



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No. 634 of 2015

Divisional Manager,
Oriental Insurance Company Limited,
Office address, No.24.E/12.A,
Sivasakthi shopping complex,
S.N.High Road, Tirunelveli.

: Appellant/2nd Respondent

Vs.

1.Esakkiyammal
2.Marimuthu
3.Mariappan

: Respondents 1&2/Petitioners 1&2
: 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree order made in MCOP.No.611 of 2013 dated 21.07.2014 on the file of the Motor Accidents Claims Tribunal cum 1st Additional District Judge, Tirunelveli.

For Appellant : Mr.C.Jawahar Ravindran
For Respondents : Mr.T.Selvakumar for R1 &R2
No appearance for R3

JUDGMENT

Heard the learned counsel on either side.

2.Oriental Insurance Company Limited has filed this Civil Miscellaneous Appeal questioning the award made in MCOP.No.611 of 2013 dated 21.07.2014 on the file of the Motor Accidents Claims Tribunal cum 1st Additional District Judge, Tirunelveli.

3.The claimants are the children of the deceased Thangarani @ Rani. The deceased was travelling as a pillion rider in a two wheeler. The vehicle was ridden by the husband of the deceased. The accident took place on 01.02.2013. The husband of the deceased lodged the F.I.R alleging that the accident was caused on account of the involvement of the another vehicle also. In another words, it was a 'Hit and Run' case. The claim petition was filed under Section 163(A) of the Motor Vehicles Act. Therefore, applying the formula set out in the Second Schedule, the Tribunal awarded a sum of Rs.4,04,500/- against the insurance company. This was because the vehicle was insured with the insurance company.

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

4.The learned counsel appearing for the appellant would point out the discrepancy between the version projected by the father on

the one side and the claimants on the other side. According to the claimants, the fault was on the part of the rider of the two wheeler, namely, their father. However, the insurance company had marked Ex.Pl, F.I.R, in which the rider of the vehicle had pointed out the involvement of another unknown vehicle. Since the Hon'ble Supreme Court in the decision reported in **(2013) 8 MLJ 136 (SC) (United India Insurance Company Ltd, v. Sunil Kumar)** has held that the enquiry into the aspect of negligence is foreign to the scope of enquiry under Section 163 of the Motor Vehicles Act.

5. Therefore, I am not inclined to interfere with the award impugned in this appeal. However, as requested by the learned counsel for the appellant, liberty is given to the appellant insurance company to proceed against the unknown vehicle as and when it is identified. The appellant insurance company is directed to deposit the entire compensation amount as awarded by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, with interest at the rate of 7.5% per annum with cost from the date of petition till the date of realization, less the amount already deposited if any. On such deposit, the claimants are entitled to withdraw the same, less the amount already withdrawn by them, if any, as apportioned by the Tribunal, by filing proper application.

6. With this observation and liberty, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The 1st Additional District Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.
2. The Section Officer,
Madurai Bench of Madras High Court, Madurai.

Copy To:-

Mr. Mariappan, S/o. Parathesi,
No. 4A/11, Mahilvanapuram,
Tirunelveli Town - 627 006

- + 1 CC TO Mr. C. JAWAHAR RAVINDRAN, ADVOCATE IN SR No. 84274
- + 1 CC TO Mr. T. SELVAKUMARAN, ADVOCATE IN SR No. 84260