

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.09.2022**

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.1128 of 2009

The Branch Manager,
National Insurance Company Limited,
4132, Keela Raja Veedhi,
Pudukkottai Town.

... Appellant

vs.

1.Minor Muthumani
S/o.Murugesan
(Represented by his father and guardian
Murugesan, S/o.Muthusamy

2.G.Veerasekaran @ Veerasekar

3.The Branch Manager,
The Oriental Insurance Company Limited,
No.666/1, G.H.Road,
Theni.

4.R.Paulraj,
S/o. Raman

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree dated 26.09.2007 passed in M.A.C.O.P.No.59 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pudukkottai and allow this appeal with cost.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Petition is filed to set aside the order and decree dated 26.09.2007 passed in M.A.C.O.P.No.59 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pudukkottai.

2. The case of the claimant in nutshell is as follows:-

On 10.01.2005 at 5.00 p.m, the first respondent was playing with his friends on left side of the Varappur- Pulavankaadu road nearby Veeriyankula Vadakarai and a tractor bearing registration No.TN-50-A-9608 owned by the second respondent attached with a Trailer bearing Registration No.TN-49-E-0459 owned by the fourth respondent was driven by the driver of the second respondent in a rash and negligent manner and dashed against the first respondent. Due to which, he sustained grievous injury and was taken to Thanjavur Government Medical College Hospital for treatment and thereafter, he had taken treatment in a private hospital. Hence, the first respondent filed the claim petition, claiming a sum of Rs.5,00,000/- as compensation.

3.The second and fourth respondents (owner of the Tractor and Trailer) remained absent before the Tribunal and therefore, they were set *ex-parte*. The National Insurance Company and the Oriental Insurance Company contested the claim petition on all the grounds available to the insured.

4.Before the Tribunal, on the side of the claimant/first respondent, four witnesses were examined as P.W.1 to P.W4 and nine documents were marked as Exs.P.1 to P.9. On the side of the appellant and the third respondents, seven witnesses were examined as R.W.1 to R.W7 and eight documents were marked as Exs.R1 to R8.

5.The Tribunal, after considering the oral and documentary evidence and arguments made on either side, partly allowed the claim petition and awarded a sum of Rs.3,90,000/- with interest at 7.5% per annum as compensation to the claimant and fixed the negligence on the part of both the vehicles namely Tractor and Trailer in the ratio 50:50. Against which, the appellant/Insurance Company has filed the present appeal.

6.The learned counsel appearing for the appellant/Insurance Company contended that the driver, who had driven the tractor, is not an employee of the fourth respondent herein, who is the owner of the trailer and that no vicarious liability could be fastened on the fourth respondent herein. The coverage of passengers for the trailer involved in the accident does not arise either under the Motor Vehicles Act or under the Policy of Insurance issued by the appellant. He would further submit that the First Information Report also reveals that only the tractor hit against the claimant, pushed him down and caused injuries to the claimant. Therefore, he prayed this Court to allow this appeal.

7.Heard the learned counsel appearing for the appellant/Insurance Company and perused the records. There is no representation for the respondents.

8.A perusal of the records would show that the tractor in the case was insured with the third respondent/insurance company. Further, a perusal of the documents would show that the deceased fell down on collusion with the Tractor and wheel of the Trailer run over him and thus, caused the accident. Though it was submitted that the Trailer in this

case has no connection with the Tractor, the accident has taken place only due to the Tractor and Trailer in this Case. The Tractor belongs to the second respondent was insured with the third respondent and the Trailer belongs to the fourth respondent was insured with the appellant and finally, the Tribunal came to the conclusion that the appellant as well as the third respondent are jointly liable to pay the compensation. The said finding of the tribunal seems to be legally sustainable and thus needs no interference.

9.Further, on appreciation of both oral and documentary evidence, the Tribunal has rightly awarded a sum of Rs.3,90,000/- as total compensation and directed the appellant and the third respondent herein to pay a sum of Rs.1,95,000/- each on behalf of the second and fourth respondents. Regarding the quantum of compensation, the appellant insurance company has not disputed the same. The other of the judgment stands as it is.

10.In the result, this Civil Miscellaneous Appeal is dismissed confirming the award and decree dated 26.09.2007 made in M.A.C.O.P.No.59 of 2005 on the file of the Motor Accidents Claims

Tribunal, Sub Court, Pudukkottai. The appellant/Insurance Company is directed to deposit the award amount as awarded by the Tribunal to the credit of M.A.C.O.P.No.59 of 2005, less the amount already deposited, if any, along with interest at the rate of 7.5% per annum from the date of petition till date of realization and proportionate costs, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, since the first respondent herein is a minor at the time of accident, the award amount is ordered to be deposited in any one of the Nationalized Bank till he attains majority and the father/guardian of the first respondent is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor. No costs.

07.09.2022

Index :Yes/No
Internet :Yes/No
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To

- 1.The Motor Accidents Claims Tribunal,
Sub Court, Pudukkottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

,
A.A.NAKKIRAN .,J.

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JUDGMENT MADE IN
C.M.A(MD)No.1128 of 2009

07.09.2022