

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:06.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.266 of 2008

United India Insurance Company Ltd.,
No.1170, Mettur Road,
Erode.

...Appellant/3rd Respondent

...VS...

1.Pushpanmani
2.R.Thulasimani
3.P.Ramasamy
4.Duraisamy
5.Thangamuthu
& Respondents 1,2,4 & 5

... Respondents/2nd Petitioner

(Respondents 2 and 3 given up before the
Trial Court itself)
(5th Respondent exparte before Lower Court)

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 11.06.2003 made in MCOP.No.471 of 1999 on the file of the Motor Accident Claims Tribunal/Principal Additional Sub Court, Erode.

For Appellants : Mr.N.Vijayaraghavan

For Respondents : Mr.I.C.Vasudevan for
M/s.V.Rajesh for R-2
No appearance for R4
R3 given up
R5 Exparte

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 11.06.2003 made in MCOP.No.471 of 1999 on the file of the Motor Accident Claims Tribunal/Principal Additional Sub Court, Erode.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 30.12.1998, while the deceased first petitioner was standing near the Erode

Telephone Nagar Extension, at about 2.30 p.m., the first respondent owned the motor cycle bearing Registration No.TDL 7045, came at high speed, from north to south, driven in a rash and negligent manner and dashed against the petitioner causing grievous injuries all over her body. The first petitioner suffered fracture on his right upper arm and suffered simple injuries all over the body. The accident took place only due to the negligence of the fourth respondent herein. At the time of accident, the deceased first petitioner was aged about 65 years and she was earning a sum of Rs.3,000/- per month by carrying on petti shop business. Due to the grievous injuries suffered by her, she is unable to attend to her her personal needs and she is in need of helper even to wear saree. Thus, the petitioner seeks a sum of Rs.1,50,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the third respondent Insurance company filed a counter stating that the accident was not notified to them and copy of the first information report and criminal court records was not served on them. The third respondent disputed the claim of the petitioner about the manner of the accident and the claim that the motor cycle bearing Registration No.TDL 7045 was insured with them at the time of accident. The manner of accident as claimed by the petitioner is disputed. The claim of the petitioner is exorbitant. Thus, the 3rd respondent seeks dismissal of the petition.

5. Before the Tribunal, the injured first petitioner, who died during pendency of the MCOP.No.471 of 1999 examined herself as P.W.1 and medical expert was examined as P.W.2 and one Pushpamani was examined as P.W.3 and produced documents Ex.P1 to Ex.P17 to substantiate her claim. On the side of the respondents, one Ramprasad was examined as R.W.1 and one document, namely, Ex.R1 was marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the fourth respondent and insured with the third respondent and directed the respondents jointly and severally to pay a sum of Rs.94,215/- as compensation. Aggrieved over the finding of the Tribunal, the 3rd respondent Insurance Company has come forward with this present appeal seeking to set aside the award passed by the Tribunal by entertaining the appeal.

7. Heard both side counsel and perused the materials available on record.

8. The learned counsel appearing for the third respondent Insurance company contends that the policy has expired long prior to the accident. Further, the Tribunal has not appreciated the evidence properly. As there is no proof of offending vehicle being insured with the 3rd respondent Insurance Company. The award passed against them is not proper. As there was no proof of the deceased having died due to injuries sustained in the road accident. The claim of the petitioner is not maintainable by her legal representatives. Hence, the third respondent seek dismissal of this appeal.

9. Per contra, the learned counsel for the petitioner contends that the Tribunal has awarded a compensation only for the injuries suffered by the first petitioner Karuppayee Ammal and as such the legal heirs are entitled to receive the amount. The contention of the third respondent Insurance Company is unsustainable. Further, the petitioner also contended that the amount awarded by the Tribunal is very nominal based on the proper evidence let in by the petitioner and as such no ground is made out by the third respondent Insurance Company to set aside the same.

10. The copy of the Insurance policy for the offending vehicle bearing Registration No.TD1 7045 is produced as Ex.R1. The Tribunal has considered the contents of Ex.R1 policy and evidence of R.W.1 who deposed on behalf of third respondent Insurance Company. This Court also perused the Ex.R1 Insurance Policy in detail. It is evidence from the said documents that the two wheeler bearing Registration No.TDL 7045 has been insured with the third respondent from 18.04.1996 till the registration of the vehicle is canceled. The same is clearly admitted by R.W.1 in his oral evidence also. There is nothing on record to show that the registration of the said two wheeler was not in force or cancelled at the time of the accident which took place on 30.12.1998. As such the finding of the Tribunal that the offending vehicle was having insurance coverage under Ex.R1 is perfectly in order. Therefore, the contention of the third respondent Insurance Company that there is no policy coverage for the offending vehicle at the time of the accident is unsustainable and the same has to fail.

