



CMA(MD)No.707 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2024

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CMA(MD)No.707 of 2008

The New India Assurance Co Ltd.,
Jerome Building,
Fort Station Road,
Trichy-2.

... Appellant

vs.

1. Elamathi
2. Tamilmani
3. Rengadurai

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the fair and decreetal order dated 25.10.2006 made in MCOP.No.
1581 of 2003 on the file of the Motor Accident Claims Tribunal,
Additional District Judge, Fast Track Court No.2, Tiruchirappalli.

For Appellant	: Mr.B.Vijay Karthikeyan
For R1 & R2	: Mr.A.Saravanan
For R3	: No appearance

J U D G M E N T

This appeal has been filed by the insurance company being
aggrieved by the award passed by the Motor Accident Claims Tribunal,
Additional District Judge, Fast Track Court No.2, Tiruchirappalli, in the



claim petition filed by the parents of a 19 year old boy pursuing first year B.Sc., degree course, died in a road accident occurred on 16.04.2003.

The police was informed about the accident by one Jegannathan and FIR was registered based on the said information. The FIR was marked as Ex.P1. The vehicle number was not given and it was shown as a hit and run case but thereafter the Police has fixed the Lorry bearing registration No.T.N.S 4449 as the offending vehicle and the Lorry driver had pleaded guilty in the criminal prosecution and paid fine. It is contended by the insurance company that the first informant Jegannathan was not examined by the claimants and erroneously the Tribunal held that the Lorry bearing registration No.T.N.S 4449 insured with them was the offending vehicle.

2. The learned counsel appearing for the appellant submitted that the FIR does not disclose the registration number of the offending vehicle. The first informant was not examined by the claimants. However, the Tribunal has accepted the case of the claimants that the Lorry bearing registration No.T.N.S 4449 insured with the appellant insurance company was the offending vehicle without any basis. A portion of the evidence in this regard is read over to this Court by the



counsel for the appellant to emphasize that PW2-Rajavel who has spoken to about the accident, could not have been the occurrence witness and his *ipse dixit* explanation for providing the identity of the offending vehicle is highly suspicion.

3. On going through the material evidence and the finding of the Tribunal, this Court finds that the accident had occurred on 16.04.2022 at about 07.30 p.m., in which the deceased Rajganesh was fatally knocked down while he was riding his two wheeler bearing registration No.TN-45-Q-6855. The FIR marked as Ex.P1 though does not reveal the identity of the vehicle which knocked down the deceased Rajganesh, subsequently the Police has collected information through witnesses particularly, PW2 Rajavel about the identity of the offending Lorry bearing registration No.T.N.S 4449. To corroborate this version, the Tribunal has relied upon the conviction imposed on the Lorry driver by the learned Judicial Magistrate, Trichy, vide judgment which is marked as Ex.P4. To disprove the version of the claimants regarding the identity of the offending Lorry, the insurance company has examined RW1 who is the Assistant Manager. He is not a witness to the occurrence and he is not a competent person to speak about the identity of the



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offending vehicle either positive or negative. Unless the insurance company has taken any effort to disprove the identity of the offending vehicle as claimed by the claimants, by preponderance of probability, the case put forth by the claimants is bound to be accepted more so when the driver of the vehicle has admitted his guilt and paid the fine. Hence, this Court finds no merit in this appeal.

4. Accordingly, the Civil Miscellaneous Appeal is dismissed.

No costs.

16.02.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

The Commissioner for Workmen's Compensation,
Tiruchirappalli.



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DR.G.JAYACHANDRAN, J.

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JUDGMENT MADE IN
CMA(MD)No.707 of 2008
DATED : 16.02.2024