

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2017

CORAM

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

C.M.A. No.1096 of 2017
and C.M.P. No.5386 of 2017

The Deputy Manager
The Oriental Insurance Co. Ltd.,
3rd Party Hub Oriental House
2nd Floor, Prakasam Road
Chennai - 108 .. Appellant/2nd Respondent

Vs.

1.Smt.T.M.Subadra
2.T.Munirathinam
3.R.V.Dillibabu .. Respondents/Petitioner 1 & 2,
1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.02.2016, passed in M.C.O.P. No.25 of 2012, by the Motor Accident Claims Tribunal, Subordinate Judge, Tiruttani.

For Appellant : Mr.J.Chandran

For Respondents: Mr.D.Anandan
for Mr.S.Udayakumar

JUDGMENT

(Made by M.Govindaraj, J.)

Challenging the award passed by the Motor Accident Claims Tribunal (Subordinate Judge), Tiruttani in M.C.O.P. No.25 of 2012 dated 06.02.2016, Oriental Insurance Co. Ltd. has preferred the appeal on liability.

2. In an accident between two motorcycles bearing Registration Nos.TN-20 BE-3015 and TN-20 BD-6170, that had taken place at around 3.00 p.m on 19.10.2011, near Mambakkam bus stop, the deceased T.Lakshminarayanan, being a pillion rider of a motorcycle bearing Registration TN-20 BE-3015 suffered head

injury and died in the hospital. On his death, the parents of the deceased/respondents 1 and 2 laid a claim for Rs.60,25,000/- restricted to Rs.50,00,000/-.

3. The insurance company has denied the averments made in the claim petition.

4. The claimants have marked Ex.P1 - copy of the FIR, Ex.P2 - Motor Vehicle Inspector's Report, Ex.P3 - Postmortem certificate, Ex.P4-Legal heir certificate, Ex.P5-B.E. Degree certificate and Ex.P6-salary slip issued by the employer, and the father of T.Lakshminarayanan/1st respondent herein, deposed evidence as PW1 and the eyewitness let in evidence as PW2. On the side of the appellant/insurance company, Legal Officer of the insurance company and Special Sub Inspector of Police, have let in evidence as RWs.1 and 2 and marked Ex.R1 - Authorisation letter, Ex.R2 - FIR, Ex.R3 - Charge Sheet, Ex.R4 - Statement given by R.Parthiban, rider of the opposite vehicle and Ex.R5 - Investigation Report.

5. Based on the materials available, the Tribunal dealt with the aspect of rash and negligence, quantum of compensation and the liability to pay compensation. According to PW1, father of the deceased. According to PW1, father of the deceased, the rider of the Hero Honda Splendor Plus bike bearing Registration No.TN-20 BE-3015 rode the vehicle in a rash and negligent manner and dashed against TVS Star City motorcycle bearing Registration No.TN-20 BD-6170, without obeying the traffic rules and regulations was the cause of the accident in which his son died.

6. The Inspector of Police, Tiruttani, has registered a case in Crime No.819 of 201 for offences under Sections 279 and 304-A IPC against the offending motorcyclist, based on the complaint of the motorcyclist bearing Registration No.TN-20 BE-3015. That due to rash and negligent driving of the third respondent herein/first respondent, the accident has occurred.

6. The appellant/insurance company has contended that the rider of the motorcycle bearing Registration No.TN-20 BD-6170 was not having a valid driving licence at the time of accident and the rider has clearly admitted the same. The Investigator of the insurance company and the police authorities stated that there is no driving licence with him at the time of accident. Since the motorcyclist of the vehicle bearing Registration No.TN-20 BE-3015 was having an effective licence and that was insured with the appellant/insurance company, claim was made against the third respondent.

7. The Tribunal relying on the evidence of PW1 and Ex.R5 - Investigation Report under Section 173 of Cr.P.C. was not filed

before the court and the criminal case was not numbered, and the statements, charge sheet and rough sketch have not been produced before the proper court, held that with an unnumbered investigation report, the evidence of the Inspector of Police cannot be countenanced. It was observed that the testimony of the witnesses shall be given preference over the FIR as per the judgment of the High Court of Madhya Pradesh in the decision reported in Nanhu Singh v. Jaheer reported in CDJ 2007 APHC 1257 and another judgment reported in National Insurance Co. Ltd., Secunderabad v. K.Yadamma reported in 2005 (3) ALD 643 and found that the rider of the first respondent vehicle bearing Registration No.TN-20 BE-3015 was rash and negligent in causing the death of the claimants' son.