11. The first petitioner injured examined herself as P.W.1 and she has categorically stated that the motor cycle came at high speed and dashed against her while she was standing near the Erode Telephone Nagar Extension road. The police have also registered a case in Crime No.647 of 1999 at Erode Police Station against the rider of the two wheeler only as evidenced by Ex.P1 first information report. It is also clear from Ex.P2 rough sketch of the occurrence spot that the accident occurred

only by the side of the road. it is also evident from Ex.P5 charge sheet laid against the rider of the two wheeler only. The petitioner also produced Ex.P6 copy of the judgment passed by the learned Judicial Magistrate No.I, Erode., wherein the rider of the two wheeler admitted his negligence and paid a sum of Rs.700/- as fine. It is therefore clear from the evidence of P.W.1 as well as the said documents that the rider of the two wheeler bearing Registration No.TDL 7045 alone caused the accident due to his rash and negligent driving. As such the contention of the third respondent Insurance Company that the negligence of the two wheeler rider is not responsible for the accident has to fail. As stated earlier, the offending vehicle was having valid insurance coverage at the time of the accident. In such circumstances, taking into consideration the entire evidence both oral and documentary available on record, it is clear that the finding rendered by the Tribunal on the issue of liability/negligence on the part of the rider of the two wheeler alone caused the accident does not warrant any interference as the same is rendered on proper appreciation of the available evidence.

12. The third respondent Insurance Company has not agitated the quantum of compensation awarded to the petitioner in this appeal. Even otherwise on careful consideration of the oral and documentary evidence available, this Court is of the view that the quantum of compensation awarded by the Tribunal cannot be stated to be on higher side and as it is just and fair compensation and the same needs no interference.

13. In the result, the civil miscellaneous appeal is dismissed. The Fair and Decreetal order passed in M.C.O.P.No.471 of 1999, dated 11.06.2003 on the file of the Motor Accident Claims Tribunal/Principal Additional Sub Judge, Erode, is confirmed. No costs. The petitioners/claimants are permitted to withdraw their entire award amount with accrued interest by filing necessary application before the Tribunal.

rrg

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
The Principal Additional Sub Judge,
Erode.

2.The Section Officer

VR Section, High Court, Madras (2 copies)

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.NO.9493

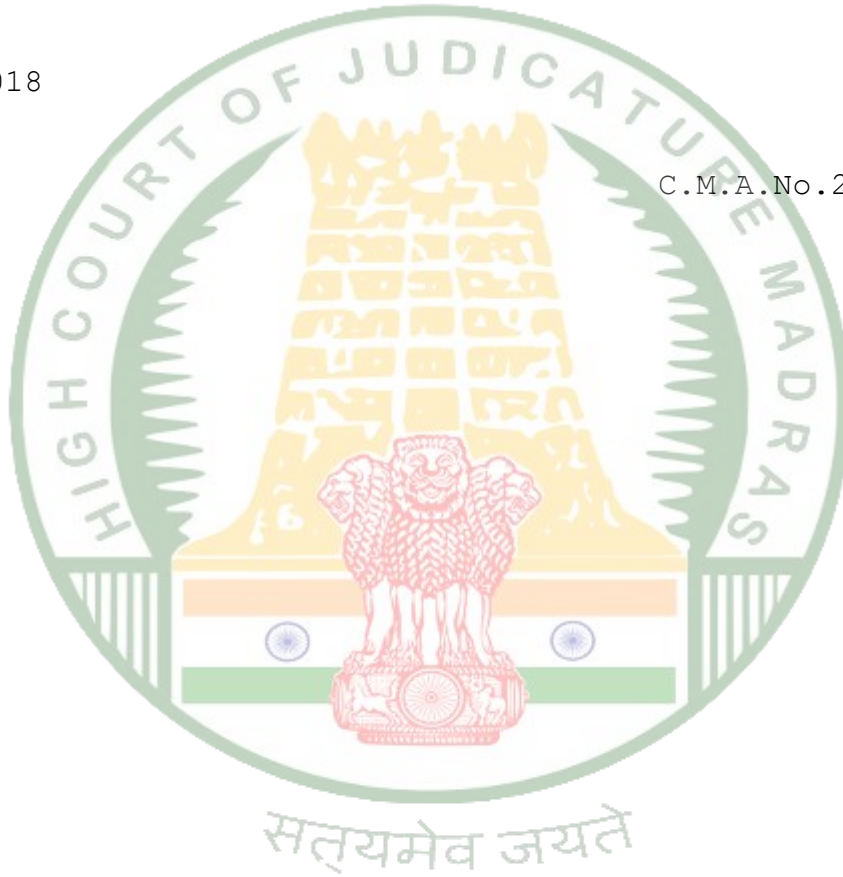
+1cc to Mr.I.C.Vasudevan, Advocate Sr.No.9484

+1cc to Mr.V.Rajesh, Advocate Sr.No.9434

SS (CO)

sm:27.3.2018

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