

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7/4/2017

C O R A M

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

C.M.A.No.2292 of 2016

The Branch Manager,
M/s. Oriental Insurance Co. Ltd.,
The Divisional Office, No.1,
Katpadi Road,
Vellore-632 004. ... Appellant/3rd Respondent

Vs

1. R.Chitra
2. R.Indhumathy Jeyanthi (minor)
rep. By the mother and natural friend/
first respondent.
3. K.Amirdhammal
4. N.Krishnamurthy
5. G.Iqbal Ahmed
6. The Branch Manager,
M/s. National Insurance Co.Ltd.,
No.333,3rd Floor, Bangalore Road,
Opp. Raja Theatre,
Krishnagiri-63.

...Respondents/Petitioners/Respondents 1 & 2

Civil Miscellaneous Appeal filed against the judgment and decree made in M.C.O.P.No.65 of 2010, dated 06.06.2012, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court No.3, Vellore at Thirupattur.

For appellant ... Mr.N.Vijayaraghavan
For respondents ... Mr.RG.Annamalai for R.1.
Mr.Arunkumar for R.6.

J U D G M E N T

(Judgment of the Court was delivered by S.Manikumar,J)

Questioning the liability fastened on Oriental Insurance Company Limited, Vellore, to pay 50% of the award amount of Rs.11,60,000/-, with interest at the rate of 7.5%, from the date of claim till deposit and costs, instant appeal has been filed.

2. Material on record discloses that on 22/6/2003, about 8.00 p.m., when K.Ramadoss, husband of the first respondent, father of the second respondent and son of the respondents 3 and 4, was riding a Bajaj Motor cycle, bearing Registration No.TN23P-7587 with a pillion K.Loganathan Babu, another vehicle,viz., Yamaha, bearing Registration No.TN29K-0572, which came in the opposite direction, collided with Bajaj Motor Cycle, Motor cyclist K.Ramadoss and pillion rider K.Loganathan Babu, sustained injuries. K.Ramadoss, was taken to Vellore C.M.C hospital and he died, on 23/6/2003. K.Loganathan Babu, survived. A case in Crime No.399/2003, under sections 279, 337, 338 and u/s 304 A of IPC has been registered against the rider of Yamaha Motor cycle bearing Registration No.TN29K-0572 and insured with National Insurance Company Limited, Krishnagiri.

3. For the death of K.Ramadoss, legal representatives, stated supra, filed M.C.O.P.No.94 of 2006 on the file of the learned Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Vellore. Lateron, transferred and renumbered as M.C.O.P.No. 65 of 2010, on the file of the Motor Accident Claims Tribunal (Sub-ordinate Judge), Tirupathur, Vellore.

4. Father of the deceased, examined himself as P.W.1 reiterated the manner of the accident. P.W.2 K.Loganathan Babu, pillion rider adduced supportive evidence. Ex.P.1 First information report, Ex.P.2 Medical report given by C.M.C Hospital, Vellore, Ex.P.3 Post mortem report, Ex.P.4 Insurance Certificate of National Insurance Company Limited, Ex.P.5 Policy of the vehicle driven by the deceased, Ex.P.6 Report of the vehicle bearing Registration No.TN29K-0572, Ex.P.7 Report of the vehicle bearing Registration No.TN23B-7587, Ex.P.8 Driving licence of R.1, Ex.P.9 Driving license of the deceased, Ex.P.10 T.C of the deceased, Ex.P.11 Advocate notice, Ex.P.12 Unopened cover sent to the first respondent, Ex.P.13 Acknowledgment by R.2 for the notice sent, Ex.P.14 Acknowledgment by R.3 for the notice sent, Ex.P.15 Accounts note, Ex.P.16 Bill book pertains to the period 6/12/2002 to 10/2/2003, containing income and expenses, Ex.P.17 Bill book pertains to the period from 11/2/2003 to 27/5/2003 and Ex.P.18 Bill book pertains to the period 28/5/2003 to 21/6/2003 have been marked on the side of the claimants.

5. R.W.1 is the Assistant Managing Director of M/s.Oriental Insurance Company Limited, Vellore. EX.R.1 investigation report, EX. R.2 policy for the vehicle bearing Registration No.TN23.P 7587 and EX.R,3 charge sheet against the rider of the motor cycle bearing Registration No.TN29K-0572, have been marked by the Insurance Company.

6. On evaluation of pleadings and evidence, Claims Tribunal, vide judgment, in M.C.O.P.No.65 of 2010, dated 6/6/2012, held that both the motor cyclists were negligent in causing the accident, in the ratio of 50:50. Based on the avocation pleaded, loss of income claimed, and considering the oral and documentary evidence, on the quantum of compensation, the Tribunal held that the legal representatives of the deceased K.Ramdoss would be entitled to Rs.11,60,000/-, with interest at the rate of 7.5% p.a., from the date of claim till realisation.

7. Supporting the prayer sought for in the instant appeal, Mr.N.Vijayaraghavan, learned counsel for the Oriental Insurance Company Limited, Vellore, appellant submitted that the Claims Tribunal has grossly held in apportioning liability between the Oriental Insurance Company Limited, Vellore and National Insurance Company Limited, Krishnagiri/6th respondent herein, insurer of Yamaha motor cycle bearing Regn. No.TN29K0572. According to him, though Mr.K.Ramdoss was a motor cyclist of Bajaj Motor Bike bearing Registration No.TN23P-7587, legal representatives of the deceased have not impleaded K.Govindaraj, owner of the said vehicle. He further contended that as per the provisions of the Motor Vehicles Act, 1988, unless and until the owner of offending vehicle is impleaded as a party respondent, no award can be passed against the insurer of the vehicle. He further submitted that liability can be fastened on the insurer to indemnify the owner/insured, if only the owner is found to be liable for payment of compensation. In the absence of owner being impleaded in the claim petition, as a respondent, liability cannot be fastened. Yet another contention made by the learned counsel for Oriental Insurance Company Limited, Vellore/appellant is that when K.Ramados deceased himself was a tort feisor, he cannot seek for indemnification by the insurer/appellant herein.