8. Since this court, in revision had confirmed that any one of the tortfeasors can be sued for compensation, the claim of the insurance company to implead owners of both vehicles were denied and proceeded against the first respondent and the insurance company.

9. Based on the finding given regarding rash and negligent act of the rider of the vehicle, the Tribunal has fastened the liability on the appellant/oriental insurance company, and arrived at a quantum of Rs.44,25,000/-.

10. Learned counsel appearing for the insurance company would contend that a preliminary point pleaded be answered, rather than going into the aspect of quantum at this stage. Hence the plea of the learned counsel for the appellant regarding the negligent aspect alone was taken up for consideration.

11. According to the the learned counsel appearing for the insurance company that, based on the complaint of third respondent herein, Ex.P1-FIR was lodged. The statement in the FIR would clearly reveal that the rider of motorcycle TVS Star City bearing Registration No.TN-20 BD-6170 was driven, rashly and negligently. Thereafter, the police have also filed a charge sheet under Ex.P3 that the rider of the motorcycle bearing Registration No.TN-20 BD-6170 was rash and negligent and caused the accident. The Special Sub Inspector of Police, RW2, has also let in evidence in support of the same that the rider of the vehicle bearing Registration No.TN-20 BD-6170 was alone responsible for the accident.

12. On the other hand, PW1, in his evidence, has stated that the rider of the vehicle TN-20 BE-3105 alone is responsible. But the rider of the said vehicle, namely Pavendhan was not examined as a witness before the Tribunal, to substantiate the said statement. It is the contention of the

learned counsel appearing for the appellant/insurance company that Ex.R5-Investigation Report and Ex.R4-Statement given by R.Parthiban, the rider of the vehicle bearing Registration No.TN-20 BD-6170 was not having valid licence. Further, the insurance policy of the motorcycle bearing Registration No.TN-20 BD-6170 had also expired on 20.09.2011, whereas the accident had taken place on 19.10.2011. Therefore, for the purpose of insurance only, the claim petition was filed against the first respondent, who is having valid licence and insurance coverage or else they may not be able to realise the compensation. The argument of the learned counsel appearing for the appellant/insurance company, is substantiated by documents, namely Exs.R4 and R5.

13. On perusal of the oral and documentary evidence, we could see that, from the beginning, the FIR was filed against the rider of the vehicle bearing Registration No.TN-20 BD-6170. After investigation, police has filed a charge sheet against the rider of the said vehicle, namely Parthiban, and suddenly at the time of filing the claim petition, the offending vehicle was changed, as it was not possessing the necessary document.

14. The insurance company has taken earnest steps to implead the tort feisor as party to the claim petition. The Hon'ble High Court has held that from the case of joint tort feisors, the insurance company can sue against any one of the tort feisor and has disallowed the impleading petition filed by the insurance company.

15. In the instant case, the case of the appellant is that there are no joint tort feisors, but the person who is responsible for rash and negligent driving, namely, rider of the vehicle bearing Registration No.TN-20 BD-6170 caused the accident. There is no allegation of rash and negligence driving by the third respondent herein. Assuming that the rider Parthiban was not rash and negligent, he could have been very well examined, as he is a relative of the claimants. It is clear from the evidence of the Inspector of Police, the statement of rider of the offending vehicle, charge sheet and FIR, the rider of the vehicle bearing Registration No.TN-20 BD-6170 was only rash and negligent and caused the accident. The entire claim has been proceeded against the third respondent herein, whose riding is not at all responsible for the accident. The factum has been proved well and therefore, in our considered view, the claim was made against a wrong person and the necessary parties have not been impleaded for claiming compensation. In the absence of rider and owner of the offending vehicle, the claim petition is not maintainable and the second appellant/insurance company cannot be held liable for payment of compensation.

16. In view of the finding on the issue of negligence and liability, that insurance company is not liable to pay compensation, we do not proceed on the quantum of compensation awarded by the Tribunal.

In the result, the civil miscellaneous appeal is allowed and award passed by the Tribunal is set aside. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

asr

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal
Tiruttani

2. The Section Officer,
V.R. Section, High Court, Madras. (2 copies)

+1cc to Mr.S.UDAYAKUMAR Advocate, S.R.No.22906

C.M.A.No.1096 of 2017

KK (CO)
TR(30/01/2018)

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