



C.M.A.(MD)No.59 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.08.2023

Pronounced on : 29.09.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.59 of 2018

and

C.M.P.(MD)No.892 of 2018

M/s.National Insurance Company Limited,
Guindy Division,
54, G.S.T. Road, Chennai 600 032
through its Branch Manager

... Appellant/
2nd Respondent

Vs.

M.Selvam (died)

1. S.Vijaya

2. S.Illango

3. S.Rajesh

... Respondents/
Petitioners

4. M/s.Candid Enterprises (P) Ltd.,
68/1-A, Trichy Main Road,
Melur, Madurai District
through its Director

... 4th Respondent/
1st Respondent

(R4 dismissed for default vide order dated 28.06.2018)



C.M.A. (MD) No. 59 of 2018

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 02.09.2014 made in M.C.O.P.No.2161 of 2002 on the file of the Motor Accident Claims Tribunal/IIIrd Additional District Judge (PCR), Madurai.

For Appellant : M/s.P.Malini

For R1 to R3 : Mr.S.M.Mohan Gandhi

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.2161 of 2002 dated 02.09.2014 on the file of the Motor Accident Claims Tribunal/III Additional District Court (PCR), Madurai.

2. The appellant/second respondent/insurer, who was made liable to pay compensation of Rs.2,67,000/- (Rupees Two Lakhs and Sixty Seven Thousand only) with interest at 7.5% per annum to the respondents 1 to 3/ claimants 2 to 4 for the death of Suresh @ Vadivel, consequent to an accident occurred on 15.08.1999, challenged the liability mulcted on it.

3. The case of the respondents 1 to 3/claimants is that on 15.08.1999 at about 09.45 p.m. in Melur to Madurai main road, near Sathesh Petrol



C.M.A.(MD)No.59 of 2018

Bunk at Othakadai, when the deceased Suresh @ Vadivel was riding his bicycle from Madurai – Othakadai on the extreme left side of the road, a tanker lorry bearing Registration No.TN-59-L-4195, which came from Madurai – Othakadai in a rash and negligent manner, dashed against the bicyclist from behind, that the bicyclist had suffered serious injuries and died on the spot itself and that the accident was occurred only due to the rash and negligent driving of the tanker lorry driver.

4. The defence of the appellant/insurer is that the tanker lorry bearing Registration No.TN-59-L-4195 was not at all involved in the accident, that the FIR was registered, as if, the deceased was hit by an unknown vehicle, that the fourth respondent/first respondent/owner of the lorry and the respondents 1 to 3/claimants colluded with each other and in order to get compensation have implicated the said vehicle, that the police authorities have not chosen to file any final report, that there was no entry for the postmortem conducted over the body of the deceased, that the fourth respondent/first respondent's driver did not possess valid licence to drive the tanker lorry and that therefore, the appellant/insurer is not liable for the claim.



C.M.A. (MD) No. 59 of 2018

WEB COPY

5. The appellant/insurer has also filed an additional counter statement reiterating the earlier plea that they are going to refer the matter to the CBI for further investigation as the accident was not occurred as alleged by the respondents 1 to 3/claimants and that therefore, the trial of the case should not be taken till the completion of the investigation.

6. During trial, the respondents 1 to 3/claimants have examined the third respondent/fourth claimant as P.W.1 and 3 other witnesses as P.W.2 to P.W.4 and exhibited 8 documents as Ex.P.1 to Ex.P.8. The appellant/insurer has examined 2 witnesses as R.W.1 and R.W.2 and exhibited three documents as Ex.R.1 to Ex.R.3.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award, by holding that the fourth respondent/first respondent's lorry was involved in the accident and the accident was occurred only due to the rash and negligent driving of the fourth respondent/first respondent's driver, mulcted liability on the appellant/insurer and directed them to pay compensation of Rs.2,67,000/- with



C.M.A. (MD) No. 59 of 2018

WEB COPY

interest and costs. Aggrieved by the impugned award, the insurer has come forward with the present appeal.

8. The learned counsel appearing for the appellant/insurer would submit that the Tribunal has misapplied its mind while holding liability on the appellant/insurer, that since the respondents 1 to 3/claimants' accepted case was fault liability principle under Section 166 of the Motor Vehicles Act, they are bound to prove the involvement of both the insured vehicle and the deceased, the avocation, earning and dependency, that the very reliance of Ex.P.1-FIR does not support the case of the respondents 1 to 3/claimants which is only to the effect that the alleged accident was caused by an unknown vehicle, that the witnesses P.W.1 to P.W.4 also do not either confirm or support their case, that the Tribunal should have directed the respondents 1 to 3/claimants to produce the documents of the criminal case records and for binding adjudication and should have absolved/exonerated the appellant/insurer from the proceedings and liability, that the Tribunal should have held that the insured alone is liable to pay compensation and thereby exonerating the appellant/insurer and that therefore, the award mulcting liability on the appellant/insurer is liable to be set aside.



