



C.M.A(MD)No.2 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.2 of 2017

1.Kaleswari

2.Minor Neerathalingam

(Second Appellant is represented by his uncle and natural guardian third appellant herein)

Muthu Madathi (Expired)

3.Thalaimalai ... Appellants/Claimants

Vs.

1.R.Sundara Moorthy

2.The New India Assurance Company Limited,
Represented by its Branch Manager,
Nagapattinam.

3.Albert (Died) ... 1 to 3 Respondents/Respondents 1 to 3

4.Josephine

5.Gilchrist ... 4 & 5 Respondents

(Respondents 4 and 5 are brought on record as legal heirs of the deceased third respondent vide Court order, dated 30.01.2024 made in C.M.P(MD)No.11976 of 2023 in C.M.A(MD)No.2 of 2017)

<https://www.mhc.tn.gov.in/judis>



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order passed by the Principal District Court and Motor Vehicle Accident Claims Tribunal, Virudhunagar District at Srivilliputtur in M.A.C.O.P.No.55 of 2004, dated 28.09.2010 and allow this Civil Miscellaneous Appeal.

For Appellants : Mr.M.Jothi Basu

For R-1 : No appearance

For R-2 : Mr.D.Sivaraman

R-3 : Died

For R-4 & R-5 : No appearance

JUDGMENT

The claimants in M.C.O.P.No.55 of 2004 on the file of the Principal District Court cum Motor Accident Claims Tribunal, Virudhunagar at Srivilliputhur are the appellants challenging the exoneration of the respondents 1 and 2 in the claim petition.

2. According to the claimants, while the deceased was walking on the road on 08.10.2002, a tanker lorry owned by the first respondent and insured with the second respondent came from the opposite direction driven in a rash and negligent manner and dashed against a two-wheeler owned and driven by the third respondent in the claim petition. The tanker lorry had caused injuries to Marimuthu.



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The said Marimuthu had succumbed to the injuries. The claimants have prayed for a sum of Rs.6,00,000/- as compensation.

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3. The owner of the tanker lorry had remained *ex parte*. The Insurance Company of the tanker lorry has filed a counter contending that the driver of the tanker lorry was noway responsible for the accident and only the owner cum driver of the two-wheeler was responsible for the accident and hence, he is liable to pay compensation.

4. The Tribunal after considering the evidence on record, had proceeded to hold that only the owner cum rider of the two-wheeler had driven the vehicle in a rash and negligent manner, which has resulted in the injuries of the deceased person. Based upon the said findings, the Tribunal had mulcted the liability upon the third respondent in the claim petition, namely, the driver of the two-wheeler and proceeded to exonerate the owner and insurer of the tanker lorry. The Tribunal had fixed a compensation of Rs.4,06,000/- to be paid by the owner of the two-wheeler. Challenging the exoneration of the tanker lorry and its insurer, the present appeal has been filed by the claimants.

5. The learned Counsel appearing for the claim petitioner brought to the notice of the Court that, the owner of the two-wheeler, namely, the third respondent had also sustained injuries in the said accident. He had filed an independent claim



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petition in M.C.O.P.No.86 of 2004 before the Motor Accident Claims Tribunal / Sub Court, Nagapattinam. In the said claim petition, the driver of the tanker lorry was found to be responsible for the accident and the insurer was mulcted with the liability. The said award was passed on 09.11.2004. The Insurance Company has not challenged the said award and they have complied with the award. Therefore, according to the learned Counsel appearing for the appellant, in the same accident, when the Insurance Company has admitted that the driver of the tanker lorry was responsible for the accident and have proceeded to pay the compensation amount, they cannot take a different stand in the other claim petition filed by the present appellants.

6. Per contra, the learned Counsel appearing for the Insurance Company had contended that since the claim amount was a mere Rs.44,000/-, the Insurance Company has not chosen to challenge the said award on its merits. That will not in anyway be helpful to the claimants in the present case. He further contended that, in the present case, the Tribunal after analyzing the oral and documentary evidence, has arrived at a finding that, only the driver of the two-wheeler was responsible for the accident and therefore, the claimants, who are not a party to M.C.O.P.No.86 of 2004 cannot rely upon the judgment in the said claim petition. Hence, he prayed for sustaining the award passed by the Tribunal.



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

8. The primary contention of the learned Counsel appearing for the appellant is that, the same Insurance Company, who are party to M.C.O.P.No.86 of 2004 have admitted that the accident has taken place only due to the rash and negligent driving on the part of the tanker lorry insured with them and they have complied with the said award. In the present claim petition, the deceased person was a pedestrian and the claim petition has filed in M.C.O.P.No.55 of 2004 before the Principal District Court, Virudhunagar at Srivilliputhur. The other claim petition, namely, M.C.O.P.No.86 of 2004 has been filed by the rider of the two-wheeler before the Motor Accident Claims Tribunal / Sub Court, Nagapattinam. Admittedly, both the claim petitions arise out of the same accident and the owner of the tanker lorry and the insurer of the tanker lorry are parties to both the claim petitions.

9. In M.C.O.P.No.86 of 2004, the liability has been fixed upon the driver of the tanker lorry on the ground that, he was found to be negligent and ultimately the liability has been mulcted upon the Insurance Company. Therefore, a different stand cannot be taken by the Insurance Company in the present appeal.

10. In view of the above said facts, the award of the Tribunal exonerating the respondents 1 and 2 in the claim petition in M.C.O.P.No.55 of 2004 is hereby set



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aside and an award is passed as against the respondents 1 and 2 in the claim petition directing them to pay the award of Rs.4,06,000/- (*)“**along with interest at the rate of 7.5% per annum from the date of claim petition excluding the default period if any.**” The award passed against the third respondent in the claim petition is set aside. In other respects, the award of the Tribunal stands confirmed. The Insurance Company is directed to deposit the award amount within a period of eight (8) weeks from the date of receipt of a copy of this judgment.

11. This Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

Sd/-

Assistant Registrar

(*)Inserted as per the order of this court dated
07.08.2024 made in CMA(MD).No.2 of 2017.

Sd/-

Assistant Registrar(CO)

// True Copy //

/09/2024

Sub Assistant Registrar()

BTR

To

To be substituted to the order which is already despatched on 31.07.2024

1.The Principal District Judge,
Motor Vehicle Accident Claims Tribunal,
Virudhunagar District, Srivilliputtur.

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2 The Subordinate Judge,
Motor Accident Claims Tribunal, Nagapattinam.

3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-22511[F] dated 25/04/2024)

+2 CC to M/s.G.M.LAW OFFICE, Advocate (SR-22577 & 41816[F] dated
26/04/2024)

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MK/01.07.2024 7P 7C

MK/03.09.2024 7P 8C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023