



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2016

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THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.M.A. (MD) .No.133 of 2013

and

M.P. (MD) No.1 and 2 of 2013

The Oriental Insurance Company Ltd.,
Oriental House, II Floor,
New No.216, Old No.115,
Prakasam Salai,
Broadway, Chennai.

... Appellant/3rd Respondent

Vs.

1. Vijila Rani
2. Johnsy (Minor)
(Minor 2nd respondent rep., by its
natural guardian, 1st respondent
Vijila Rani)
3. Selvaraj ... Respondent Nos.1 to 3/
Petitioner Nos.1 to 3
4. P.Celestine Raj ... 4th Respondent/1st Respondent
5. Manoharan ... 5th Respondent/2nd Respondent
(5th respondent remained ex-parte before the Lower Court)

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Award of Rs.6,81,000/- (Rupees Six Lakhs and Eight One Thousand only) passed in M.C.O.P.No.51 of 2010, dated 03.04.2012, on the file of the learned Motor Accidents Claims Tribunal cum Subordinate Judge, Padmanabhapuram.

For Appellant	:Mr.K.Bhaskaran
For R-1& R2	:Mr.T.Selvakumaran
For R-4	:M/s.J.Anandavalli
For R-3	:No appearance.
For R-5	:Set Exparte

JUDGMENT

Aggrieved over the award passed by the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram in M.C.O.P.No.51 of 2010, the present appeal is filed.



2. The case of the claimants/respondent Nos.1 to 3 is that on 30.08.2009 at 2.00 p.m., when the deceased Rajan was riding his motor-cycle bearing Registration No.TN 74-Z-5288 from west to east direction, a Mahindra Van bearing Registration No.TN 22-A.A.Z-9684, came in an opposite direction in a rash and negligent manner, hit against the motor-cycle. In the impact, the rider of the motor-cycle died on the spot. Alleging that the driver of the van was responsible for the accident, the legal heirs of the deceased Rajan made a claim for Rs.15,00,000/-.

3. The claim was resisted by the appellant/Insurance Company, disputing the age, income of the deceased and also the manner of accident.

4. The specific stand of the appellant is that the Fitness Certificate of the van had expired on 21.06.2009 and it was not renewed thereafter. Since there was a policy violation, the appellant is not liable to pay compensation.

5. The Tribunal relying upon the oral and documentary evidence held that the driver of the van was responsible for the accident and awarded Rs.6,81,000/- together with interest at the rate of 7.5% p.a.

6. Though the appellant has raised various grounds in this appeal, Mr.K.Bhaskaran, learned counsel for the appellant would mainly contend that there was a policy violation and therefore, the liability cannot be fastened on the appellant.

7. In the instant case, the occurrence had taken place on 30.08.2009. Ex.P.3 Report of the Motor Vehicle Inspector reveals that the Fitness Certificate expired on 21.06.2009. The appellant had not produced any material before the Tribunal to show that they issued a notice to the owner of the van to produce the Registration Book of the vehicle. Though the fifth respondent contended that there was a policy violation, he has not produced any material to prove the same before the Tribunal.

8. In my considered view, the Tribunal rightly fastened the liability on the appellant/Insurance Company. The appellant has not questioned the quantum and the negligence aspect in this appeal. In such view of the matter, I do not find any merits in this appeal.

9. **In the result**, this appeal is dismissed. In view of the dismissal of this appeal, the appellant/Insurance Company shall deposit the entire award amount with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy



of this Judgment, if not already deposited.

10. On such deposit being made, the respondent Nos.1 and 3/claimant Nos.1 and 3 are permitted to withdraw their share in the award amount without filing any formal petition before the Tribunal. The entire share of the minor claimant shall be deposited in any one of the Nationalized Bank, till he attains majority. The first respondent/Mother, who is the guardian of the second respondent/minor claimant No.2 is permitted to withdraw the accrued interest, once in three months directly from the bank and utilize the same for her welfare. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal cum
Subordinate Court, Padmanabhapuram.

+1cc to Mr.K.BHASKARAN,Advocate Sr.No. 31112
AA/GSV-PM/SAR-III/26.07.2016/3p-3c

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