



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos. 402, 403 & 404 of 2011
and
M.P.Nos.1, 1 & 1 of 2011

M/s.United India Insurance Co.Ltd.,
Katpadi Road,
Vellore.

... Appellant in all the three CMAs/
2nd Respondent
Vs

Minor Vinod,
(Minor Rep. by his Mother & NF Govindammal)
...1st Respondent in CMA No. 402 of 2011

Mani
...1st Respondent in CMA No.403 of 2011

N.Bharathi
Minor Janani
Minor Priyanka
Muniraj
Kanaga
(Minors 2 & 3 rep.by her Mother & NF Bharathi)
...Respondents 1 to 5 in CMA No 404 of 2011

R.Selvam
... 2nd Respondent in CMA.Nos.402 & 403 of 2011
and 6th Respondent in CMA.No.404 of 2011
(R2 in CMA 402 & 403 R6 in CMA 404/11
before Trial Court)

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.Nos.347, 359, 426 of 2001, dated 07.07.2004 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tirupattur, Vellore District.

For Appellant in all CMAs : Mr.N.Vijayaraghavan

For 1st Respondent in CMA.
No.402 & 403 of 2011 and



Respondents 2, 3 & 5 in
CMA.No.404 of 2011

: Mr.P.A.Sudesh Kumar

COMMON JUDGMENT

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The instant appeals have been filed by the Insurance company, challenging the common Award dated 07.07.2004, passed by the Motor Accident Claims Tribunal, Sub Court, Tirupattur, Vellore District in M.C.O.P.Nos.347, 359, 426 of 2001.

2. The brief facts leading to the filing of the instant appeals are as follows:

One Nithyanantham, who was a rider of the Hero Honda Motor Cycle bearing Registration No. TN-23-R-3336, died and minor Vinod and Mani sustained injuries on 04.08.2001 as a result of an accident caused by a lorry bearing Registration No.TAM 2786 owned by R.Selvam, the 2nd respondent in C.M.A.Nos.402 & 403 of 2011 and the 6th respondent in C.M.A.No.404 of 2011 and insured with the Appellant. The injured persons as well as the dependents of the deceased Nithyanantham preferred separate claims before the Motor Accident Claims Tribunal, Tirupattur in Vellore District as detailed below :

MCOP.No.	Type of claim	Claim amount
347 of 2001	Injury	Rs.50,000/-
359 of 2001	Injury	Rs.50,000/-
426 of 2001	Fatal	Rs.7,00,000/-

The Motor Accident Claims Tribunal by its common Award dated 07.07.2004 in M.C.O.P.Nos.347, 359 & 426 of 2001 directed the Appellant to (a) pay the first respondent in CMA.No.402 of 2011 a sum of Rs.13,000/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation, (b) the first respondent in CMA.No.403 of 2011 a sum of Rs.13,000/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation and (c) the first respondent in CMA.No.404 of 2011 a sum of Rs.9,20,500/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation.

3. Aggrieved by the common Award dated 07.07.2004 passed by the Motor Accident Claims Tribunal in M.C.O.P.Nos.347, 359 & 426 of 2001, the instant appeals have been filed by the Insurance company.

4. Heard Mr.N.Vijayaraghavan, learned counsel for the Appellant and Mr.P.A.Sudeesh Kumar, learned counsel for the 1st Respondent in C.M.A.Nos.402, 403 of 2011 and for Respondents 2, 3 & 5 in C.M.A.No. 404 of 2011. The owner of the insured vehicle R.Selvam has remained exparte both before the Tribunal as well as this Court. The first and fourth respondents in CMA.No.404 of



2011 died, during the pendency of the Appeal.

5. According to the learned counsel for the Appellant, the Tribunal under the impugned Award has not considered the counter statement filed by them. According to the learned counsel for the Appellant, the accident happened only due to the rash and negligent driving by the rider of the two wheeler as it hit against a stationery lorry which is insured with the Appellant. The learned counsel for the Appellant drew the attention of this Court to the First Information Report which was marked as Ex.P1 and submitted that as seen from the First Information Report, the two wheeler in which the injured as well as the deceased were traveling hit against a stationery lorry and therefore, according to the learned counsel for the Appellant, the statement made by the claimants before the tribunal that due to the rash and negligent driving by the driver of the lorry which was coming from the opposite direction, collided with the two wheeler is a false statement. According to the learned counsel for the Appellant, since the First Information Report was registered immediately on the date of accident itself, it has higher evidenciary value. According to the learned counsel for the Appellant, the Tribunal under the impugned Award has not considered the counter statement as well as the First Information Report before coming to the conclusion that the Appellant is liable to compensate the claim of the respective claimants.

