**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	19.02.2021
Date of Judgment	13.05.2021

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CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A (MD) No.996 of 2016andCMP (MD) No.8974 of 2016

Branch Manager,
I.C.I.C.I Lombard General Insurance Company Ltd.,
Madurai Road,
Tirunelveli Junction,
Tirunelveli. : Appellant/2nd Respondent

Vs.

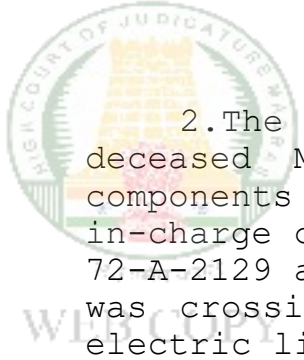
- 1.Saritha
- 2.Minor Pavithra
(Minor 2nd respondent is represented
through her mother and guardian
the 1st respondent)
- 3.Paramasivan
- 4.Saroja : Respondents 1 to 4/Claimants 1 to 4
- 5.The Branch Manager,
Namakkal Transport Carries Private Limited,
1694, Krishna Colony,
Gurgaon,
Haryana-122 001. : 5th Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 14.10.2014 made in MCOP No.1424 of 2013 on the file of Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli.

For Appellant : Mr.K.K.Ramakrishnan
for M/s.V.Muthukamatchi
For R1 to R4 : Mr.R.Rajaraman
For 5th Respondent : Dismissed
(Vide order, dated 27.06.2018)

J U D G M E N T

Challenge made in this appeal is to the award, dated 14.10.2014 made in MCOP No.1424 of 2013 on the file of Motor Accident Claims Tribunal (II Additional District Court), Tirunelveli.



2.The short facts of the case is that on 20.04.2012, the deceased Muthukrishnan was on duty in transporting Wind Mill components to Valliyoor through Lorry HR-55-M-0740 and the Engineer in-charge of the work was following the Lorry in a TATA SUMO Car TN-72-A-2129 and when the Lorry reached Kadambankulam, an electric line was crossing the road and to avoid the clash of the Lorry with electric line, the Lorry Cleaner and Coolie lifted the electric line by wooden sticks, but unfortunately the current was passed and spark found at the top of the Lorry. On seeing this, the Engineer and the deceased Muthukrishnan shouted the driver, cleaner and coolie to come down. After stopping the Lorry, Muthukrishnan smelling the burning of tyre in the Lorry, went near the Lorry and bend down and watched the tyre of the Lorry, which was already connected with electric live line, but he was thrown out and died on the spot due to electrocution. The legal heirs of the deceased Muthukrishnan filed a claim petition seeking compensation of Rs.10,00,000/- for the death of the deceased.

3.The Tribunal, upon consideration of oral and documentary evidence, awarded compensation of Rs.10,08,000/- together with interest @ 8% p.a directing the 2nd respondent Insurance Company in the claim petition to pay the compensation to the claimants. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court with this appeal.

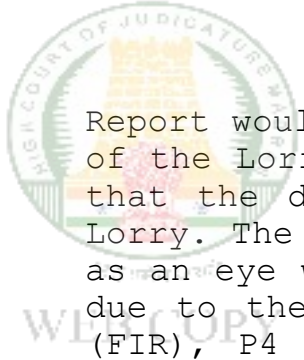
4.Heard both sides and perused the materials available on record.

5.In this case, the dispute is with regard to negligence alone. The learned counsel appearing for the appellant Insurance Company/2nd respondent submitted that the accident had not happened due to the negligent act of the Lorry driver and the deceased had voluntarily invited the occurrence of touching the Lorry, which was connected with the live electric line, but without considering these aspects the tribunal erroneously fixed the entire negligence on the part of the Lorry Driver and prays that the Civil Miscellaneous Appeal has to be allowed.

6.On the other hand, the learned counsel appearing for the respondents 1 to 4/claimants argued the case in support of the findings of the tribunal and prays for dismissal of the Civil Miscellaneous Appeal.