8. Learned counsel appearing for the appellant further contended that as per the directions of this Court, in C.M.P.No.16189 of 2016 in C.M.A.No.2292 of 2016, dated 25/10/2016, a sum of Rs.4,47,000/- being 50% of the amount, apportioned against the Oriental Insurance Company Limited/appellant has been deposited. For the above said reasons, he prayed for reversal of liability fastened on the Insurance Company/appellant herein.

9. Mr.Arunkumar, learned counsel for the National Insurance Company Limited, Krishnagiri/sixth respondent submitted that the Tribunal, has fixed negligence in equal proportion against the riders of the Motorcycles. As per the impugned judgment, the sixth respondent is liable to pay 50% of the award amount i.e., Rs.5,80,000/-, with interest at the rate of 7.5%, from the date of claim till deposit and 50% of the costs, to the legal

representatives of the deceased.

10. Respondent Nos.1 to 4, have filed C.M.P.No.4494 of 2017, seeking permission to withdraw Rs.4,47,326/-, deposited to the credit of M.C.O.P.No.65 of 2010, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court No.3, Vellore at Thirupattur.

11. Though the challenge by the Oriental Insurance Company Limited, Vellore/appellant herein, on liability was explained to the learned counsel for the respondents 1 to 4/legal representatives, he insisted to order for withdrawal. According to him, he is not aware as to whether National Insurance Company Limited, Krishnagiri 63, insurer of Yamaha motorcycle has deposited the amount apportioned against them.

12. During the course of hearing, Mr.RG.Annamalai, learned counsel for the legal representatives/respondent Nos.1 to 4 submitted that finding of the Tribunal, fixing negligence on K.Ramadoss/deceased, has not been challenged. Submission is placed on record.

13. Heard the learned counsel for the parties and perused the materials available on record.

14. On evaluation of pleadings and evidence, indisputably, the Tribunal has arrived at a categorical conclusion that both the riders of motorcycles, Bajaj Motor Cycle bearing Registration No.TN23P-7587, insured with Oriental Insurance Company Limited and rider of Yamaha Motor Cycle bearing Registration No.TN29K-0572, insured with National Insurance Company Limited, Krishnagiri, were equally negligent in causing the accident. Tortfeasor K.Ramadoss died.

15. Contention that the owner of Bajaj Motorcycle bearing Registration No.TN23P-7587, K.Govindaraj, has not been impleaded, as party respondent in M.C.O.P.No.65 of 2010 has not been disputed. Though in law, it may be technically correct, to contend that the owner of the offending vehicle has to be impleaded and consequently, the insurer of the said vehicle, be made liable, as per the policy of insurance, yet we are not inclined to subscribe to the said contention, for the reason that as per Section 166 of the Motor Vehicles Act, 1988, in making the award, Claims Tribunal is empowered to pass an amount, which shall be paid by the insurer/owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

16. In the case on hand, admittedly, K.Ramadoss was also found to be a tortfeasor. He had contributed to the accident. Probably that is the reason as to why the legal representatives

of the deceased, have not impleaded the owner of the Bajaj motor cycle. As the deceased was also a tortfeasor, claim against Oriental Insurance Company Limited, is not maintainable.

17. No details were furnished as to whether National Insurance Company Limited, Krishnagiri/sixth respondent has filed any appeal and therefore, the said Company is liable to pay compensation of Rs.5,86,000/- with interest at the rate of 7.5% p.a., from the date of claim till deposit. Learned counsel submitted that there is no specific instruction as to whether the above said amount has been deposited. As liability is fastened on Oriental Insurance Company Limited and National Insurance Company Limited, Krishnagiri, to the extent of 50% of the award, the said amount is due and payable by the sixth respondent.

18. In the light of the above discussion, we are inclined to accept the contentions of the learned counsel appearing for the appellant herein and accordingly, set aside liability fastened on Oriental Insurance Company Limited and allow the instant appeal.

19. Accordingly, this Civil Miscellaneous Appeal is allowed. Amount deposited in M.C.O.P.No.65 of 2010, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court No.3, Vellore at Thirupattur, is directed to be refunded. M/s.National Insurance Company Limited/sixth respondent is directed to deposit a sum of Rs.5,80,000/- with interest at the rate of 7.5% p.a., from the date of claim till deposit and 50% of the costs, if not deposited, within a period of four weeks, from the date of receipt of a copy of this order. Legal representatives of the deceased/respondents 1, 3 and 4 are permitted to withdraw their respective shares, after making necessary applications, before the Tribunal. Share of the minor/second respondent be deposited in a National Bank under the reinvestment scheme, initially for a period of three years. The first respondent/mother of the minor/second respondent is permitted to withdraw the interest accrued, once in three months. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

Motor Accidents Claims Tribunal,
Additional District and Sessions Court No.3,
Vellore at Thirupattur.

+1 CC to Mr.N.Vijayaraghavan, Advocate sr 21967
+1 Cc to Mr.S. Arunkumar, sr 21271

C.M.A.No.2292 of 2016

RJ (CO)
sp/4/5



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