



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.1360 of 2011

and

M.P (MD)No.1 of 2011

WEB COPY

The United India Insurance Co.Ltd.,
Through its Divisional Manager,
The Divisional Office,
No.1, Post Office Road,
Palayamkottai,
Tirunelveli - 627 002.

...Appellant/2nd Respondent

Vs.

1.Jeyachitra
2.Minor.Sivaranjani
3.Minor.Gousalya
4.Minor.Maha Jeya Shir
5.Rajeshwari ...Respondents Nos.1 to 5/Petitioner Nos.1 to 5
(The minor Respondents 2 to 4 are rep. by their mother
and natural guardian 1st Respondent)

6.Ulaganathan ...6th Respondent/1st Respondent

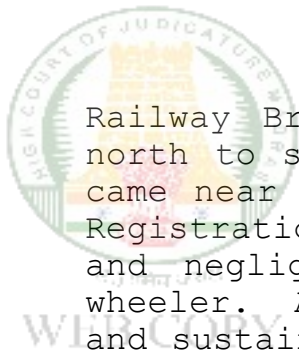
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 02.03.2011 passed in MACOP.No.74 of 2007 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Thoothukudi.

For Appellant :Mr.J.Milton for Mr.G.Prabhu Rajadurai
For R1 to R4 :Mr.T.Selvakumaran
For R6 :No Appearance

JUDGMENT

The Civil Miscellaneous Appeal has been filed, against the judgment and decree, dated 02.03.2011 passed in MACOP.No.74 of 2007 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Thoothukudi.

2.It is a case of accident, which took place on 24.03.2006 at about 07.25 p.m. when the claimant Rajesh Muthukumar was riding the Yamaka motorcycle, bearing Registration No.TN-69-F-5102, near



Railway Bridge in the Thoothukudi - Madurai Bye pass road, from north to south at the extreme left side of the road. When he was near Railway Bridge, the driver of an Ambassador Car, bearing Registration No.TN-U-0356, came in the opposite direction, in a rash and negligent manner at high speed and dashed against the two wheeler. As a result of which, the said Rajesh Muthukumar fell down and sustained multiple injuries including fatal head injury and was immediately taken to the Arulraj Hospital and further referred to Apollo Hospital, Madurai for better treatment and was treated as inpatient. But he died due to his injuries.

3.The claimants have filed a petition in M.C.O.P.No.74 of 2007 on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Thoothukudi, seeking compensation of Rs.25,00,000/-.

4.Before the Tribunal, on the side of the claimants, two witnesses were examined as P.Ws.1 & 2 and marked ten documents as Exs.P.1 to P.10. On the side of the respondents, one witness was examined as R.W.1 and one document was marked as Ex.R1.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondents and also on appreciating the evidences on record, held that the accident was occurred due to the negligent act of the driver of the Ambassador Car, bearing Registration No.TN-U-0356 and directed the appellant herein to pay compensation of Rs.5,38,000/-. Aggrieved over the judgment passed by the Tribunal, the appellant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Heard Mr.J.Milton, learned counsel for the appellant and Mr.T.Selvakumar, learned counsel for R1 to R4. No representation on behalf of the sixth respondent.

7.The learned counsel appearing for the appellant/Insurance Company contended that in F.I.R., the offending vehicle is not mentioned and after five months, the vehicle was produced before the Motor Vehicle Inspector and the Motor Vehicle Inspector had inspected the vehicle, but there was no documents filed either by the claimants or by the owner to prove that the vehicle was transferred to one Suresh. Further, charge sheet was filed against the driver of the Car. But the Tribunal had wrongly fixed the entire responsibility for the accident on the part of the driver of the appellant/Insurance Company

8.On perusal Motor Vehicle Report, which was marked as Ex.P3, clearly shows that there was damaged in the front side of the Car. Further at the time of accident, there is valid insurance policy is not denied by the insurance company. Since charge sheet was filed against the driver of the Ambassador Car bearing Registration No.TN-U-0356, the evidence of eye witness P.W.2 and the driver of



the Ambassador Car was also not examined, the appellant's Car driver only was responsible for the accident. So in all aspect, the Tribunal has rightly fixed the negligent on the driver of the Ambassador Car.

9. Considering all the materials on record in entirety, this court is of the view that there is no error to interfere with the award of the Tribunal.

10. In the result, the Civil Miscellaneous Appeal is dismissed by confirming the order and decree, dated 02.03.2011 passed in M.C.O.P.No.74 of 2007 on the file of the Motor Accidents Claims Tribunal / Principal District Judge, Thoothukudi.

11. It is submitted by the counsel for the appellant/Insurance Company Limited that they have already deposited the entire award amount with accrued interest. Insofar as major claimants are concerned, the claimants are entitled to withdraw the same as per the ratio of apportionment made by the Tribunal, after following due process of law. Insofar as minor claimants are concerned, their share of compensation amount, as apportioned by the Tribunal, is ordered to be deposited in any one of the nationalized bank, in a Fixed Deposit, initially for a period of three years, renewable thereafter, until they attain majority, and the first respondent herein is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

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/
Principal District Judge,
Thoothukudi.



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

WEB COPY

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-2062[F] dated
21/01/2022)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-1976[F] dated
21/01/2022)

C.M.A. (MD)No.1360 of 2011

and

M.P (MD)No.1 of 2011

20.01.2022

svs (CO)

TR(08.03.2022) 4P 6C