

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2294 of 2016

The Branch Manager

M/s TATA AIG General Insurance Company Limited

Jaya Enclave, Third Floor

No.1057, Avinashi Road

Coimbatore 641 018

Appellant/3rd Respondent

-vs-

1. Joseph, S/o Susaiappan

2. Anthoni Rani @ Brizet Rani, D/o Joseph

3. John Mariya, D/o Joseph

4. Justin Lourduraj, S/o Joseph... Respondents 1 to 3/Petitioners

5. N.Prabhu ... 4th & 5th Respondents/

Respondents 1 & 2

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.01.2016 made in M.C.O.P.No.452 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri.

For Appellant

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Mr.N.Vijayaraghavan for

M/s M.B.Gopalan Associates

JUDGMENT

M/s TATA AIG General Insurance Company Limited, Coimbatore has brought this civil miscellaneous appeal questioning the correctness of the impugned award passed by the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri in M.C.O.P.No.452 of 2013 dated 28.1.2016, awarding a sum of Rs.4,29,400/-, as against the claim of Rs.8,00,000/-, for the loss of life of the son of the first respondent in the motor vehicle accident.

2. Learned counsel for the appellant insurance company submitted that when the son of the first respondent, namely, Mr.Sowriyappan @ Sowri Arokiyaraj was riding the two-wheeler in a rash and negligent manner without following the rules on the fateful day and invited the accident, thereby succumbed to the

fatal injuries and that a specific stand was taken by the insurance company that the rider himself was the tort-feasor, the Tribunal, accepting the clever stand taken by the claimants that he was only a pillion-rider based on the contents of the First Information Report, claim petition and charge sheet, has decreed the claim, as a result the solid stand taken by the insurance company that he was the rider of the two-wheeler has been completely overlooked and consequently the liability to pay the entire compensation has been saddled with the insurance company. Therefore, he submitted that the present appeal has been filed aggrieved over the quantum and liability.

3. This Court is not able to find any justification or merit in the said contentions. The reason is that when the accident took place on 1.7.2011 at about 16.00 hours (4.00 P.M.), it was the specific stand of the respondents 1 to 3/claimants that the Bajaj motorcycle bearing Registration No.TN 24 K 2901 was driven by one Mr.Justin Lourduraj and Mr.Sowriyappan @ Sowri Arokiayaraj (since deceased) was travelling as a pillion-rider. When they were proceeding from Kuppam to Krishnagiri road within the Tamil Nadu border, the rider of the motorcycle was unable to control the speed of the vehicle, since the vehicle was going in a downward direction, and when it took a left turn, an unknown vehicle was coming very close to the motorcycle and on seeing the same, the rider Mr.Justin Lourduraj dashed against a rock and stone along with the pillion-rider, as a result both of them fell down, but the pillion-rider sustained grievous injuries. Immediately he was taken to the Government Hospital at Krishnagiri for treatment, but on the way to hospital, the said Sowriyappan @ Sowri Arokiayaraj succumbed to the injuries. Finally the post-mortem certificate issued by the Government Hospital, Krishnagiri on 2.7.2011 also indicated that the deceased succumbed only due to the multiple injuries. Taking note of the stand taken in the claim petition, which has been consistently found both in the First Information Report and the charge sheet stating that while Mr.Justin Lourduraj was riding the Bajaj motorcycle bearing Registration No.TN 24 K 2901, the accident occurred only due to his careless driving of the vehicle, the Tribunal has given a finding that the accident occurred only due to the rash and negligent driving of the motorcycle by Mr.Justin Lourduraj. Although this has been disputed by the insurance company in the counter affidavit filed before the Tribunal, no evidence to the contrary was placed by the insurance company to show that the deceased was driving the motorcycle. Therefore, when a clear and categorical finding of facts has been arrived at by the Tribunal on the basis of oral and documentary evidence and consequently the Tribunal has also applied the principle of 'pay and recover', this Court is not inclined to entertain the appeal filed by the insurance company challenging the impugned award. Accordingly, the impugned award stands confirmed and the civil

miscellaneous appeal is dismissed. Consequently, C.M.P.No.16198 of 2016 is also dismissed.

4. The learned counsel for the appellant fairly submitted that the statutory amount of Rs.25,000/- alone has been deposited. Therefore, the appellant insurance company is directed to deposit the balance award amount together with interest and cost as ordered by the Tribunal to the credit of the M.C.O.P.No.452 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 3/claimants are entitled to withdraw the entire amount as per the apportionment along with accrued interest by moving appropriate applications before the Tribunal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Special District Judge
Motor Accident Claims Tribunal
Krishnagiri

+1 cc to M/s.M.B.Gopalan Associates sr 69276

C.M.A.No.2294 of 2016

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