



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.494 of 2021

WEB COPY

Parvadhavarthini

... Appellant/Claimant

Vs.

1.Balaji

2.United India Insurance Company Limited,
Branch Office, Kamaraj Street,
Cauvery Nagar, Kulithalai,
Karur District.

...Respondents/Respondents

(R1 set exparte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set-aside the portion of judgment and decretal order made in M.C.O.P.No.444 of 2019, dated 07.07.2020 by the Motor Accident Claims Tribunal (Subordinate Judge), Kulithalai, which fixed and allocated partial liability of Rs.15,00,000/- to the first respondent and fix the entire compensation to the second respondent Insurance Company.

For Appellant :Mr.S.Deenadhayalan

For R2 :Mr.I.Robert Chandrakumar

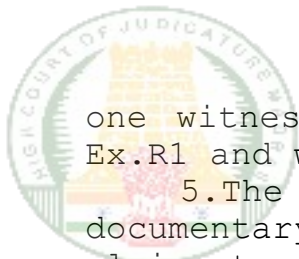
JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment and decree in M.C.O.P.No.444 of 2019, dated 07.07.2020 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Kulithalai,

2.It is a case of fatal accident, which took place on 03.05.2019 at about 04.00 a.m. while the deceased one Sushanth was travelling in a Maruti Ertiga Car, bearing Registration No.TN-47-AJ-7266 belonging to the first respondent from Chennai to Salem, at that time, the driver of the first respondent's car, who drove the vehicle in a rash and negligent manner, dashed against a stone, which situates on the left side of the road. As a result of which, the deceased sustained multiple injuries all over his body and he died on the spot.

3.The claimant has filed a petition in M.C.O.P.No.444 of 2019 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Kulithalai, seeking compensation of Rs.70,00,000/-.

4.Before the Tribunal, on the side of the claimant, four witnesses were examined as P.W.1 to P.W.4 and marked eleven documents as Exs.P.1 to P.11. On the side of the second respondent,



one witness was examined as R.W.1 and one document was marked as Ex.R1 and witness document were marked as Ex.X1 and Ex.X2.

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 occurred due to the negligent act of the driver of the first respondent and awarded compensation amount of Rs.59,61,161/-. However, the second respondent was directed to pay a sum of Rs.44,61,000/- only and the reaming amount of Rs.15,00,000/- will have to be paid by the appellant itself because he is responsible for the accident. Aggrieved over the judgment passed by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Heard Mr.S.Deenadhayalan, learned counsel appearing for the appellant and Mr.I.Robert Chandrakumar, learned counsel appearing for the second respondent and perused the materials available on record.

7.The learned counsel appearing for the appellant contended that the first respondent is the father of the deceased and owner of the offending vehicle. But the Tribunal wrongly fixed liability on the part of the first respondent and awarded Rs.59,61,000/-, in which Rs.15,00,000/- is to be payable by the first respondent is highly erroneous and legally unsustainable.

8.A perusal of records show that the Tribunal fixed liability on the first respondent since the first respondent is the owner of the offending vehicle. But the first respondent has not filed any appeal against the said findings of the Tribunal. The appellant/claimant did not file an appeal for the amount allotted to the first respondent. Instead, the appellant/claimant filed this appeal to fix the entire liability on the second respondent. Therefore, this Court is of the view that, the appeal is not maintainable.

9.In the result, the Civil Miscellaneous Appeal stands dismissed by confirming the portion of the judgment and decree made in MCOP.No.444 of 2019, dated 07.07.2020, by the Motor Accident Claims Tribunal (Subordinate Judge), Kulithalai, which fixed and allocated partial liability of Rs.15,00,000/- to the first respondent. No costs.

Sd/-

Assistant Registrar (CS.II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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 (Subordinate Judge),
Kulithalai,

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

+1 cc to Mr.I.ROBERT CHANDRAKUMAR,Advocate, SR.No.4662 dt.08/02/2022

**C.M.A. (MD) No.494 of 2021
04.02.2022**

MK(21.03.2022) 3P 5C