



C.M.A(MD)No.1057 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.09.2023

Pronounced On : 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1057 of 2012

and

M.P(MD)No.1 of 2012

M/s.National Insurance Co.Ltd.,
through its Branch Manager,
No.35, North Usman Road,
T.Nagar, Chennai.

: Appellant /2nd Respondent

Vs.

1.S.Muthukali

2.S.Jothi Ramalingam

3.Ponmoli

4.Theivendran

5.Ramakrishnan @ Ramar

: Respondents/Petitioners

6.Navazkani

: Respondent/1st Respondent

7.D.Susila

: Respondent/3rd Respondent



C.M.A(MD)No.1057 of 2012

WEB COPY

8.The New India Assurance Co.Ltd.,
through its Branch Manager,
No.375, Anna Salai, 2nd Floor,
Saidapet, Chennai.

: Respondent/4th Respondent

(R3 and R4 are declared as majors and R1
guardianship discharged vide order dated
19.06.2014 made in M.P.(MD)No.1 of 2014
in CMA(MD)No.1057 of 2012)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, against the judgment and decree dated 15.03.2012
passed in M.C.O.P.No.1596 of 2006 on the file of the I Additional
District Judge/MACT, Madurai.

For Appellant : Mr.P.Malini

For Respondents : Mr.A.Ilango, for R8.

: No Appearance for R1 to R5
and R6 and R7

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award made
in M.C.O.P.No.1596 of 2006 on the file of the I Additional District
Judge/MACT, Madurai.



C.M.A(MD)No.1057 of 2012

WEB COPY

2. For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.

3. The appellant/insurer, who was made liable to pay compensation of Rs.17,00,000/- with interest at 7.5% per annum to the respondents 1 to 5/claimants 1 to 5 for the death of Sivalingam, consequent to an accident occurred on 28.01.2006, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

4. The appellant/insurer, though raised a ground in the appeal memorandum challenging the quantum of compensation awarded at by the Tribunal, the learned counsel for the appellant would submit that they are only challenging the liability mulcted on it and not the quantum of compensation.

5. The case of the claimants is that on 28.01.2006 at about 02.30 pm., the accident was occurred while the tempo vehicle bearing Registration No.TN-10-L-3921, dashed against one Maruthi Car bearing Registration No.TN 37 Y 4204 as the tempo vehicle was being driven rashly and negligently by its driver north to south on Trichy to Madurai



C.M.A(MD)No.1057 of 2012

main road near Karunaipuri Manavar Illam in Siruganur and as the Maruthi Car was also being driven by its driver from south to north on the above described road and place rashly and negligently; that both the vehicles colluded against each other, causing the death of deceased and one another in the tempo van and two persons travelling in the Maruthi Car were also injured in the accident and that the accident was occurred only due to the rash and negligent driving of both the drivers.

6. The case of the second respondent is that the driver of the tempo van bearing Registration No.TN-10-L-3921, was driving the vehicle slowly at moderate speed keeping to his left and at the place of occurrence, Maruthi Car bearing Registration No.TN-37-Y-4204 drove in a rash and negligent manner from south to north at the terrific speed and dashed against the tempo van and caused the accident; that since the tempo van driver sustained injuries and was taken to the hospital, FIR was lodged against the driver of tempo van; that the accident had taken place on the eastern side of the road; that the Maruthi Car after dashing against the van, lost its control and went out of the road and was lying apart from the eastern side and that the Maruthi Car driver was alone responsible for the accident.



C.M.A(MD)No.1057 of 2012

WEB COPY

7. The defence of the fourth respondent is that the driver of Maruti vehicle bearing Registration No.TN-37-Y-4204 had driven the vehicle slowly and proceeding from north to south on the extreme left side of the road and at that time, the first respondent's vehicle's driver came in a rash and negligent manner and suddenly came to the wrong side of the road and dashed against the third respondent's vehicle and that the accident was occurred only due to the rash and negligent driving of the first respondent's driver.

