



C.M.A(MD)No.83 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated :11.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.83 of 2019
and
C.M.P.(MD).No.852 of 2019

The Branch Manager,
New India Assurance Company Limited,
East Coast Chambers,
92, G.N.Chetty Road,
T.Nagar, Chennai-17.

: Appellant/2nd Respondent

Vs.

1.Kala

2.Deepika

3.Mownika

4.Aravind

: Respondents 1 to 4

(Minor 4th respondent is declared as Major and guardianship of his mother(R1) is discharged vide Court order dated 16.07.2021 made in C.M.P.(MD).No.6329 of 2020 in C.M.A.(MD).No.83 of 2019).

5.Jeya

6.Sathiyavani

1/16



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7. Cholamandalam M.S. General Insurance Company Limited,
Dindigul Main Road, SRI ENT Hospital,
Keelavasal,
Madurai-625 010.

: Respondents 5 to 7

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Fair and Decreetal order in M.C.O.P.No.721 of 2014 dated 29.06.2018 on the file of the Motor Accidents Claims Tribunal, Additional District and Special Court, Pudukkottai and allow the appeal with costs.

For Appellant : Mr.J.S.Murali

For R1, R2 & R4 : Mr.P.Ganapathi Subramanian

For R7 : Mr.S.Srinivasa Raghavan

JUDGMENT

[Judgment of the Court was made **by K.K.RAMAKRISHNAN.J.**]

The Second respondent in M.C.O.P.No.721 of 2014 on the file of Motor Accidents Claims Tribunal, Additional District and Special Court, Pudukkottai, filed this appeal, challenging the award passed in the said M.C.O.P.No.721 of 2014 filed by the respondents 1 to 4 herein.



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2.Facts of the case:

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The Fifth Respondent namely, Jeya is the owner of the car bearing Registration No.TN-49 AT-0786. On 31.05.2014 at 11.15 p.m., the said vehicle was taken by her father Mahendran, along with his brother-in-law deceased/Neelakandan towards Trichy to Peravoorani Road. At that time, near Vadakadu AV Petrol bunk, the Mini Lorry, namely the insured lorry bearing Registration No.TN-55 AE-2460, was driven by the driver in a rash and negligent manner and dashed against the car, thereby the deceased sustained injuries. After treatment for 26 days, he died. Vadakadu Police Station registered a case in Crime No. 69 of 2014 against the lorry driver insured with the appellant. Thereafter, the wife of the deceased and his legal heirs filed MCOP No.721 of 2014 stating that the accident happened due to the negligence of both the drivers. The deceased Neelakandan was doing Coconut business earning more than Rs.20,000/- per month and claimed compensation of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only). The Income certificate/Ex.P.16 was marked and the Vice President of Cultivation and Marketing of Coconuts Association namely, P.W.3 was examined. P.W.3 stated that he is the vice president of Peravoorani Coconut Farmer Association. The



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deceased/Neelakandan was in the said business for 10 years and earned more than Rs.20,000/- per month.

3.The appellant insurance company filed a counter denying the negligence on the part of insured lorry and shifting the negligence on the part of the car driver. Hence,appellant seeks for exoneration from the liability and also disputed the income of the deceased. The insurance company, who insured the car also filed a counter stating that the accident happened only due to the negligence of mini-lorry driver, and pleaded for exoneration from liability against the car driver.

4. During the course of the trial, the claimant proved their claim, and examined P.W.1 to 4 and marked Ex.P.1 to Ex.P.19. On the side of the respondent/appellant insurance company, R.W.1 was examined and Ex.R1 was marked.

5.The learned trial Judge considered the entire evidence, more particularly, the evidence of R.W.1, who drove the mini-lorry on the date of the occurrence, who “pleaded guilty” and fixed the liability upon the



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appellant insured vehicle namely the mini-lorry. In the said circumstances, the insurance company filed this appeal challenging the fixing of negligence on the part of the lorry driver in spite of the pleadings that both drivers of the vehicles were responsible for the accident.

6.The learned counsel for the appellant reiterated grounds filed in the affidavit stating that the “plea of guilty before the criminal Court and conviction is not a circumstance to fix the entire liability on the appellant against the pleadings. The learned counsel further submitted that without any sufficient income proof, the learned trial Judge erroneously fixed the monthly income of the deceased as Rs. 20,000/- per month and hence, he seeks for the reduction of the compensation awarded by the Court below. The learned trial Judge erred in relying on the result of the criminal case in these proceedings and hence he seeks for the interference in the award.

