



C.M.A.(MD).No.742 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.742 of 2019

and

C.M.P(MD) No.9469 of 2019

The Branch Manager,
The Oriental Insurance Company Limited,
1st Floor, KJR Complex,
16, Northveli Street, Madurai Town,
Madurai.

... Appellant/2nd Respondent

-VS-

1. Nallathambi

2. Lakshmi

3. Sakthivel

4. Selvi Sinraj

... Respondents 1 to 4/ Petitioners 1 to 4

5. Balamurugan

... 5th Respondent/1st Respondent

6. Rajadurai

... 6th Respondent/3rd Respondent

(Respondents 5 and 6 are
remained exparte before the
lower Court)



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment made in M.C.O.P.No.260 of 2015, dated 30.08.2018, on the file of the Motor Accident Claims Tribunal-cum – Principal District Judge, Dindigul District.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.M.Prabhu – for R1 to R4

: No appearance – for R5 and R6

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award passed in M.C.O.P.No. 260 of 2015, on the file of the Motor Accident Claims Tribunal-cum– Principal District Judge, Dindigul District, primarily, on the ground of liability.

2. The claimants have filed the above claim petition initially contending that while their son was driving a two wheeler, at about 07.00 p.m., on 30.01.2015, a dog had crossed the road and he had lost his balance and had fallen down and sustained grievous injuries. Later an application was filed in I.A.No.961 of 2016, to amend the claim petition. In the amendment it



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was incorporated that a Tractor owned by the first respondent and insured with the second respondent was driven in a rash and negligent manner and the same had dashed against the two wheeler. Due to the said impact, the deceased had sustained grievous injuries and later passed away.

3. The Insurance Company of the Tractor had filed a counter contending that as per the F.I.R lodged by the first claimant, who is the father of the deceased, the victim has lost his balance and fallen down from the two wheeler, sustained grievous injuries and later passed away. The insurance Company has further contended that in the final report, the police have found that the two wheeler had dashed against the rear side of the parked Tractor and had fallen down and sustained injuries.

4. The Tribunal, after considering the oral and documentary evidence has arrived at a finding that the evidence of P.W.2, who is the ocular evidence is believable and has held that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Tractor. The Tribunal has proceeded to fix the compensation at Rs.8,86,800/- (Rupees Eight Lakhs Eighty Six Thousand and Eight Hundred only). Challenging the said award, the present appeal has been filed by the Insurance Company.



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5. According to the learned counsel appearing for the appellant, an FIR was lodged by the father of the claimant to the effect that the deceased had fallen down on his own and has sustained injuries. In the final report, it is specifically pointed out that the two wheeler had dashed against the rear side of the parked Tractor. The original claim petition was filed with an averment that the claimant had fallen down on his own and he claimed compensation from their own Insurance Company. The Tribunal was not right in mulcting the liability upon the driver of the Tractor without any allegation and without proof of negligence on the part of the driver of the Tractor.

6. Per contra, the learned counsel appearing for the respondents 1 to 4 herein had contended that after the police had filed a final report they came to know that a Tractor was involved in the accident and thereafter, the claim petition was filed. P.W.2, who is the ocular witness has specifically deposed that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Tractor. In fact, the Insurance Company has not chosen to examine the driver of the Tractor, in order to establish the fact that the vehicle was not involved in the accident. Hence, he prayed for sustaining the award passed by the Tribunal.



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7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. According to the claimants, the accident has taken place at 07.00 p.m., on 30.01.2015. An F.I.R has been lodged by the father of the deceased on 01.02.2015 at 01.00 p.m., alleging that his son had fallen down from the vehicle on his own and he had sustained grievous injuries and later passed away. In the claim petition also, initially the claimants have contended that due to sudden crossing of a dog, the victim had lost control of the vehicle, had fallen down and sustained injuries. There is no reference about any offending vehicle either in the F.I.R or in the claim petition that was initially filed by the claimants.

9. After investigation, the police has filed a final report under Ex.X1. A perusal of the final report discloses that the victim had dashed against the rear side of a parked Tractor which was owned by the first respondent. Even assuming that the final report is true, the claimants have not established the negligence on the part of the driver of the Tractor so as to claim compensation from the Insurance Company. It is not the case of the claimants that they are



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not able to identify the Tractor till the filing of the charge sheet. It is their specific case that no other vehicle was involved, but the victim himself has fallen down and hence the accident. P.W.2, calls himself an ocular witness, but does not inspire the confidence of the Court in view of Ex.P.1- FIR and Ex.X.1 – Final Report and the initial averments in the claim petition. Therefore, the Tribunal was not right in relying upon the deposition of P.W.2.

10. In view of the above said deliberation, it is clear that the involvement of the Tractor has not been established by the claimants. Even assuming that the Tractor was involved in the accident, the negligence on the part of the driver of the Tractor has not been established. That apart, it could be seen that the victim himself lost his control over the two wheeler, had fallen down and succumbed injuries. In such circumstances, the Tribunal was not right in mulcting the liability upon the insurer of the Tractor. The award of the Tribunal is hereby set aside.



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11. Accordingly, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

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

1. The Motor Accident Claims Tribunal-
cum – Principal District Judge,
Dindigul District.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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