



C.M.A.(MD).No.1190 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISHKUMAR

C.M.A.(MD).No.1190 of 2021

Chola M/s. General Insurance Company Limited,
New Milliniam Complex,
First Floor,
Dindigul High Road,
No.3, 4, Kalavasal, Madurai
represented by its Branch Manager.

... Appellant

Vs.

1.Annalakshmi
2.Minor Mathu
3.Minor Bala
(The minor respondents 2 and 3
represented through their mother,
the first respondent herein)
Mottaiyandi (died)
(Amended as per order
in I.A.No.248/2018, dated 14.11.2018)
4.Amirtharaj

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.12 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Theni, dated 22.08.2019.



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For Appellant : Mrs.K.R.Shivashankari
For Respondents : No appearance

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal, Additional District Judge, Theni in M.C.O.P.No.12 of 2018, dated 22.08.2019, the present appeal has been filed by the Insurance Company.

2. The main contention of the appellant/Insurance Company is that the second respondent vehicle has been falsely implicated only in order to claim the compensation. It is the further contention that the deceased himself fell down from his own auto and sustained head injury. After succumbed to injury, the second respondent auto has been set up only in order to claim the compensation. Hence, the present appeal has been filed.

3. No response from the respondents, despite several opportunities have been given to the respondents.



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4. When the matter came up for hearing on 16.03.2023, 09.03.2023 and 08.03.2023, the matter has been extensively argued. At the relevant point of time, the counsel for the respondents also very much present. Thereafter, the counsel for the respondents is continuously absent for the reasons best known to him.

5. Be that as it may, the brief facts leading to the filing of this appeal is as follows:

On 16.05.2016, at about 1.30 p.m., when the deceased Muniyandi was driving his auto bearing Registration No.TN 60 K 6937, from South to North direction on Theni to Periyakulam Main Road, he lost his control over the auto and he was thrown away on the road. At that time, the driver of another auto bearing Registration No.TN 67 AM 9996 belonged to the first respondent drove the auto in a rash and negligent manner on the back side and hit against the deceased Muniyandi and caused serious injuries to him. The deceased Muniyandi died on the spot itself. A criminal case was registered against the driver of the auto bearing Registration No.TN 67 AM 9996 belonged to the first respondent



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in Crime No.489 of 2016 under Section 304(A) of I.P.C., on the file of Theni Taluk Police Station. Hence, the petitioners have claimed a total compensation of Rs.10,00,000/- from the respondents 1 and 2. The first petitioner is the wife and the petitioners 2 and 3 are the daughter and son and the fourth petitioner is the father of the deceased Muniyandi. It is the case of the second respondent/Insurance Company that the deceased himself was driven the auto in a rash and negligent manner and without following the Motor Vehicles Rules of the road and due to the heavy speed, he was not able to control the auto and he himself fell down on the road with auto and due to the capsize of auto, the accident was occurred and the deceased got fatal injuries.

6. Before the Tribunal, on the side of the petitioners, P.Ws.1 and 2 were examined and Exs.P1 to P4 were marked and on the side of the respondents, R.Ws.1 to 3 were examined and Exs.R1 and R2 were marked and Ex.X1 also marked.

7. The Tribunal, on the basis of the evidence of P.Ws.1 and 2, come to the conclusion that only the first respondent's driver drove the auto in



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a rash and negligent manner and caused the accident, which resulted the death of the deceased and awarded compensation.

8. The learned counsel appearing for the appellant/Insurance Company would contend that the Tribunal has not appreciated the entire evidence. In fact, the evidence of the Inspector, who investigated the matter, clearly shows that the deceased fell down from his own auto and due to capsize of auto, the accident was occurred. He would further contend that the medical evidence clearly shows that the deceased died only due to the head injury, whereas the case of the claimants that the first respondent driver run over on the neck of the deceased and absolutely there is no injuries whatsoever on the neck. Therefore, it is the contention of the learned counsel for the appellant that the first respondent auto has been fixed only for claiming compensation.

9. It is relevant to note that the first information itself was lodged by the brother of the deceased only at 6.00 p.m., though the accident took place on the same day at 1.30 p.m. The information provided by the brother of the deceased indicate that the deceased fell down from his own



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auto, at that time, the auto belonged to the first respondent came from the behind and run over the neck of the deceased. As a result, he succumbed to injuries. It is also relevant to note that the investigation conducted by the police in this regard reveal that the deceased auto itself capsized and the deceased fell down from the auto and succumbed to injuries. On perusal of the medical evidence clearly indicate that the deceased died only due to the head injuries sustained by him. If really the auto came in a rash and negligent manner and run over on the neck of the deceased, there should have been at least some fracture on the neck or serious injuries on the neck, which is found missing in the postmortem certificate. Further, the evidence of P.Ws.1 and 2, wife and brother of the deceased itself clearly shows that the deceased himself fell down from his own auto, at that time, the first respondent auto came from behind and run over on the neck of the deceased.

10. As discussed above, the accident took place at 1.30 p.m., whereas the F.I.R., came to be filed after 6.00 p.m. and there was no reason as to why such huge delay, which is against the normal human conduct of the ordinary person. If really P.W.2 was present at the time of



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accident as alleged in the evidence, there was no reason as to why he has not given information to the police immediately. His evidence is totally contrary to the medical evidence, particularly the postmortem report, which does not disclose any injury on the neck of the deceased to substantiate the version. The evidence of R.W.1 clearly indicate that the deceased died due to fall from his own auto. This fact clearly shows that the first respondent vehicle has been implicated only in order to claim compensation from the insurance Company.

11. The Tribunal awarded compensation only on the evidence of P.Ws.1 and 2 and without considering the evidence of R.W.1 and postmortem certificate, which is not proper. Admittedly, the deceased did not have any driving licence. Hence, the total compensation awarded by the Tribunal necessarily has to be set aside. Accordingly, the award passed by the Motor Accident Claims Tribunal, Additional District Judge, Theni in M.C.O.P.No.12 of 2018, dated 22.08.2019 is set aside and the claimants are entitled to a sum of Rs.50,000/- (Rupees Fifty Thousand only) under no fault liability and the same has to be paid by the District Collector, Theni.



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12. In the result, the Civil Miscellaneous Appeal is allowed. No
costs.

23.03.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

akv

To

1.The Motor Accident Claims Tribunal,
Additional District Judge,
Theni.

2.The District Collector,
Theni.



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N.SATHISHKUMAR, J.

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