7.Per contra, the learned counsel appearing for the claimants/respondents 1 to 4 submitted that when there is a “plea of guilty” and conviction was passed in the criminal case, the Judgement can



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be marked to show that there was admission relating to the negligence. In the said circumstances, the said admission has to be properly explained by the driver of the said vehicle. In this case, even though R.W.1 was examined, no explanation was given by R.W.1 under what circumstances, he pleaded guilty and paid the fine. In the said circumstances, he seeks for the affirmation of the finding relating to the negligence on the part of the driver. The learned counsel further submitted that P.W.3 was examined and also Ex.P.16 was marked and the specific pleading was that the deceased was doing coconut business. Hence, the learned trial Judge fixed Rs.20,000/- as monthly income and there is no reason to differ with the same without any contra evidence adduced on the side of the Insurance company. Hence, he seeks for non interference in the award passed by the Court below. Even otherwise, he said that the learned trial Judge without considering the future prospect granted only Rs.20,000/- as monthly income. If future prospects are added, there can not be reduction of the amount. In the said circumstances, he seeks for the confirmation of the award.



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8. We have considered rival submissions and also perused the evidence and the impugned Judgement and also precedents relied upon both parties.

9. Whether the tribunal is correct in fixing the negligence on the part of the driver of the offending vehicle, who had pleaded guilty before the criminal Court?

9.1. Whether the award granted by the tribunal is just and reasonable?

10. R.W.1 is the driver of the appellant insurance company's insured vehicle. The criminal case was registered against him and a final report was filed against him and "he paid the fine after plea of guilty". Even though R.W.1 was examined and he pleaded guilty, he did not properly explain the admission of rash and negligent driving. This Court finds no explanation on the side of R.W.1 for the above admission. The Honourable Supreme Court, this Court and various High Courts and even the English Courts have held that if a party pleaded guilty before the Court, the same is admissible as a admission to the fact of the case, unless



the same was explained otherwise by him.

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11.In the said circumstances, the following judgments of the Honorable Supreme Court and our High Court are to be considered:-

- 11.1.1 In the case of ***Seth Ramdayal Jat, Vs. Laxmi Prasad*** reported in ***2009 11 Scc 545***.
- 11.1.2 In the case of ***Oriental Insurance Co. Limited Vs. K.Balasubramanian and others*** reported in ***2008 ACJ 2553***.
- 11.1.3. In the case of ***Vinobabai and others Vs. Karnataka State Road Transport Corporation and Another***, reported in ***1979 ACJ 282***.
- 11.1.4. In the case of ***Stupple Vs. Royal Insurance Co. Ltd.***, and in the case of ***Stupple Vs. Same***.
- 11.1.5. In the case of ***Tamil Nadu State Transport Corporation Vs. P.Shanthi***, dated 28.04.2017 in ***C.M.A.No.1369 of 2017***.
- 11.1.6. In the case of ***The Managing Director Vs. Anju Rajan***, dated 05.06.2017, in ***C.M.A.(MD).Nos.1392 to 1396 of 2017***.
- 11.1.7. In the case of ***L.N.Prakash Vs. United India Insurance Co. and others*** reported in ***1995 2 TAC 339***.
- 11.1.8. In the case of ***Sukhinder Anand Vs. Khaza Vazir Ali(Minor) and others*** reported in ***1994 2 TAC 593***.
- 11.1.9. In the case of ***Govind Singh and others vs. A.S.Kallasam and another*** reported in ***1975 ACJ 215***.
- 11.1.10 In the case of ***Sankaran and others Vs. Valliammal and others*** reported in ***MANU/TN/0350/1987***.



The above judgments have held that when the accused pleaded guilty, the criminal Court judgment is admissible. The fact of negligence was admitted by plea of guilty. In the said circumstances, the same has to be properly explained by the concerned person. Otherwise, the said admission relating to the factum of negligence can very well relied by the Tribunal to render the findings on negligence as against the driver of the vehicle.

- 11.2. When the accused pleaded guilty by admitting his rashness and negligence and caused accident before the Criminal Court during the prosecution of the corresponding criminal offence. The same is admissible as fact to prove the issue of negligence in the civil proceedings unless he has properly explained the said admission to the satisfaction Court.

- 11.3. In the case of *Nettleship Vs. Weston*, reported in **1972 ACJ 115**, Lord Denning has held as follows:

“5...The conviction is admissible in civil proceedings as prima facie evidence of negligence...”

