

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2016

CORAM :

THE HON'BLE MR. JUSTICE A.SELVAM
and
THE HON'BLE MR. JUSTICE P.KALAIYARASAN

C.M.A.No.612 of 2015
& M.P.Nos.1 and 2 of 2015

Royal Sundaram Alliance Insurance Co.Ltd.,
Near Salem Castle Hotel,
A.5/86/163, Bharathi Street (Upstairs),
Sornapuri, Salem

.. Appellant

Vs.

1. Selvambigai
2. Minor Karthikeyan
3. Minor Udayakumar
(Minors 2 and 3 rep.by their mother Selvambigai
4. P.Venkatesan

.. Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 19.12.2014 passed in M.C.O.P.No.48 of 2005 by the Motor Accidents Claim Tribunal (Subordinate Judge), Attur.

For Appellant	..	Mr.M.Krishnamoorthy
For Respondents	..	Mr.Kaithamalai Kumaran
		for R1 to R3
		No appearance for R4

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.)

Challenge in this Civil Miscellaneous Appeal is to the Award dated 19th December, 2014 passed in M.C.O.P.No.48 of 2005 by the Motor Accident Claims Tribunal/Sub Court, Attur.

2. Respondents 1 to 3, as petitioners, have filed MCOP No.48 of 2005, wherein the present appellant and the fourth respondent have been arrayed as respondents.

3. It is averred in the petition that the first petitioner is the wife of deceased Umapathy. The petitioners 2 and 3 are their children. The deceased has joined as Police Constable in the year 1986. On 28.8.2003, the deceased has travelled as a

pillion rider on a Motor Cycle bearing Registration No.TN 30 A 2134 so as to report his duty and the same has been driven by the first respondent. The first respondent has driven the same on Kallakurichi Main Road and all of a sudden, he applied brake so as to avert accident and unfortunately, the vehicle met with an accident and due to that, the deceased has sustained fatal injuries and the first respondent has given a complaint and the same has been registered in Crime No.645 of 2003. The vehicle of the first respondent has been insured with the second respondent. Since the entire accident has happened due to negligent driving of the first respondent and since the vehicle, which caused the accident, has been insured with the second respondent, present petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the second respondent, it is averred that the deceased has driven the vehicle, which involved in the accident. It is false to aver that the first respondent has driven the same and the quantum of compensation claimed by the petitioners is excessive and there is no merit in the petition and the same deserves to be dismissed.

5. On the basis of the rival evidence adduced on either side, the Motor Accident Claims Tribunal has fixed a compensation of Rs.9,13,199/- with a specific direction that on behalf of the first respondent, the second respondent should pay the same by way of passing the impugned award and the same has been challenged by way of filing the present Civil Miscellaneous Appeal.

6. The learned counsel appearing for the appellant/second respondent has repeatedly contended that the accident has taken place on 28.8.2003 at about 8.30 a.m, but the deceased has been admitted in hospital at 11.05 a.m and the First Information Report has been given on 23.45 hrs. The first respondent has not driven the motor cycle, whereas the deceased himself has driven the same and in order to avoid such kind of situation, even though the accident has taken place at 8.30 a.m, the deceased has been admitted in hospital at 11.05 a.m and First Information Report has been given on 23.45 hrs., and further on the side of the second respondent, R.W.3 has given specific evidence to the effect that motor cycle has dashed against his bi-cycle and the person, who has driven the same, sustained head injuries and the Motor Accident Claims Tribunal, without considering the acceptable evidence adduced on the side of the second respondent, has erroneously found that the first respondent has driven the motor cycle at the time of the accident and therefore, the finding given by the Motor Accident Claims Tribunal is liable to be set aside and the award passed by the Motor Accident Claims Tribunal is liable to be modified.

7. The learned counsel appearing for respondents 1 to 3 has contended that the entire accident has taken place only due to rash and negligent driving of the first respondent and the first respondent has himself examined as R.W.1 and his specific evidence is that at the time of the accident, he has driven the motor cycle and the Motor Accident Claims Tribunal, after considering all the evidence available on the side of the petitioners and also the specific evidence given by R.W.1, has rightly come to a conclusion that the accident has taken place only due to rash and negligent driving of the first respondent and therefore, the award passed by the Motor Accident Claims Tribunal does not require any interference.

8. It is an admitted fact that the accident has taken place on 28.8.2003 and due to accident, the husband of the first petitioner has passed away.

9. The only question that has to be decided in the present Civil Miscellaneous Appeal is as to whether the deceased has himself driven the motor cycle or the first respondent has driven the same?

10. As rightly pointed out on the side of the appellant/second respondent, the accident has taken place at 8.30 a.m and the deceased has been admitted in hospital at 11.05 a.m and the First Information Report has been given at 23.45 hrs. Simply on the basis that the deceased has been admitted in hospital at 11.05 a.m, even though the accident has taken place at 8.30 a.m., the Court cannot come to a conclusion that after making necessary arrangements, the first respondent has himself given First Information Report at 23.45 hours.

11. It is true that on the side of the second respondent, R.W.3 has given a specific evidence to the effect that at the time of the accident, motor cycle has dashed against his bicycle and he has fallen down and further the person, who has driven the vehicle, sustained head injury. On the other hand, on the side of the petitioners, one Kumar has been examined as P.W.2 and his specific evidence is that only due to accident, the pillion rider has fallen down in supine position and thereby he sustained head injury.

12. In fact, this Court has analysed the entire evidence given by R.W.3 and ultimately found that on the basis of his evidence, the Court cannot come to a conclusion that the deceased has himself driven the vehicle. Further, it is seen from the records that for detecting the said fact, the appellant/second respondent has also sought aidance from CBI, but no fruitful action has come out.

13. Considering the fact that on the side of the petitioners, acceptable evidence is available for the purpose of proving that the first respondent has driven the vehicle at the time of the accident and also considering that on the basis of evidence given by R.W.3, the Court cannot come to a conclusion that entire accident has taken place only due to rash and negligent driving of the deceased, this Court is of the view that there is no force in the contention put forth on the side of the appellant/second respondent. The Motor Accident Claims Tribunal, after considering the rival evidence adduced on either side, has rightly fixed liability.

14. The learned counsel appearing for the appellant/second respondent has not challenged the quantum of compensation awarded by the Motor Accident Claims Tribunal and therefore, the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed without cost. The award dated 19.12.2014 passed in M.C.O.P.No.48 of 2005 by the Motor Accident Claims Tribunal/Sub Court, Attur is confirmed. Consequently, the connected Miscellaneous Applications are closed.

ajr

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal/Sub Court, Attur

+ 1 cc to M/s.Kithamalai Kumaran, Advocate SR 34037

+ 1 cc to Mr.Krishnamoorthy, Advocate SR 34287

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