



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.596 of 2017
and
C.M.P (MD) .No.6236 of 2017

The Branch Manager,
The Oriental Insurance Co., Ltd.,
Office at 16, K.J.R.Complex,
North Veli Street,
Madurai.

... Appellant/Respondent No.3

Vs

1.Jeyarani

2.Minor Abinash

3.Minor Anisha
(Minors 2nd & 3rd respondents rep.by
their mother, the 1st respondent Jeyarani)

4.Jothi

... 1-4 Respondents/1-4 Petitioners

5.Sasivarnam

... 5th Respondent/1st Respondent

6.Malairani

... 6th Respondent/2nd Respondent

(5th and 6th respondents remained
ex-parte before the lower Court)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award of Rs.17,52,000/- (Rupees Seventeen Lakhs and Fifty Two Thousand Only) passed in M.C.O.P.No.255/2013 dated 15.12.2016 on the file of the Motor Accident Claims Tribunal-cum-IV Additional District Judge, Madurai.

For Appellant

: Mr.K.Bhaskaran

For Respondent Nos.1 to 4

: Mr.S.Palanivelayutham

For Respondent Nos.5 & 6

: No appearance



JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the award made in M.C.O.P.No.255/2013, dated 15.12.2016, on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Madurai.

2. It is a case of fatal accident, which took place on 30.10.2012 at about 12.30 p.m., at Kamuthi to Madurai Road.

3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased by name Karthik was travelling as a pillion rider along with one Sathiyaraj, in a two-wheeler bearing Registration No.TN 65 M 7644 at Kamuthi to Madurai main road, the rider of the two-wheeler drove the vehicle in a high speed without observing traffic Rules and as a result, the vehicle capsized and in the said accident, the said Karthik as well as Sathiyaraj, sustained multiple injuries all over the body and thereafter, succumbed to the injuries.

3. The claimants filed an application in M.C.O.P.No.255 of 2013 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Madurai, seeking compensation.

4. Before the Tribunal, the Claimants examined three witnesses as P.Ws.1 to 3 and marked nine documents as Ex.P.1 to Ex.P.9. The Insurance Company examined two witnesses as R.Ws.1 and 2 and marked three documents as Ex.R1 to R3.

5. The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent riding of the two-wheeler by Sathiyaraj and since the vehicle was insured with the appellant/Insurance Company, directed the appellant to pay compensation of Rs.17,52,000/-.

6. Against which, the appellant/Insurance Company has filed this present appeal challenging liability.

7. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal erred in fixing the entire negligence on the rider of the two-wheeler and fixed the liability on the Insurance Company to pay compensation, when the deceased did not wear the Helmet. He further submitted that some contributory negligence has to be fixed on the deceased for not wearing the Helmet.

8. In support of his submission, the learned counsel appearing for the appellant/Insurance Company relies on the judgment of this Court in **A.Chithra and others vs. G.A.Sivakumar and others** reported



in **2017(1) TN MAC 423**, wherein at Paragraph No.7, it has been held as follows:

"7.However, as rightly pointed out by Mr.K.Bhaskaran, learned counsel for the second respondent, the deceased rider was not wearing Helmet at the time of accident. Therefore, contributory negligence has to be fixed. Section 128 of the Motor Vehicles Act mandates wearing of hit-wear/Helmet and the rider shall wear Helmet. It is not the case of the claimants that the rider was wearing Helmet as per Section 129 of the Motor Vehicles Act, 1988. Therefore, 15% contributory negligence has to be fixed on the deceased Driver."

9. Per contra, the learned counsel appearing for the respondents 1 to 4 submitted that the deceased was only a pillion rider and therefore, he did not wear Helmet and therefore, the Tribunal has rightly fixed the entire negligence on the rider of the two-wheeler and hence, the finding of the Tribunal does not warrant interference.

10. However, the learned counsel for the appellant/Insurance Company submitted that in the above referred case, the person/rider of the vehicle was fixed with 15% contributory negligence, whereas in the present case, the deceased was only a pillion rider and therefore, it would suffice if 5% contributory negligence is fixed on the deceased.

11. Heard the learned counsel appearing on both sides and perused the materials available on record.

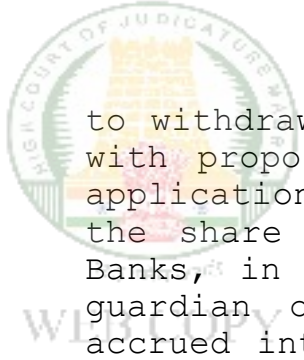
12. A perusal of the award passed by the Tribunal clearly shows that the deceased travelled in the two-wheeler as a pillion rider and he did not wear Helmet and therefore, I find some force in the argument advanced by the learned counsel appearing for the appellant/Insurance Company. Therefore, this Court fixes 5% negligence on the pillion rider.

13. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed confirming the award passed in M.C.O.P.No.255/2013 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Madurai, dated 15.12.2016 in respect of quantum and in respect of negligence, 5% negligence is fixed on the deceased.

(ii) The Appellant/Insurance Company is directed to deposit their share of 95 % of the award amount of Rs.17,52,000/- (Rupees Seventeen Lakhs and Fifty Two Thousand Only) with proportionate interests and costs to the credit of M.C.O.P., on the file of claims Tribunal within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any.

(iii) On such deposit being made, major claimants are permitted



to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs, without filing any formal application before the Tribunal. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The IV additional District Judge,
Motor Accidents Claims Tribunal,
Madurai.
2. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 75402
+ 1 CC TO Mr.S.PALANI VELAYUTHAM, ADVOCATE IN SR No. 75703

PM

TE/SV-MMS/SAR-II : 20/11/2017 : 4P/5C

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