



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.218 of 2015

and

M.P. (MD) No.2 of 2015

and

C.M.P. (MD) No.8994 of 2016

National Insurance Company Limited,
Kumbakonam by its Divisional Manager,
No.62, T.S.R.Big Street,
Kumbakonam.

... Appellant

Vs.

1.Panchanathan

2.Seethai

3.Selvamani

4.Vijayasanthi

5.Minor Abinaya

6.Minor Bharathi

... Respondents 1 to 6

(Minor respondents 5 and 6
are rep.by their father & legal
guardian the first respondent)

7.Kandasamy

... 7th Respondent

(fourth respondent declared as Major
and guardianship discharged
as per the order of Court dated
16.10.2015 made in MP(MD)No.4/2015
in CMA(MD)No.218/2015)

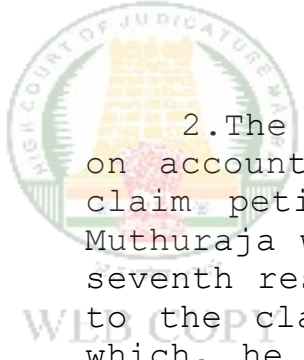
Prayer: This Civil Miscellaneous Appeal is filed under Section 173
of Motor Vehicles Act, 1988 against the order and decree made in
MCOP.No.263 of 2012 dated 25.02.2014 on the file of the Motor
Accident Claims Tribunal/ Additional Sub Court, Kumbakonam.

For Appellant : Mr.J.S.Murali

For Respondents : No appearance for R1 to R6

JUDGMENT

National Insurance Company Limited has filed this Civil
Miscellaneous Appeal questioning the award dated 25.02.2014 made
in MCOP.No.263 of 2012 on the file of the Motor Accident Claims
Tribunal/ Additional Sub Court, Kumbakonam.



2.The respondents 1 to 6 herein filed the said claim petition on account of the demise of one Muthuraja. According to the claim petition, on 22.10.2011 at about 1.30 a.m the deceased Muthuraja was riding the two wheeler (Hero Honda) belonging to the seventh respondent herein when the accident took place. According to the claimants, an unknown vehicle hit him. As a result of which, he fell down and sustained injuries and later died. The appellant has alleged that the deceased was under the influence of alcohol and did not have valid driving licence and invited the accident by riding the two wheeler in a rash and negligent manner. According to the appellant, there was no other offending vehicle involved.

3.The Tribunal held that the allegation that the deceased was under the influence of alcohol at the time of accident was not established. The Tribunal directed the appellant to pay a sum of Rs.9,00,000/- as compensation to the claimants with interest at the rate of 7.5% per annum. They were permitted to pay the said amount and recover it from the vehicle owner.

4.Heard the learned counsel for both parties.

5.The claim petition in this case has been filed under Section 166 of the Motor Vehicles Act, 1988. The deceased was himself rider of the vehicle. He is the tortfeasor himself. The claimants have not been able to furnish details of any other offending vehicle. F.I.R itself registered only against the deceased. Since the accident occurred only due to the negligence of the deceased himself, the question of fastening liability on the insurance company would not arise. The deceased was not an employee under the owner of the vehicle. That the tortfeasor cannot maintain a claim petition under Section 166 of the Act is well settled. If the deceased was a tortfeasor, his legal representative also cannot maintain the claim petition under the said provision. Therefore, fastening of the liability on the insurance company by applying pay and recover principle is clearly incorrect.

6.I am therefore constrained to set aside the award dated 25.02.2014 made in MCOP.No.263/2012 on the file of the Motor Accident Claims Tribunal/ Additional Sub Court, Kumbakonam fastening liability on the appellant herein. This Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

The Additional Sub Judge,
Motor Accident Claims Tribunal/ Additional Sub Court,
Kumbakonam

COPY TO:

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.J.S.Murali, Advocate SR.No. 82908

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skm

JM/SV MMS/SAR 1/13.11.2017/3P/4C