- 11.4. In the case of *The Oriental Insurance Co. Ltd. v. K. Balasubramanian*, reported in **2007 SCC OnLine Mad 660** Division Bench of this Court has held as follows:



10. ... It is a well settled proposition of law that the judgments of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal nor relevant in a Civil Case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence.

*11.5. In the case of **Seth Ramdayal Jat v. Laxmi Prasad**, reported in (2009) 11 SCC 545 at page 553, Hon'ble Supreme Court has held as follows:*



21. The admission of the appellant was recorded in writing. While he was deposing in the suit, he was confronted with the question as to whether he had admitted his guilt and pleaded guilty of the charges framed. He did so. Having, thus, accepted that he had made an admission in the criminal case, the same was admissible in evidence. He could have resiled therefrom or explained away his admission. He offered an explanation that he was wrongly advised by the counsel to do so. The said explanation was not accepted by the trial court. It was considered to be an afterthought. His admission in the civil proceeding was admissible in evidence.

*11.6. In the case of **Govind Singh and others Vs. A.S.Kailasam and another** reported in **AIR 1975 Mad 65** this Court has held as follows:*

8. ... More significant is the fact that, when R.W. I was prosecuted for an offence under S. 337 I.P.C., he has voluntarily pleaded guilty to the charge framed against him. After having admitted before the Criminal Court that the accident took place due to his rash and negligent driving of the car, there is hardly any force



in the present contention of R.W. 1 that he did not drive the car rashly or negligently and that he was not to be blamed for the accident it is no doubt seen that R.W. 1 has attempted to reconcile the conflicting positions by projecting a story that his plea of guilt before the Criminal Court was not one of truth, but was one of the convenience, viz., to avoid making frequent visits to the Court to defend the case. This explanation is hardly convincing and, at any rate, cannot be allowed to be successfully projected by R.W. 1. An admission against his interest made by R.W. 1 either before the Tribunal or elsewhere, has got to be taken into account in rendering a decision on the relative stands taken by the parties in the controversy.

11.7 Pribhidas v. B.N. Renuka, AIR 1983 Kar 186

11. This Court has ruled in the case, Vinobabai v. K.S.R.T.C., (1979) 1 Kant LJ 257 that when the driver admits his guilt before the Criminal Court and is convicted, it would establish prima facie that he was guilty of rash and negligent driving and we have pointed out above that the driver did not care to enter the witness-box and offer any explanation. The admission, therefore, becomes



decisive on the facts of the present case that the accident was the result of rash and negligent driving of the car in question by its driver. That is the conclusion arrived at by the Tribunal and we affirm it.

12.In this case, even though R.W1 was examined, no explanation was given against the admission by him. In view of the above, this Court perused the evidence of P.W.2. P.W.2 clearly deposed that due to the negligence of the driver of the mini-lorry, the accident happened Apart from that, there is no reason to disbelieve the evidence of P.W.2 and also no contra-evidence was adduced by R.W.1 for his admission in the criminal case. This Court is unable to differ with the finding of the learned trial Judge relating to fixing the negligence upon the driver of the mini-lorry.

13.As far as the quantum is concerned, P.W.3 was examined. He is the President of District Coconut Agricultural association. He produced Ex.P.16 and no question was raised relating to the reliability of P.W.3's evidence. P.W.1 also clearly stated that the deceased was doing coconut business. P.W.3's evidence also is cogent and corroborated with the



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certificate. In the said circumstances, fixing of Rs.20,000/- as a monthly income by the tribunal is to be confirmed. Further, the learned trial Judge ordered only Rs.20,000/- without considering the future prospect. If future prospect is considered, the amount would go around Rs.8,00,000/-. In the said circumstances, this Court is not inclined to interfere with the quantum granted by the learned trial Judge. In the said circumstances, this court finds no merit in the appeal. This appeal is dismissed and the judgment and award passed by the Motor Accidents Claims Tribunal, Additional District and Special Court, Pudukkottai in M.C.O.P.No.721 of 2014, dated 29.06.2018 is hereby confirmed. No costs. Consequently, the connected civil miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
11.09.2024

Index :Yes/No
Internet :Yes/No
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To

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1. The Additional District and Special Judge,
Motor Accidents Claims Tribunal,
Pudukkottai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN.J.,

and

K.K. RAMAKRISHNAN.J.,

vsg

C.M.A(MD)No.83 of 2019

and

C.M.P.(MD).No.852 of 2019

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