



C.M.A.(MD)Nos.339 and 340 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 11.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)Nos. 339 and 340 of 2013
and M.P(MD)Nos.2 and 2 of 2013

In C.M.A(MD)No.339 of 2013:

National Insurance Company Ltd.,
Branch I, No.33, Promenade Road,
Cantonment,
Trichy – 1

... Appellant/2nd Respondent

Vs.

1.Minor Keerthana

..1st Respondent/Petitioner

2.R.Babu

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.06.2011 passed in M.C.O.P.No.373 of 2007 on the file of the Motor Accident Claims Tribunal Judge, Kulithalai.

In C.M.A(MD)No.340 of 2013:

National Insurance Company Ltd.,
Branch I, No.33, Promenade Road,
Cantonment,
Trichy – 1

... Appellant/2nd Respondent

Vs.

1.Minor Gowri

...1st Respondent/Petitioner

2.R.Babu

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated



C.M.A.(MD)Nos.339 and 340 of 2013

21.06.2011 passed in M.C.O.P.No.374 of 2007 on the file of the Motor Accident Claims Tribunal Judge, Kulithalai.

For Appellant : Mr.N.Murugesan

For R2 : No appearance

COMMON JUDGMENT

The instant appeals have been filed challenging the finding on liability.

2. The 1st respondent in both petitions filed the claim petitions stating that while they were walking on the road, the vehicle insured with the appellant, namely, a tipper lorry, came in a rash and negligent manner and dashed against the claimants, which resulted in grievous injuries to them.

3. The owner of the tipper lorry remained exparte before the Tribunal.

4. The appellant filed a counter stating that the tipper lorry was not involved in the accident; and that in any case, the compensation awarded was excessive.



5. The claimant examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.4. The appellant examined R.W.1 and R.W.2 and marked Ex.R.1 to Ex.R.6.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligent driving of the insured vehicle; and that the appellant is liable to pay compensation of Rs.20,000/- each to both the claimants.

7. The learned counsel for the appellant submitted that there are contradictions in the evidence of the eyewitnesses and the accident register, which suggest that a bus was involved in the accident; and that the police had also closed the case as a 'mistake of fact'.

8. The 1st respondent remained exparte before the Tribunal. Notice sent to the 1st respondent by the Registry has been returned with an endorsement "No residence". Though notice sent to the 2nd respondent is served and the name of the 2nd respondent is printed in the cause list, none entered appearance.



9. This Court gave its anxious consideration to the submissions made by the learned counsel for the appellant and carefully perused the materials available on record.

10. The only point for consideration in the instant appeal is whether the finding on liability by the Tribunal is justified.

11. It is seen that the claimants had examined eyewitnesses, who had clearly deposed that the accident took place only due to the rash and negligent driving of the vehicle insured with the appellant. The claimants were minor children, and merely because they had inadvertently stated before the doctor that they were hit by a bus, it would not render the evidence of the eyewitnesses unreliable. The fact that the criminal case was closed as a 'mistake of fact' cannot be a ground as the nature of investigation conducted by the investigating officer and the nature of inquiry before the Tribunal are different. Hence, this Court is of the view that in the absence of any other evidence produced on the side of the appellant to disbelieve the evidence of eyewitnesses, the Tribunal was right in holding that the accident took place due to the rash and negligent driving of the tipper lorry and the appellant is liable to pay compensation.



C.M.A.(MD)Nos.339 and 340 of 2013

12. The learned counsel for the appellant submitted that they have deposited the entire compensation amount. If not deposited, they shall do so within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant in both the appeals are permitted to withdraw the same by filing a suitable application before the Tribunal.

13. In the result, the appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

11.09.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. Motor Accident Claims Tribunal Judge, Kulithalai.

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



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C.M.A.(MD)Nos.339 and 340 of 2013

SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)Nos. 339 and 340 of 2013
and M.P(MD)Nos.2 and 2 of 2013

11.09.2024