C.M.A.(MD)No.59 of 2018

WEB COPY

9. The points that arises for consideration are :

- 1) *Whether the Tribunal erred in mulcting the entire liability on the appellant/insurer, despite showing that the fourth respondent/ first respondent's vehicle was not at all involved in the accident, as the FIR itself was registered against the driver of the unknown vehicle and the failure of the police to file any final report against the fourth respondent/first respondent's driver before the criminal Court and there was no evidence to show that postmortem was conducted on the body of the deceased?*
- 2) *Whether the impugned award dated 02.09.2014 is liable to be interfered with?*

10. Admittedly, on the basis of the complaint lodged by the grandfather of the deceased, FIR under Ex.P.1 came to be registered in Crime No.316 of 1999 for the offence under Section 304(A) IPC against the unknown driver.

11. It is the specific case of the appellant/insurer that the jurisdictional police, after registering the above FIR, has not chosen to file any final report, that there is absolutely no evidence to show that postmortem was conducted on the body of the deceased, that motor vehicle inspection was not conducted on the lorry allegedly involved in



C.M.A.(MD)No.59 of 2018

the accident and that the respondents 1 to 3/claimants have miserably failed to produce any evidence to show that the said vehicle was involved in the accident.

12. The respondents 1 to 3/claimants, in order to prove that the fourth respondent/first respondent's lorry was involved in the accident, have summoned and examined police official attached with Othakadai Police Station as P.W.4 and exhibited the copy of the FIR index (compared with original) under Ex.P.8. P.W.4, in his chief examination, would say that on 16.08.1999, the accused was arrested and the tanker lorry bearing Registration No.TN-59-L-4195 was sent to the Regional Transport Office (RTO), Madurai North for motor vehicle inspection and that since CD file was not available in their station, he was producing the original FIR index and after comparison, copy of the same was marked as Ex.P.8.

13. It is evident from Ex.P.8 that the FIR was shown to be registered on 15.08.1999 and contained further entries to the effect that the accused was arrested on 16.08.1999 and was released on bail and that the tanker lorry was sent to motor vehicle inspection. In Ex.P.8, they have also shown



C.M.A. (MD) No. 59 of 2018

the particulars of the accused as V.D.Maran, S/o.Duraisamy and the vehicle involved is shown as tanker lorry bearing Registration No.TN-59-L-4195.

14. It is the main contention of the appellant/insurer that the above entries in Ex.P.8 were subsequently created fraudulently for the purpose of getting compensation. P.W.4, in his cross-examination, would admit that the particulars of the deceased were written in red ink, that the particulars of the lorry was entered in ballpoint pen, that the endorsement that the accused was released on bail was also written in ballpoint pen and that there was no entry as to whether the final report was filed.

15. The learned counsel appearing for the appellant/insurer would further submit that the appellant/insurer has sent notices to the fourth respondent/first respondent and the driver of the vehicle directing them to furnish the particulars of the accident as to whether the lorry owned by the fourth respondent/first respondent was involved in the accident, but the same were returned as unserved under Ex.R.1 and Ex.R.2 respectively.



C.M.A.(MD)No.59 of 2018

WEB COPY

16. One V.D.Maran, S/o.Duraisamy was shown as the accused/driver of the tanker lorry in Ex.P.8, but notice was sent to one Duraisamy of Ward No.17, Usilampatti, as if, he was the driver of the offending vehicle. It is not known as to how the appellant/insurer has identified the said Duraisamy as the driver of the offending vehicle.

17. The appellant/insurer has examined its official as R.W.1 and he would reiterate their contention that the lorry bearing Registration No.TN-59-L-4195 was not at all involved in the accident. In cross-examination, he would say that he came to know that the fourth respondent/first respondent's vehicle not involved in the accident from the report of the investigator, that he was not aware about the persons, who were examined by the investigator and that he does not know as to whether the FIR was closed. Subsequently, the appellant/insurer has examined its investigator as R.W.2 and he would say that he had enquired in Othakadai Police Station, Melur Court and the surrounding places in Othakadai, that the FIR does not say that the fourth respondent/first respondent's vehicle was involved in the accident, that since final report was not filed, the case was closed by the Judicial Magistrate Court, Melur



C.M.A. (MD) No. 59 of 2018

WEB COPY

and that he came to know from his enquiry that the fourth respondent/first respondent's vehicle was not involved in the accident. In cross-examination, he would say that he has collected the particulars shown in column Nos.1 to 3 of his report from the concerned police, that he has examined the owner and the driver of the vehicle and the claimants, but they have refused to give any statement and that he did not mention the time, place and the persons examined by him in his report. The Tribunal, by observing that the investigation report filed under Ex.R.3 cannot be admitted in evidence, has held that the appellant/insurer is estopped from disputing their own investigation report filed under Ex.R.3, as R.W.2 has specifically stated that he examined the owner and the driver of the offending vehicle and that therefore, their contention that the driver is non-existing person cannot be accepted.

