BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **28.02.2024**

CORAM:

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

C.M.A(MD)No.27 of 2021
and
C.M.P.(MD)No.363 of 2021

The Branch Manager,
The Oriental Insurance Company Limited,
Theni Town,
Theni District. ...Appellant

Vs.

1.Shanthi

2.Sri Thanga Iswariya

3.Minor Sri Krishna

*(R3 is represented by his mother and natural guardian, 1st respondent)*

4.Sivakami

5.C.Kumar ...Respondents

**PRAYER:** Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 03.09.2019 passed in M.C.O.P.No.34 of 2019 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Virudhunagar @ Srivilliputhur and allow the appeal.

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| For Appellant | : Mr.C.Jawahar Ravindran |
| For R1 to R4 | : Mr.A.Sivaji |
| For R5 | : Mr.S.Elangovan |

## JUDGMENT

[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN.J.]**

Being aggrieved over the award passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Virudhunagar @ Srivilliputhur in M.C.O.P.No.34 of 2019, dated 03.09.2019, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.34 of 2019 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Virudhunagar @ Srivilliputhur. The respondents 1 to 4 herein are the claimants. They filed the claim petition in M.C.O.P.No.34 of 2019, claiming a sum of Rs.50,00,000/-(Rupees Fifty Lakhs only) as compensation for the death of the husband of the first respondent. By the award, dated 03.09.2019, the Tribunal awarded a sum of Rs.22,98,800/- (Rupees Twenty Two Lakhs and Ninety Eight Thousand and Eight Hundred only) as compensation along with 7.5% interest from the date of filing of the claim petition.

**3.Facts of the Case:-**

According to the respondents 1 to 4, on 15.06.2008 at 21.00 hours, when the deceased was travelling in his toyota qualis vehicle bearing Reg.No.TN 67 S 5000 in Peraiyur – Usilampatti road, it dashed against the Tractor bearing Reg.No.TN 27 X 1873 belonging to the fifth respondent, which had been parked without any danger light, due to which, he sustained severe injuries and succumbed to the injuries. The accident occurred only due to the reckless parking of the Tractor belonging to the fifth respondent without any parking lamp. Therefore, the respondents 1 to 4 filed the claim petition, claiming a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation.

4.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition. The appellant insurance company contended that the deceased is the owner of the toyota qualis vehicle bearing Reg.No.TN 67 S 5000 and the accident occurred due to the negligence on the part of the car driver. Further, the deceased is not a third party and therefore, he is not entitled to any compensation. Hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and 17 documents were marked as Ex.P1 to P17. On the side of the insurance company, neither any witness was examined nor any documents were filed.

**6.Finding of the Tribunal:**

The Tribunal, considering the pleadings, oral and documentary evidence held that the driver of the tractor of the appellant's vehicle was responsible for the accident. The learned trial Judge considering the evidence of Ex.Ps.11 to 14, has fixed the monthly income of the deceased as Rs.15,000/- and considering the age of the deceased as 46 added 25% towards future prospects and applied multiplier 13 and deducted ¼ for the personal expenditure of the deceased and awarded compensation of Rs.22,98,750/- and rounded of to Rs.22,98,800/- to the claimants. Aggrieved against the said award dated 03.09.2019, the appellant Insurance Company has filed the present appeal.

**7. Submission of the learned counsel for the appellant:**

The learned counsel appearing for the appellant insurance company states that negligence is only on the part of the Car driver, who drove the car in a rash and negligent manner and hence, the claimants are not entitled to claim any compensation. The final report was also filed against the driver of the car only and hence, he seeks exoneration of the liability fixed upon them and he has not seriously disputed the quantum.

**8.Submission of the learned counsel for the Respondents:**

The learned counsel appearing for the respondents 1 to 4 submits that the learned Trial Judge, considering the evidence of P.W.1 and also Ex.P15, Judgment in MCOP NO. 176 of 2010, wherein it was specifically held that both the vehicles are involved in the accident and insured by the same insurance company and found from the evidence of P.W.1 that the Tractor was parked without any parking lamp and this is the cause for the accident. Hence, he seeks for confirmation of the award.

9.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 4 and also perused all the materials available on record.

10. The following points arise for consideration of this appeal:

10.1.Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

**11.Discussion on the negligence:**

It is the case of the claimants that, on 15.06.2008 at 21.00 hours, when the deceased was travelling in his toyota qualis vehicle bearing Reg.No.TN 67 S 5000 in Peraiyur – Usilampatti road, it dashed against the Tractor bearing Reg.No.TN 27 X 1873 belonging to the fifth respondent, which was recklessly parked without any parking light, due to which, he sustained severe injuries and succumbed to the injuries. The accident occurred only due to the parking of the Tractor belonging to the fifth respondent without any parking lamp. Admittedly, both the vehicles are insured by the same insurance company, namely, the appellant insurance company. Even though FIR was registered against the car driver and he got acquittal in the criminal case, it is the duty of this Court to consider the evidence adduced before this Court. In this case, P.W.1 travelled in the said car at the time of the accident. She clearly deposed that the tractor was parked without any parking lamp and also the said tractor was parked without any parking barricade. Therefore, the car dashed against the tractor. To disbelieve the said evidence, no contra evidence was adduced on the side of the appellant insurance company. The Hon'ble Supreme Court in the following cases has held that the

Tribunal is duty bound to discuss the evidence adduced before the Tribunal ir-respect of contra version mentioned in the criminal case records:-

| **National Insurance Company Limited Vs. Chamundeswari and others 2021 (18) SCC 596** | **Janabai Vs. ICICI Lambord Insurance company Limited 2022 (10) SCC 512** |
|---|---|
| *If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report.* | *The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable.* |

The testimony of P.W.1 is cogent and clear and without any infirmity. She clearly deposed about the parking of the tractor without parking lamp which resulted in accident. Hence, the Tribunal has rightly fixed the negligence. Therefore, this Court concurs with the finding of the learned trial Judge that the driver of the tractor of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation.

12.Since the learned counsel appearing for the appellant/insurance company has not seriously disputed the quantum, this Court is confirming award of Rs.22,98,800/- determined by the learned Tribunal Judge by fixing Rs.15,000/- as monthly income of the deceased upon consideration of the entire evidence.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Virudhunagar @ Srivilliputhur in M.C.O.P.No.34 of 2019, dated 03.09.2019 is hereby confirmed. The appellant Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. The Tribunal shall deposit the shares of the minor claimant in a Fixed Deposit under the cumulative deposit scheme, in any one of the Nationalized Banks, till they attain majority. The mother /

guardian of the minor is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.,) (K.K.R.K.J.,)**
**28.02.2024**

Index:Yes/No
Internet:Yes/No
sm/sbn

**To**

1.The Motor Accident Claims Tribunal
cum Chief Judicial Magistrate,
Virudhunagar @ Srivilliputhur.

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

**V.BHAVANI SUBBAROYAN, J.**
**and**
**K.K. RAMAKRISHNAN, J.**

sm/sbn

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