 50% of the income towards personal expenses of the deceased, the contribution would be Rs.25,200/- and by applying the multiplier 16, it would come to Rs.4,03,200/-. Hence the claimants are entitled to get compensation under the head of loss of dependency at Rs.4,03,200/-. The Tribunal has awarded Rs.15,000/- for loss of love and affection and Rs.2,000/- towards funeral expenses and Rs.10,000/- for other expenses. Our Honourable Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has permitted to award Rs.40,000/- towards spousal consortium. But subsequently, the Honourable Apex

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Chuhru Ram and others reported in (2018) 18 SCC 130 and the **New India Assurance Company Ltd., Vs. Smt.Somwati and others**, passed in **Civil Appeal No.3093 of 2020 and batch, dated 07.09.2020**, has permitted the spousal consortium to be awarded to the survive spouse, parental consortium to be awarded to the children upon the premature death of their parents and filial consortium to be awarded to the parents for the loss of their children. On applying the above legal dictum, the claimants 1 and 2 being the parents of the deceased are certainly entitled to get Rs.40,000/- each towards filial consortium and Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses under the conventional heads and on addition, the same would exceed the amount already awarded by the tribunal. The respondents 1 to 4/claimants have neither challenged the quantum fixed by the tribunal nor advanced any arguments in this regard before this Court.

26.Considering the above, this Court decides that the appeal is devoid of merits 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 answered accordingly.

27.In the result, this Civil Miscellaneous Appeal is dismissed and the award made in M.C.O.P.No.1469 of 2004, dated 23.06.2011 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Tiruchirappalli is confirmed. Parties are directed to bear their own 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 Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tiruchirappalli.



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

+1 CC to Mr.J.S.MURALI, Advocate (SR-185[F] dated 06/01/2021)

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-381[F] dated
06/01/2021)

**order made in
C.M.A(MD)No.1062 of 2016
and
C.M.P. (MD)No.9512 of 2016
05.01.2021**

KM (03.03.2021) 9P 6C