6. Per contra, the learned counsel for the first respondents in CMA.Nos.402 & 403 of 2011 and the second, third and fifth respondents in CMA.No.404 of 2011 would submit that it has been the consistent stand of the claimants that only due to the rash and negligent driving by the driver of the insured lorry which was coming in the opposite direction, the persons traveling in the two wheeler, sustained injuries and one of them also died. The learned counsel further submitted that the driver of the lorry was not examined by the Appellant as a witness. The learned counsel also submitted that even in the cross examination, the claimants' witnesses have denied that the two wheeler collided with the stationery lorry which is insured with the Appellant. The learned counsel further submitted that PW2 and PW3 are the pillion riders in the two wheelers who are the claimants in M.C.O.P.No.347 and 359 of 2001 and being the eye witnesses, the Tribunal has rightly accepted the statement made by them that only due to the rash and negligent driving by the driver of the lorry which came in the opposite direction, collided with the two wheeler, the injuries of the pillion riders and the death of the rider of the two wheeler had happened.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels,



observes the following:

a) It has been the consistent stand of the respective claimants before the Tribunal that the insured lorry which came in the opposite direction collided with the two wheeler, in which, the injured as well as the deceased were traveling and the accident had happened, only due to the rash and negligent driving by the driver of the lorry insured with the Appellant. Even in the cross examination of PW-2 and PW-3, who are the pillion riders, they have denied that the two wheeler collided with a stationery lorry.

b) Based on the complaint given by the 3rd party, the First Information Report was registered only against the deceased Nithyanandham who was the rider of the two wheeler. As seen from the First Information Report, it is not clear as to whether the complainant (3rd party) was an eye-witness to the accident. The Appellant has also not examined the driver of the lorry (insured vehicle) as a witness before the Tribunal to disprove the contention of the respective claimants that only due to the rash and negligent driving by the driver of the lorry, the accident had happened.

c) Even though, the Appellant has, in its grounds of appeal have questioned the quantum of compensation, awarded to the respective claimants under the impugned Award, the learned counsel for the Appellant has restricted his submissions only to the liability of the Appellant to pay the compensation.

d) Before the Tribunal, the claimants have filed 13 documents which were marked as Exs.P1 to P13 and three witnesses were examined on their side including the pillion riders of the two wheeler who are the claimants in M.C.O.P.Nos.347, 359 of 2001. On the side of the Appellant only one document was filed namely, the Motor Vehicles Investigation Report but no witness was examined on their side. The Tribunal under the impugned Award has considered both the oral and documentary evidence available on record and only thereafter, has passed the impugned Award.

8. In the light of the above observations, this Court does not find any merit in all these appeals. Accordingly, these appeals are dismissed without costs. Consequently connected Miscellaneous Petitions are closed.

9. It is brought to the notice of this Court that the Appellant has already deposited the Award amount to the credit of MCOP.Nos.347 and 359 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tirupattur, Vellore District and a sum of Rs.7,00,000/- to the credit of MCOP.No.426 of 2001 on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupattur, Vellore District. Therefore, the first respondent in CMA.No.403 of 2011 is permitted to withdraw his



Award amount together with interest lying to the credit of MCOP.No.359 of 2001 by filing an appropriate application. Since the first respondent in CMA.No.402 of 2011 is a minor, his Award amount shall be deposited in any one of the Nationalised Banks, till he attains majority and his mother/guardian is permitted to withdraw the interest accrued once in six months. Since only a sum of Rs.7,00,000/- has been deposited by the Appellant to the credit of MCOP.No.426 of 2001, the Appellant is directed to deposit the balance Award amount together with interest to the credit of MCOP.No.426 of 2001 on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupattur, Vellore District, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the fifth respondent in CMA.No.404 of 2011 is permitted to withdraw her respective share together with accrued interest lying to the credit of MCOP.No.404 of 2011 by filing an appropriate application. Since the second and third respondents in CMA.No.404 of 2011 are minors, their respective shares shall be deposited in any one of the Nationalised Banks till they attain majority and the fifth respondent/guardian of the minors is permitted to withdraw the interest accrued once in six months. Insofar as the first and fourth respondents' shares are concerned, since they died during the pendency of the Appeal, their shares shall be withdrawn by their legal heirs by filing appropriate applications.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

nl/jen
To

1.The Motor Accident Claims Tribunal
Sub Court, Tirupattur, Vellore District.

2.The Section Officer,
Vernacular Section, Madras High Court.

+3cc to Mr.M.b.Gopalan, Advocate SR.No.72709,7210,72711

+1cc to Mr.P.A.Sudesh Kumar, Advocate SR.No.71918

C.M.A.Nos. 402, 403 & 404 of 2011 and
M.P.Nos.1, 1 & 1 of 2011

RJ(CO)
GMY(06/12/2018)