



CMA(MD).No.849 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 15.06.2023

PRONOUNCED ON : 19.06.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.849 of 2017
and CMP(MD).No.9034 of 2017

The General Manager
National Insurance Company Ltd.,
Trichy Branch
33, Promenade Road
Cantonment, Trichy -1

... Appellant

VS.

1.Periyakkal

2.Kanagaraj

3.Renuka

4.Padmanaban

5.Sundharamoorthi

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgement ddated 19.12.2016 made in MCOP.No.966 of 2013 on the file of the Special District Judge, Tiruchirappalli.



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For Appellant : Mr.A.Ilango
For R1 to R4 : Mr.N.Sudhagar Nagaraj
R5 : Died.

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award of the Motor Accident Claims Tribunal, Trichy in MCOP.No.966 of 2013 primarily on the ground that the insured vehicle was not involved in the said accident.

2.The claimants have contended that the deceased aged 45 years was a mechanic and while he was walking in the corner of the road, a lorry owned by the first respondent and insured with the second respondent was driven in a rash and negligent manner and dashed against the deceased and he sustained grievous injuries and later, passed away. The claimants sought for a compensation of Rs.6,00,000/-.

3.The owner of the lorry had remained exparte. The insurer had filed a counter contending that there is no proof that the deceased was involved in the road accident. On the other hand, the deceased body was found out near Athavathur Modern Rice Mill under mysterious circumstances. The police authorities instead of registering an F.I.R



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under Section 174 Cr.P.C, death of the deceased was registered as the case of 'hit and run' case. The Insurance Company had further contended that the first respondent's lorry was implicated in the alleged crime and the Insurance Company has referred this case to CBCID, Trichy for reinvestigation. Hence, they contended that they are not liable to pay any compensation.

4.On the side of the claimants, the wife of the deceased was examined as PW1 and one Lawrence who is said to be the cleaner of the offending lorry was examined as PW2. The Tribunal found that just because the police have taken 6 months time to trace and identify the offending vehicle, it cannot be stated that the said vehicle was not involved in the accident. The Tribunal relied upon the evidence of RW2 who was the cleaner of the offending vehicle. Based upon the said evidence, the Tribunal proceeded to fix the liability upon the appellant/insurance company. The Tribunal further fixed the notional monthly income of the deceased at Rs.5,000/- and ultimately, awarded a sum of Rs.7,20,115/- as compensation. This award is under challenge in the present appeal.



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5. According to the learned counsel appearing for the appellant, it is stated in the F.I.R that the accident has taken place at 9.00 p.m on 01.03.2001 and the F.I.R has been registered at 1.00 a.m on 02.03.2001. An auto driver is the defacto complainant. In the said F.I.R, he has specifically stated that the registration number of the offending vehicle could not be found out. However, in the claim petition, the accident is said to have taken place at 3.00 p.m.

6. Though the F.I.R was registered on 01.03.2001, only after a period of 6 months, PW2 who is said to be the cleaner of the offending lorry had approached the police officials and has given a statement to the effect that his lorry was involved in the said accident. It is highly unbelievable that a cleaner of the offending lorry himself would approach the police and give such a statement. Therefore, according to the learned counsel appearing for the appellant, though the accident has taken place, the involvement of the lorry belonging to the first respondent has not been established by the claimants. Hence, he prayed for allowing the appeal.

7. Per contra, the learned counsel appearing for the claimants had vehemently contended that at the time of registering the F.I.R, the vehicle



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number was not available, but the relatives, friends and the family members of the deceased searched and ultimately found out that the lorry belonging to the first respondent was involved in the said accident. During police investigation, the cleaner of the lorry had admitted that he was in the lorry at the time of accident. Further, the cleaner of the offending vehicle has been examined as PW2 who has categorically stated that he was in the lorry at the time of accident.

8.The learned counsel for the respondents had further contended that the driver of the lorry was charge sheeted and he has pleaded guilty and paid fine under Exhibit P4. Therefore, there cannot be any dispute whatsoever that the lorry belonging to the first respondent was involved in the said accident and the second respondent is liable to pay compensation. Hence, he prayed for sustaining the award passed by the Tribunal.

9.I have considered the submissions made on either side and perused the materials available on record.

10.The claimants have contended that the deceased had passed away in an accident involving the lorry belonging to the first respondent on 01.03.2001 at 3.00 p.m. However, a perusal of the F.I.R which was



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given by an auto driver indicates that the accident has taken place at 9.00 p.m on 01.03.2001. The F.I.R has been registered at 1.00 a.m on 02.03.2001. A perusal of the contents of said F.I.R indicates that the registration number of the lorry was not known.

11.From the deposition of RW2, it is clear that he was called by the police officials on 05.09.2001 and he had stated that he was a cleaner in the offending vehicle at the relevant point of time.

12.It is not known how the vehicle was identified during the investigation process. The wife of the deceased was examined as PW1 and she has categorically admitted in her cross examination that she is not aware of the vehicle which has caused the accident. The only other evidence is the deposition of PW2 who is said to be the cleaner of the offending vehicle. As rightly pointed out by the learned counsel appearing for the appellant, it is highly unbelievable that the cleaner of the offending lorry has voluntarily come forward to give a statement before the police officials that his vehicle was involved in the said accident. The deposition of PW2 does not inspire the confidence of this Court so as to prove the involvement of the vehicle in the said accident. Other than PW1, no other eye witness was examined on the side of the



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claimants. Therefore, it is clear that the claimants have miserably failed to establish that the accident has taken place only due to the rash and negligent driving on the part of the driver of the lorry belonging to the first respondent.

13.From the contents of the F.I.R, it could be seen that the deceased had certainly met with an accident and he had passed away due to the injuries sustained in the said accident. However, the involvement of the lorry belonging to the first respondent alone is in question. A perusal of the F.I.R also reveals that it is a case of 'hit and run'. The claimants were not able to connect the lorry belonging to the first respondent with the said accident by providing convincing and cogent evidence. The Tribunal has simply relied upon the criminal Court proceedings and the deposition of PW2 and has proceeded to arrive at a finding that the lorry was involved in the said accident. The said finding is not based on any concrete material.

14.In view of the above said deliberations, this Court is of the view that the deceased had sustained injuries by way of an accident which is a 'hit and run' case and therefore, the appellant/insurance company cannot be held liable for payment of compensation. However, the claimants are



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at liberty to initiate proceedings under Section 161 of the Motor Vehicles Act for receiving compensation by filing an appropriate application.

15. With the above said observation, this civil miscellaneous appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Special District Judge,
Tiruchirappalli.

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



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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