18. As already pointed out, the appellant/insurer has taken a specific stand that the fourth respondent/first respondent in collision with the respondents 1 to 3/claimants have fraudulently implicated the vehicle of the fourth respondent/first respondent.



C.M.A.(MD)No.59 of 2018

WEB COPY

19. It is settled law that if fraud is taken as a defence, the same must be specifically pleaded with necessary particulars and must be proved. In the present case, though the appellant/insurer has disputed the entries in Ex.P.8-FIR index, they have not chosen to produce any material or evidence to prove that the entries were fraudulently created subsequently.

20. As rightly observed by the learned trial Judge, though the appellant/insurer has taken a stand that they are going to prefer a complaint before the CBI and prayed for not taking up the case till their completion of investigation, they have not produced any iota of evidence to show that the complaint was lodged before the CBI and the same was pending.

21. To counter the contention of the appellant/insurer that there was no entry for the postmortem conducted over the body of the deceased, the respondents 1 to 3/claimants have summoned and examined P.W.2-medical officer and he would say that postmortem was conducted on the body of the deceased Suresh @ Vadivel, but no final opinion was given, that the body was handed over with them by saying that it was a case of road



C.M.A.(MD)No.59 of 2018

accident, that Accident Register was recorded, as if, the person was brought dead, that death was not occurred in Government Rajaji Hospital as per the records available with them and that there is no entry for sending the copy of the postmortem certificate to the Police Station or to the Court. The respondents 1 to 3/claimants have also summoned the staff attached to Government Rajaji Hospital and exhibited the copy of the Accident Register Extract under Ex.P.7 through him. In Ex.P.7, it has been shown that Suresh @ Vadivel was brought dead at 02.00 a.m. on 16.08.1999. The respondents 1 to 3/claimants have also produced crematorium receipt under Ex.P.4, wherein, the name of the deceased, Accident Register Number and FIR number are shown.

22. As rightly observed by the learned trial Judge, the proof required is only of preponderance of probability and not beyond reasonable doubt. The respondents 1 to 3/claimants have produced materials and evidence to show *prima facie* case that the lorry bearing Registration No.TN-59-L-4195 was involved in the accident. Since the burden get shifted to the appellant/insurer, as already pointed out, they have not produced any evidence to prove the fraudulent implication of the fourth respondent/first



C.M.A. (MD) No. 59 of 2018

respondent's vehicle in the accident and that thereby, they have miserably failed to discharge their burden in this regard. Moreover, as rightly contended by the learned counsel appearing for the respondents 1 to 3/claimants, there is absolutely no contra evidence with regard to rash and negligence aspect.

23. Considering the evidence available on records, the finding of the Tribunal that the tanker lorry bearing Registration No.TN-59-L-4195 was involved in the accident and that the accident was occurred only due to the rash and negligent driving of the tanker lorry driver, cannot be found fault with.

24. Admittedly, the tanker lorry bearing Registration No.TN-59-L-4195 was owned by the fourth respondent/first respondent and the same was insured with the appellant/insurer. Hence, the decision of the Tribunal mulcting liability on the appellant/insurer cannot be found fault with.

25. It is pertinent to note that the appellant/insurer has not challenged the quantum of compensation awarded at, by the Tribunal. Except the above, the appellant/insurer has not canvassed any other reason



C.M.A. (MD) No. 59 of 2018

WEB COPY

or ground to impugn the award. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

26. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

27. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 02.09.2014 passed in M.C.O.P.No.2161 of 2002 on the file of the Motor Accident Claims Tribunal/III Additional District Court (PCR), Madurai, is confirmed. The appellant/insurer is directed to deposit the entire award amount with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the respondents 1 to 3/ claimants are permitted to withdraw their shares together with interest and costs. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

29.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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C.M.A. (MD) No. 59 of 2018

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To:

1. The Motor Accident Claims Tribunal/
III Additional District Court (PCR), Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.59 of 2018

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.59 of 2018
and
C.M.P.(MD)No.892 of 2018

Dated : 29.09.2023