



C.M.A.(MD).No.656 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.656 of 2022

and

C.M.P.(MD).No.5659 of 2022

P.Rajesh

... Appellant

Vs.

1.S.Poorani

2.M.Bhavani

3.National India Insurance Company Limited,
through its Branch No.1's Manager
having Office at No.175A,
Great Cotton Road,
Thoothukudi Town, Thoothukudi Taluk,
Thoothukudi District.

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.08.2019 passed in M.C.O.P.No.30 of 2017 on the file of the Motor Accident Claims Tribunal, Principal District Court, Thoothukudi.

For Appellant : Mr.J.Maria Rubit

For R1 & R2 : Mr.N.S.Ramakrishna Dass

For R3 : Mr.J.S.Murali



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J U D G M E N T

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This appeal has been filed challenging the award of the Tribunal, directing the Insurance Company to pay the award amount and recover the same from the appellant.

2. The brief facts leading to the filing of this appeal are as follows:

On 22.07.2015, the deceased after finishing his mason work, sleeping in the sand, which was dumped nearby vacant site of Arunachalam. At that time, the driver of the lorry bearing Registration No.TN 69 AD 4412 belonging to the first respondent took the lorry in a careless manner in reverse, without the help of cleaner and dashed against the deceased. As a result, the lorry ran over the right leg and lower part of the abdomen of the deceased and sustained grievous injuries all over the body. Immediately, he was taken to Government Medical College Hospital, Tuticorin and admitted as in-patient. He was treated as in-patient from 22.07.2015 to 31.07.2015 and succumbed to injuries on 16.08.2015. The deceased was aged about 21 years. The contention of the second respondent/Insurance Company is that the driver of the lorry did not possess valid driving licence and the lorry was driven by one Ramesh Kumar, S/o.Solayappan, Kulathoor, at the time of accident. Since there was no valid driving licence, one P.Sudalai, S/o.Pulamadan has been substituted as a driver.



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Hence, they disputed the liability.

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3. On the side of the petitioners, P.Ws.1 and 2 were examined and Exs.P1 to P12 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Ex.R1 marked.

4. The Tribunal, after considering the evidence, has found that only the driver of the lorry was negligent in reversing the lorry without the cleaner's help and awarded a sum of Rs.8,78,000/- on various heads to the claimants and directed the Insurance Company to pay the said amount and recover the same from the appellant herein. Challenging the said finding, the present appeal has been filed.

5. The main contention of the learned counsel for the appellant before this Court is that due to fear, the lorry driver has given a wrong identity at the time of filing the F.I.R. Thereafter, the investigation found that only Sudalai drove the vehicle. Therefore, the contention is that he had a valid driving licence and even the M.V. Report discloses the same and the final report also against the said Sudalai. Therefore, he would submit that the finding of the Tribunal directing the Insurance Company to pay and recover the same has to



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be set aside.

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6. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

7. In the light of the above submissions, now the points for consideration in this appeal are (i) whether the Tribunal is right in directing the pay and recovery? (ii) whether the factum of substitution has been proved in the manner known to law?

8. It is not disputed about the accident and the death of the deceased. The lorry was owned by the appellant is also not disputed. On 22.07.2015, unfortunately the lorry was driven in reverse by its driver. As a result, the deceased succumbed to injuries in a hospital after few days. This fact also not disputed. The main contention of the Insurance Company is that the driver of the lorry did not have valid driving licence. It is relevant to note that initially the F.I.R. has been filed immediately after the accident. The name of the driver was shown as Ramesh Kumar, S/o.Solayappan, Kulathoor. The information has been furnished by one Thangarasu, S/o.Kabali, which resulted the filing of the F.I.R. It is relevant to note that the informant, who is also from the same



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locality. Therefore, giving false identity of the driver is highly improbable.

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9. Be that as it may, on the very next day, the statement from the witnesses have been recorded by the investigating officer and they have also confirmed the name of the driver as Ramesh Kumar. He did not possess valid driving licence. Then Sudalai come into picture on 30.07.2015, with the help of subsequent investigating officer. The investigating officer has investigated the matter till 30.07.2015 and proceeded against one Ramesh Kumar and the statements of the witnesses indicate the name of Ramesh Kumar. Suddenly, the investigating officer one Manthiramoorthy has conducted further investigation, then the name of Sudalai came into picture. These facts clearly indicate that only for the purpose to show that the driver has a valid driving licence, Sudalai name has been brought on record at a latter point of time. This Court has also summoned the C.D. file from the concerned investigating officer. On perusal of the C.D. file, this Court found that the statements have been recorded at an earliest point of time from the witnesses. In fact, the witnesses have implicated one Ramesh Kumar not Sudalai. Therefore, the contention of the appellant that Sudalai only drove the vehicle, who possessed the driving licence at a relevant point of time, cannot be countenanced. In fact, the records clearly reveal that Sudalai has been brought on record to show that the driver had a valid licence.



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10. In such a view of the mater, I do not find any merit in this appeal.

Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

14.06.2023

akv

To

- 1.The Motor Accident Claims Tribunal,
Principal District Court,
Thoothukudi.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR,J.

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