



C.M.A. No. 2537 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A. No. 2537 of 2013

The Manager

M/s. Bajaj Alliance General Insurance Co. Ltd.,

No.25/26, Prince Towers, 5th Floor,

College Road, Nungambakkam,

Chennai - 600 006.

... Appellant

Vs.

1. R. Vijayalakshmi

2. Subba (Minor)

3. Josephine Jaya

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 15.06.2011 made in M.C.O.P. No. 532 of 2003, on the file of the Motor Accident Claims Tribunal, Additional Subordinate Court, Chengalpattu.

For Appellant : Mr. M. B. Gopalan

For RR 1 and 2 : Mr. N. Mahendrababu

For R3 : No appearance



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JUDGMENT

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This Civil Miscellaneous Appeal is filed by the Insurance Company against the Award dated 15.06.2011 in M.C.O.P. No. 532 of 2003 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Court, Chengalpattu.

2. For the sake of convenience, the parties are referred herein according to their litigative status and ranking before the Tribunal.

3. The first petitioner is the wife and the second petitioner is the minor daughter of the deceased namely Ramadoss. The case of the petitioners/claimants is that on 16.04.2003, the deceased viz., Ramadoss was riding his Hero Honda two-wheeler bearing Registration No. TN-21-R-7710 from Tambaram to Meenambakkam on G.S.T. road, when he reached near Santhi Petrol Bunk, a car bearing Registration No. TN-22-P-6766, came behind him in rash and negligent manner and hit on the two-wheeler of the deceased, which resulted in causing injuries to him. Due to injuries sustained, he was admitted in to the hospital, where he died. Hence, the



dependants of the deceased filed claim petition claiming compensation for
Rs.8,00,000/-.

4. The first respondent is the owner of the car and has not contested the claim and was remained ex-parte before Tribunal. The second respondent is the insurer of the car has contested the claim and contended that the driver of the car, has driven the vehicle with due care and caution but the driver of the two-wheeler has negligently drove the same and invited the accident. Hence, the driver of the car is not responsible for the accident and the claim made under various heads are also on the higher side, hence prays to dismiss the claim.

5. Before the Tribunal, on the side of claimants, P.W.1 and P.W.2 were examined and Exs.P1 to P6 were marked, on the side of the respondents R.W.1 and R.W.2 were examined and Exs.R1 and R4 were marked.

6. Based on the evidence placed on record, in Point No.1, the Tribunal has held that the driver of the car is responsible for the accident. In



Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.6,57,890/- as compensation payable by the respondents.

7. Aggrieved over the finding of the fact that the driver of the car is responsible for the accident, this appeal has been filed by the Insurance Company to set aside the Award passed by the Tribunal.

8. The learned counsel for the Insurance Company has submitted that the the vehicle involved in the alleged accident that took place on 16.04.2003, at 21.30 hours, near Santhi Petrol Bunk between Tambaram and Meenambakkan on GST road is a White Qualis Car and however, the vehicle implicated herein is a Santro car bearing Registration No. TN-22-P-6766. She also further stated that the owner of the Santro car also deposed that her vehicle was not involved in the accident. The learned counsel also made submission regarding the witnesses *viz.*, R.W.1 and R.W.2, to disprove the evidence of the claimant regarding the manner in which, the accident had taken place. The evidence of the respondents are not properly examined by the Tribunal and the car has been falsely included in this case as offending vehicle and prays to set aside the Award.



WEB COPY 9. The counsel for the claimant submitted that based on the evidence placed on the record and after perusing the evidence of the offending vehicle, the Tribunal has rightly held that the driver of the car is responsible for the occurrence and also prays to confirm the Award.