8. During trial, the claimants have examined the first claimant Muthukali as P.W.1 and two other witnesses Rajendran and M.Muniyasamy as P.W.2 and P.W.3 respectively and exhibited 10 documents as Ex.P.1 to Ex.P.10. On the side of the respondents two witnesses were examined as R.W.1 and R.W.2 and two documents were exhibited as Ex.R.1 to Ex.R.2.

9. The learned trial Judge, upon considering the evidence both oral and documentary, has passed the impugned award, dated 15.03.2012, holding that the first respondent's tempo van driver alone was



C.M.A(MD)No.1057 of 2012

WEB COPY

responsible for the accident and on that basis mulcted liability on the second respondent. Aggrieved by the impugned award mulcting liability, the second respondent/insurer has preferred the present appeal.

10. Admittedly, the 1st respondent/1st claimant is the wife; 2nd and 4th respondents/2nd and 4th claimants are the sons; 3rd respondent/3rd claimant is the daughter and 5th respondent/5th claimant is the father of the deceased Sivalingam.

11. It is not in dispute that on the basis of the complaint lodged by one Rajendran, FIR came to be registered in Crime No.53 of 2006 on 28.01.2006 for the offence under Sections 279, 337, 338 and 304(A) I.P.C against the tempo van driver Udayakumar. The complainant, who lodged the complaint has been examined as P.W.2 as occurrence witness. According to P.W.2, he alone had booked the van to travel to Chennai and he was travelling in the said van along with others from Chennai. P.W.2 in his chief examination itself would say that the van driver had driven the vehicle with speed and in cross examination, he would say that he had warned the driver not to drive the vehicle rashly, even then, he drove the vehicle in the centre portion of road and that the Maruti car's



C.M.A(MD)No.1057 of 2012

WEB COPY

driver drove the vehicle only on the right side and not on the middle of the road. P.W.2 would categorically say that the van driver had driven the vehicle to the middle of the road and dashed against the maruti car.

12. No doubt, the learned counsel for the appellant/insurer has relied on Ex.P.2/rough sketch to show that the accident was occurred not in the way as projected by the claimants, but would go to show the mode of accident as stated by the second respondent.

13. It is pertinent to note that in Ex.P.2/rough sketch prepared by the jurisdictional police during investigation that the accident was shown to have occurred in the middle of Trichy to Chennai south to north road. As rightly observed by the Tribunal, though the FIR was registered at 05.00 pm., Police went to the occurrence place and prepared the rough sketch after long time, since the accident and that too with the help of tyre mark and glass pieces, they used to note the scene of occurrence.

14. The second and fourth respondents/insurers have examined their investigators as R.W.1 and R.W.2 respectively. Admittedly, the investigators are not the occurrence witnesses and as rightly observed by



C.M.A(MD)No.1057 of 2012

the Tribunal, no weightage can be given to the report filed by R.W1 and R.W.2.

15. Admittedly, the second and fourth respondents have not chosen to examine their drivers to prove the mode of accident. As already pointed out, FIR was lodged against the tempo van driver and P.W.1 would specifically depose that the rash and negligent driving of the van driver was responsible for the accident.

16. In the absence of any contra evidence and taking note of the evidence of P.W.1 and other records, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the tempo van driver cannot be found fault with and this Court is in entire agreement with the finding recorded by the Tribunal.

17. It is not in dispute that the tempo van bearing Registration No.TN-10-L-3921 was owned by the first respondent and the same was insured with the second respondent. Hence, the Tribunal has rightly mulcted liability on the second respondent. As already pointed out, the appellant/second respondent has not disputed the quantum of



C.M.A(MD)No.1057 of 2012

WEB COPY

compensation. Consequently, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

18. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

22.09.2023

NCC : Yes/No
Index : Yes/ No
Internet : Yes/ No
das

To

1.The I Additional District Judge/MACT, Madurai.

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



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C.M.A(MD)No.1057 of 2012

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.1057 of 2012
and
M.P(MD)No.1 of 2012

22.09.2023