



C.M.A.(MD)Nos.755 and 832 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **03.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)Nos.755 and 832 of 2008

In C.M.A(MD)No.755 of 2008:

Muthunatchi

... Appellant/Claimant

Vs.

1.Chinna Murugan

2.The National Insurance Company Ltd.,
through its Divisional Manager,
Branch II, 8A, Yanaikal Street,
Hotel President Building,
Madurai.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.09.2007 passed in M.C.O.P.No.1971 of 2002 on the file of the III Additional District and Sessions Court (PCR), Madurai, (Motor Accident Claims Tribunal).

In C.M.A(MD)No.832of 2008:

1.Petchiammal
2.A.Mala
3.Meenakshi
4.Minor Rakku
5.Sangari
6.Minor Periasamy



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7.Minor Chinnathambi

8.Minor Athimoolam

... Appellants/Petitioners

Vs.

1.Chinna Murugan

2.The National Insurance Company Ltd.,
through its Divisional Manager,
Branch II, 8A, Yanaikal Street,
Hotel President Building,
Madurai.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.09.2007 passed in M.C.O.P.No.1981 of 2002 on the file of the III Additional District and Sessions Court (PCR), Madurai, (Motor Accident Claims Tribunal).

In both appeals:

For Appellants : Mr.K.R.Manimaran

For R2 : M/s.S.Srinivasaraghavan

COMMON JUDGMENT

The above appeals have been filed by the claimants, who are the legal representatives of the deceased, who died in the same accident aggrieved by the dismissal of their claim petitions.

2. The appellants filed the claim petitions stating that while the



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deceased were riding in the bicycle on the extreme left side of the road, LMV goods vehicle bearing Reg.No.TN-59-C-4011 came in the opposite direction in a rash and negligent manner and dashed against the deceased, as a result of which, both the deceased sustained fatal injuries.

3. The 1st respondent, the owner of the vehicle remained exparte before the Tribunal.

4. The 2nd respondent filed a counter stating that the vehicle was not involved in the accident; that even as per the first information report, an unknown vehicle was involved; that the final report filed against the driver of the insured vehicle cannot be accepted since the Inspector of Police, who conducted the investigation, was not examined; that the evidence of eyewitness, P.W.3, cannot be accepted; and therefore, the claim petitions are liable to be dismissed.

5. The claimants had examined three witnesses and marked Ex.P.1 to Ex.P.5. The respondents neither examined witnesses nor marked documents.



6. The learned counsel for the appellants submitted that though in the first information report, the vehicle's number was not mentioned, the police after investigation had identified the vehicle as one belonging to the 1st respondent herein, which is insured with the 2nd respondent; that therefore, the Tribunal ought to have accepted the final report and believed the evidence of P.W.3 an eyewitness to the accident; and that the evidence adduced by the claimants has to be assessed on the touchstone of preponderance of probability and relied upon the judgment of the Hon'ble Supreme Court in **Mangla Ram vs. Oriental Insurance Company Limited and others in (2018) 5 Supreme Court Cases 656**.

7. The learned counsel for the 2nd respondent per contra submitted that the Tribunal had disbelieved the evidence of P.W.3, who was an interested witness and his conduct does not inspire confidence; that since the police have not been examined, the final report ought not to have been accepted; that the Tribunal has rightly rejected the final report; and prayed for dismissal of these appeals.

8. This Court gave its anxious consideration to the submissions



made on either side and carefully perused the materials available on record.

9. The point for consideration in the instant appeals is whether the Tribunal is right in dismissing the claim petitions filed by the appellants on the ground that they have not established the involvement of the vehicle owned by the 1st respondent and insured with the 2nd respondent.

10. Before the Tribunal, the claimants had examined P.W.3, an eyewitness to the occurrence. The Tribunal had disbelieved the evidence of P.W.3 on the ground that even though he had witnessed the accident and noted the registration number of the vehicle, he had not given any complaint. Further, the informant Periyasamy, the brother of one of the deceased, who had lodged the complaint, was not examined before the Tribunal. Although Ex.P.2, the final report filed by the police shows that the vehicle of the 1st respondent was involved in the accident, it is seen that the claimants had not examined the Inspector of Police, who conducted the investigation or any other person associated with the investigation.



11. This Court is of the view that even if the evidence of P.W.3 is disbelieved, the final report cannot be ignored. At the same time, the 2nd respondent has to be given an opportunity to cross-examine the persons, who had conducted investigation and filed the final report before the Court. Normally, the examination of the police officials may not be necessary as facts revealed in the criminal case would only be corroborative in nature before the Tribunal. In this case, the evidence of P.W.3 has been disbelieved by the Tribunal. Therefore, this Court is of the view that in the interest of justice, it is desirable to remit back the matter to the Tribunal so as to enable the claimants to examine the police officials or any other persons, who were involved in the investigation resulting in the filing of the final report, Ex.P.2 before the learned Judicial Magistrate No.6, Madurai, against the driver of the insured vehicle.

12. Accordingly, the judgment and decree dated 21.09.2007 passed in M.C.O.P.No.1981 of 2002 on the file of the III Additional District and Sessions Court (PCR), Madurai, (Motor Accident Claims Tribunal), is set aside. The matter is remitted back to the Tribunal for conducting fresh trial. It is open to all the parties concerned to adduce such evidence as



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may be necessary to establish their respective claims. The tribunal while adjudicating the claim petitions shall bear in mind the observation of the Hon'ble Supreme Court in **Mangla Ram's** case cited supra that the evidence has to be assessed on the basis of preponderance of probability and the claimants cannot be expected to prove the case beyond reasonable doubt. Since the accident is of the year 2002, the Tribunal shall record the evidence and conclude and adjudicate the claim petitions within a period of two months from the date of receipt of a copy of this order.

13. In the result, these appeals are allowed. No costs.

03.10.2024

Index : Yes / No
Neutral Citation : Yes / No
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To
1.III Additional District and Sessions Court (PCR),
Madurai, (Motor Accident Claims Tribunal).

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

CM

Judgment made in
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