10. Based on the above facts, this Court by order dated 21.02.2020 had directed the jurisdiction police to conduct re-investigation in Crime No. 61 of 2003, U/s 279, 337 IPC@ 279, 304(A) IPC, as to verify whether Hyundai Santro Car bearing Registration No. TN-22-P-6766 is falsely implicated. The present Inspector of Police, Meenambakkam Police Station investigated and filed a Report before this Court stating that there was no false implication of the vehicle, only the colour and model of the car was wrongly mentioned as white colour Qualis car instead of silver colour Santro car and he concluded his investigation that there was no false implication of the vehicle. Without wholly relying on the report of the investigation by the Inspector of Police, Meenambakkam, this Court has considered the evidence which was placed on the record before the Tribunal for the purpose of deciding the issue of negligent driving of the driver of the



car bearing Registration No. TN-22-P-6766.

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11. The claimant came to know about the accident at about 21.30 hours after the occurrence and she lodged the complaint next day i.e., 17.04.2003 at 10.00 AM. Based on the statement given by the deceased, the criminal case was registered against the driver of the car. R.W.2 has also stated that, he has examined the owner of the vehicle and after examining other witnesses, Final Report was filed against the driver of the car.

12. Admittedly, the claimants have not examined any witnesses, before the Tribunal. However, the driver of the car namely, Ramesh appeared before the Criminal Court and pleaded guilty. Before the Tribunal, driver of the car has not appeared. However, the fact that driver of the car admitted the tortious act committed by him. This admission is made before the Criminal Court and he was convicted. This fact corroborates the case of the claimants and there is no other witness deposed contrary to the case of the claimants touching the negligence aspect.

13. This Court in the case of *Branch Manager, National Insurance Co. Ltd vs. Krishnammal and others* [2007 (5) MLJ 1038 :



MANU/TN/6294/2006], while discussing the evidentiary value of admission of guilt made in criminal proceedings has held in paragraph 13, which reads as follows:

“It is a well-settled principle that the judgment of the Criminal Court, except for the proof of the fact that there had been a criminal trial which ended in conviction or acquittal, is not either admissible or relevant in a civil case or a motor accident claims case. To the above said general principle, there is one exception that the said judgment will become relevant and admissible in case of conviction on the plea of guilty, not as a verdict of a Criminal Court but as an admission made in the former case. No doubt admissions are not conclusive proofs but they are the best evidence of the facts admitted. In such cases, the party against whom the admission is sought to be used as a piece of evidence can disprove the facts admitted by adducing rebuttal evidence. In the instant case, no rebuttal evidence, worthy of taking into consideration, has been brought forth eitherly the claimants or by the owner of the vehicle (sixth respondent herein/first respondent in M.C.O.P.). As such, the said admission gains more evidentiary value.”

14. As discussed supra, in this case, no witnesses were examined to prove the fact that driver of the car is not involved in accident nor the deceased herein is responsible for the accident. The evidence of P.W.1 is contrary to the evidence of R.W.2 and the Criminal Court records supports the case of the claimant. In the absence of any rebuttal evidence, the evidence of claimant shall be acceptable and they are entitled to get compensation as claimed by them. Hence, the Tribunal has rightly held that



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car driver herein is responsible for the accident and rightly awarded compensation in favour of the claimants. Accordingly, this Court finds no merits in the contention of Insurance Company and this appeal is liable to be dismissed.

15. In the result, this Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. The Award and Decree passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.532 of 2003, dated 15.06.2011, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Chengalpattu is hereby confirmed. The Appellant-Insurance Company is directed to deposit the compensation amount awarded by the Tribunal along with interest and costs within a period of six weeks from the date of receipt of a copy of this Judgment to the credit of M.C.O.P.No.532 of 2003. On such deposit the claimants are permitted to withdraw the compensation amount awarded by the Tribunal along with interest and costs less the amount already withdrawn, if any. There shall be no order as to costs.

23.08.2023

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Index:Yes/No

Speaking Order:Yes/No



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Neutral Citation Case: Yes/No

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To:

1. Motor Accident Claims Tribunal,
(Additional Subordinate Court),
Chengalpattu.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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