



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM :

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No.370 of 2015

and

M.P. (MD) No.1 of 2015

The Branch Manager,
New India Assurance Company Ltd.,
"Rekha Towers",
No.24BB, Kamarajar Salai
Madurai - 9.

... Appellant

Vs.

1.K.Kamaraj
2.Subbulakshmi
3.Kamal

... Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 20.09.2011 made in M.C.O.P.No.111 of 2006 on the file of Motor Accidents Claims Tribunal, Sub Court, Periyakulam.

For Appellant : Mr.B.Vijay Karthikeyan
For Respondents : R1 - died
Mr.A.Arivuchandran for R2

JUDGMENT

One Selvakumar, the son of the claimants had borrowed the two wheeler from one Kamal, the third respondent herein and was riding it on 14.09.2005 and coming from Periyakulam to Vadugapatti for purchasing some items. It is alleged that a dog crossed the road and to avoid the same, the rider took a turn and hit the tamarind tree. He died on the spot. The claimants filed a petition under Section 163(A) and Section 166 of the Motor Vehicles Act before the Motor Accidents Claims Tribunal, Periyakulam. The Tribunal awarded a sum of Rs.4,42,000/- with interest. The said award is under challenge before this Court.

2.Heard the learned counsel on either side.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel appearing for the appellant would contend that the deceased was the tortfeasor himself. He had borrowed the



two wheeler from the owner and was riding it. He would therefore step into the shoes of the owner himself. Unless the negligence is fastened on the rider of the vehicle, the owner cannot be made vicarious liable. Unless the owner is made liable for negligence, the insurer cannot be made liable. Therefore, in this case, the question of awarding compensation will not arise. Because the deceased was the tortfeasor himself. In the present case, the Tribunal has given a finding that the accident took place on account of the act of god. Without specifically fastening the liability on the vehicle owner, the insurer could not have been made liable. This Court therefore has to necessarily hold that the impugned award is liable to be set aside. This appeal has to be allowed. However, it is submitted that the appellant insurance company had deposited the entire award amount and 50% of the same has been withdrawn by the claimants. Therefore, it is made clear that the appellant insurance company shall not take any steps to recover the said withdrawn amount from the surviving claimant.

4. With the above observation, this appeal is allowed and the award dated 20.09.2011 made in M.C.O.P.No.111 of 2006 on the file of Motor Accidents Claims Tribunal, Sub Court, Periyakulam is set aside. The appellant insurance company is at liberty to withdraw the remaining balance amount together with the accrued interest. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Sub Court, Periyakulam.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.B.VIJAY KARTHIKEYAN, ADVOCATE IN SR No. 88438
+ 1 CC TO Mr.A.ARIVUCHANDRAN, ADVOCATE IN SR No. 88713

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TE/KKR/SAR-1 : 08/01/2018 : 2P/6C

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