7.It is mainly contended by the learned counsel for the appellant that the accident occurred only due to the negligence of the deceased and therefore, the entire negligence should be fastened on the deceased and the Insurance Company should be exonerated.

8.It is seen from the records that the accident had taken place on 26.03.2011 at about 9.00 pm. Perusal of Ex.P1 First Information



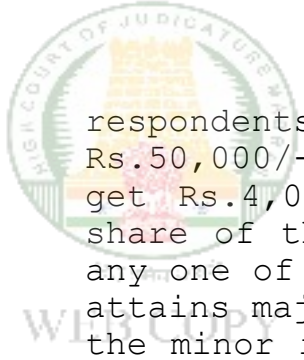
Report would show that the case was registered as against the driver of the Lorry. PW2, who is the eye witness of the occurrence deposed that the deceased died due to electrocution, while inspecting the Lorry. The tribunal believed the evidence of P.W.2, who was examined as an eye witness of the occurrence and held that the deceased died due to the negligent act of the Lorry driver. Perusal of Exs.P1 (FIR), P4 (Observation Mahazar) and P5 (Rough Sketch), it is seen that the Lorry was carrying the wind mill with cleaner and workman and when the Lorry was reached the Kadambanakulam junction, a crossing of electric line was intercepted and the cleaner and the workman taken effective steps by using wooden stick to avoid the touching of the Lorry with electric line and sparkled was made out and on seeing the same, the deceased Muthukrishnan, who drove the Car behind the Lorry shouted the driver, cleaner and workman in the Lorry to jump from the Lorry to avoid the electrocution. However, the deceased went near the stationed Lorry and touched the Lorry and thereby invited the occurrence of electrocution.

9. On careful perusal of the entire records, it reveals that the accident took place due to negligence on the part of the driver of the Lorry as well as the deceased. Hence, the trial court finding that the accident took place due to negligent act of the Lorry driver is not correct.

10. It is pertinent to note here that the driver of the Lorry has not chosen to give the complaint stating that the accident took place only due to the negligent act of the deceased. Further, the driver of the Lorry has not sent any petition opposing registration of the criminal case against him. Hence, this court held that the accident occurred only due to composite negligent on the part of the driver of the Lorry as well as the deceased. Therefore, this court fixed the negligence at 80% on the part of the driver of the Lorry and 20% on the part of the deceased.

11. It is to be noted that the learned counsel appearing for the appellant Insurance Company has not disputed the quantum award by the tribunal and he has challenged this appeal on the basis of the negligence. As this court fixed the negligence at 80% on the side of the driver of the Lorry and 20% on the part of the deceased, the claimants would be entitled to Rs.8,06,400/-. In respect of the interest awarded by the tribunal, it is modified into 7.5% p.a.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The negligence is fixed at 80% on the part of the driver of the Lorry and 20% on the part of the deceased. The appellant Insurance Company is directed to deposit their apportionment of negligence amount of Rs.8,06,400/- fixed by this court before the tribunal together with interest @ 7.5% p.a. from the date of claim petition, till the date of deposit. On such compliance, the 1st respondent/1st claimant is entitled to withdraw Rs.3,06,400/- and the



respondents 3 and 4/claimants 3 and 4 are each entitled to withdraw Rs.50,000/- and the minor 2nd respondent/2nd claimant is entitled to get Rs.4,00,000/- together with accrued interest and costs. The share of the minor 2nd respondent/2nd claimant shall be deposited in any one of the Nationalized Bank on a fixed deposit scheme, till she attains majority. The 1st claimant, being the mother and guardian of the minor is entitled to withdraw the interest accrued on the fixed deposit once in three months for the welfare of the minor. The excess amount, if any, shall be refunded to the appellant Insurance Company by the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

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/ /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/
II Additional District Court,
Tirunelveli.
- 2.The Record Keeper, (2C)
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A (MD) No.996 of 2016
13.05.2021

PK(CO)
KB(26.08.2021) 4P 4C