



C.M.A. No. 1219 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1219 of 2021
and C.M.P. No.6175 of 2021

The United India Insurance Co. Ltd.,
PPS Complex, Mettur Main Road,
Omalur Post, Salem District.

... Appellant / 2nd Respondent

Vs.

1. Chinnakodan @ Chinnathambi
2. Marakkal
3. Padma
4. Minor Ranjith
5. Minor Vinoth

... Respondents / Petitioners

6. Mathalaimuthu

... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 23.08.2018 passed in M.C.O.P. No.168 of 2018 (Old M.C.O.P. No.34 of 2009) on the file of the Sub Judge, Motor Accidents Claims Tribunal, Omalur, Salem.

For Appellants	:	Mr. C. Paranthaman
For RR 1 to 5	:	Mr. R. Subramanian
For R6	:	No Appearance



JUDGMENT

WEB COPY

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and Decree passed in M.C.O.P. No.168 of 2018 (Old M.C.O.P. No.34 of 2009), dated 23.08.2018 on the file of the Sub Judge, Motor Accidents Claims Tribunal, Omalur, Salem.

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

3. The case of the claimant is that on 29.08.2007 at about 04:30 PM, the deceased namely Nallathambi was riding a bajaj M80 two wheeler bearing Registration No. TN-25-A-2937 on the Dharmapuri to Salem main road, while he reached near Omalur Police Station, at that time, a tractor belongs to the first respondent bearing Registration No. TN-55-J-4734 came in the opposite direction in rash and negligent manner and dashed against the two wheeler of the deceased causing grievous injuries. The deceased succumbed to injuries on the next day. The deceased was working in a power loom and was earning Rs.5,000/- per month. For the loss of deceased Nallathambi, the claimants have filed this claim petition seeking



compensation for a sum of Rs.5,00,000/-.

WEB COPY

4. The first respondent, who is the owner of the Tractor bearing Registration No. TN-55-J-4734 filed a counter and disputed the negligent act attributed against the driver of the tractor but he has not come forward to adduce any evidence by cross examining the witnesses. The second respondent – insurance company of the tractor filed a counter and contended that the tractor was not involved in the accident and it was falsely implicated in the case. The insurance company has relied on the F.I.R., which shows that the deceased was hit by a unknown lorry and also contended that the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs. P.1 to P.11 were marked and on the side of the respondent, R.W.1 and R.W.2 were examined and Exs.R.1 to R.8 were marked.

6. Based on the evidence placed on record, the Tribunal in point



No.1, has held that the deceased was died due to the tortuous act committed by the driver of the tractor bearing Registration No.TN-55-J-4734, hence the respondent are liable to pay the compensation to the claimants. In point No.2, the Tribunal has quantified and granted compensation for a sum of Rs.7,50,400/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the liability fixed on the second respondent – insurance company, this appeal has been filed by the insurance company.

8. The learned counsel appearing for the insurance company has submitted that the first respondent tractor has been falsely implicated and contended that their vehicle was not involved in the accident. The learned counsel submitted that admittedly, in the F.I.R., which is marked as Ex.P.1, the involvement of tractor was not mentioned and it is stated that an unknown lorry has dashed against the two wheeler of the deceased. There is also evidence placed on record that the tractor has been falsely implicated in this case. The final report in criminal case also filed stating that the allegation of involvement of tractor is 'mistake of fact', hence prays to



dismiss the award of the Tribunal.

WEB COPY

9. Per contra, the learned counsel appearing for the claimants has submitted that the claimants have examined the eye witness to the occurrence as P.W.2 and he has categorically narrated the manner in which the accident has taken place before the Tribunal and the same has been accepted. Without adducing any contra evidence to dis-prove the evidence of P.W.2, the insurance company is not entitled to contend that their tractor is not involved in the accident, hence prays to dismiss the appeal.

10. Heard submissions made on both sides and perused the materials placed on record:

11. Admittedly, in this case, the claimants have examined P.W.2, who is the eye witness to the occurrence and according to him, he came to Omalur for his personal work on 29.08.2007 at about 04:30 PM and was standing near the Dharmapuri to Salem main road. He had seen the deceased riding a two wheeler towards Salem, at that time, a Tractor bearing Registration No.TN-55-J-4734 came in the opposite direction and hit on the two wheeler of the deceased, which resulted in causing severe injuries to the



deceased and he has assisted the deceased. After two days, he was examined by the police regarding the occurrence. In the cross examination, he has re-iterated the occurrence.

12. In Ex.P.1 - F.I.R., lodged by one Arjunan states that an unknown lorry, hit the deceased and he sustained grievous injuries, but Arjunan was not the eye witness to the occurrence. He reached the spot and came to know that an unknown vehicle hit the deceased. This complaint has been investigated by the Police and they have filed a final report, Ex.P.6, stating the involvement of the Driver of the tractor bearing Registration No.TN-55-J-4734 i.e., the tractor of the first respondent. The evidence of eye witness P.W.2 is corroborated by the other materials placed on record by the claimants.

13. The respondent – insurance company has examined their Field Officer and other Officials from their office to prove their case, that the tractor has been falsely implicated in this case, but, these witnesses are not the eye witness to the occurrence. They have not produced any evidence to substantiate the fact of non involvement of their vehicle in the occurrence.



C.M.A. No. 1219 of 2021

The Tribunal has accepted the evidence of P.W.2 as more probable and held that the driver of the tractor bearing Registration No.TN-55-J-4734 is the tortfeasor and accordingly, held that the respondents are liable to pay the compensation.

14. Evidence placed on record shows that, the insurance company has not chosen to examine the driver of the tractor or any other eye-witness of the occurrence. The evidence of P.W.2 has been corroborated by the other evidences, more particularly the fact that case was investigated by the Police and the final report against the driver of the tractor, was appreciated by the Tribunal. Hence, this Court finds no infirmity in the finding of the Tribunal and there is no merit in this appeal filed by the Insurance company.

15. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently connected civil miscellaneous petition stands closed. No cost.

24.11.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



C.M.A. No. 1219 of 2021

WEB COPY

To:

1. The Sub Judge,
Motor Accident Claims Tribunal,
Omalur, Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



WEB COPY



C.M.A. No. 1219 of 2021

K. RAJASEKAR, J.

stn

C.M.A. No. 1219 of 2021

24.11.2023