



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.885 of 2018

WEB COPY

Minor Pandimeena
Rep. by her Guardian
S.Vijaya,
W/o.Sathaiah,
Konnaikadu,
Arasarkulam Post,
Aranthangi Taluk,
Pudukkottai District.

...Appellant/Petitioner

Vs.

1.The Royal Sundaram Alliance Insurance Company Ltd.,
Chennai Branch,
46-Whites Road,
Chennai.

2.Abdul Meera

3.The Branch Manager,
National Insurance Company Limited,
4232, Keelaraja Veethi,
Pudukkottai Town & Post.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Fair and Decreetal order, dated 06.11.2015 and made in M.C.O.P.No.67 of 2012, on the file of the Motor Accident Claims Tribunal (Additional District Court), Pudukkottai.

For Appellant : Mr.K.Baalasundharam
For R1 : Mr.M.E.Ilango
For R3 : Mr.A.Ilango

* * * * *

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-claimant against the order of dismissal, dated 06.11.2015, made in M.C.O.P.No.67 of 2012, passed by the Motor Accident Claims Tribunal (Additional District Court), Pudukkottai.

2.Mr.M.E.Ilango, learned counsel takes notice for the first respondent and Mr.A.Ilango, learned counsel takes notice for the third respondent.

3.By consent of both parties, the Civil Miscellaneous Appeal itself is taken up for final disposal.



4.The appellant is the claimant. According to the appellant on 21.06.2003 at 6.00 a.m., while the father of the appellant Pandian was driving the Motorcycle bearing Registration No.TN-55-H-3940 along with one Ganapthy, near Railway Gate, an Ambassador Car bearing Registration No.TN-28-X-1122 belonging to the second respondent came in a rash and negligent manner and dashed against the motorcycle and due to which, both the rider and pillion fell into the pit. The said Pandian died inspite of treatment given for 58 days, due to the injuries sustained by him in the accident. The minor daughter of the deceased filed the claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of her father Pandian. The first respondent is the insurer of the motorcycle, which was driven by the deceased. The second respondent is the owner of the Ambassador Car. The Third respondent is the insurer of the Ambassador Car and hence, she filed the claim petition against the respondents claiming compensation.

5.The first respondent filed counter statement and contended that the accident occurred only due to rash and negligent riding by the deceased, who is the owner of the motorcycle. In view of the same, the owner of the motorcycle or his legal representatives are not entitled to claim compensation.

6.The second respondent remained ex-parte before the Tribunal.

7.The third respondent filed counter statement and contended that the Ambassador Car did not dash against the Motorcycle and did not cause the accident. The deceased due to the rash and negligent riding, fell into the pit and sustained injuries. The appellant in collusion with the second respondent filed the claim petition. In such circumstances, the third respondent is not liable to pay any compensation.

8.Before the Tribunal, the appellant examined two witnesses as P.W.1 & P.W.2 and marked 8 documents as Ex.P1 to Ex.P8. On the side of the respondents, 4 witnesses were examined as R.W.1 to R.W.4 and 6 documents were marked as Ex.R1 to Ex.R6. The Tribunal considering the pleadings, dismissed the claim petition.

9.Against the said order of dismissal, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of P.W.2. Without considering the evidence let in by the appellant, the Tribunal erred in dismissing the claim petition. The Tribunal ought to have held that the accident occurred only due to rash and negligent driving by driver of the Ambassador Car belonging to the second respondent and ought to have fastened the liability on the third respondent. In view of the payment of premium by the owner of the motorcycle, the Tribunal ought to have directed the first respondent Insurance Company to pay the compensation, even if the negligence on the part

of the driver of the second respondent is not proved.

11.The learned counsel appearing for the first respondent contended that the policy issued by the first respondent does not cover the rider of the motorcycle and hence, the first respondent is not liable to pay any compensation.

12.The learned counsel appearing for the third respondent contended that the Tribunal has considered all the materials on record, dismissed the claim petition by giving reasons and prayed for dismissal of the appeal.

13.I have heard the learned counsel appearing for the appellant and the respondents 1 & 3 and perused the materials available on record.

14.From the materials on record, it is seen that the Tribunal has held that the accident occurred due to rash and negligent driving by the deceased based on Ex.P1 FIR and Ex.P2 Report of the Motor Vehicle Inspector. The appellant examined two witnesses as P.W.1 & P.W.2 and the respondents examined 4 witnesses as R.W.1 to R.W.4. The Tribunal has not considered the evidence let in by the appellant and the respondents and without considering the same and without giving any finding on the evidence let in by the parties, especially the evidence of P.W.2, the Tribunal has dismissed the claim petition. In such circumstances, the order of the Tribunal is set aside and the matter is remanded back to the Tribunal for fresh disposal. It is open to the parties to let in additional evidence, if they so desire. The Tribunal is directed to consider all the evidence on record and dispose the claim petition on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

15.In the result, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

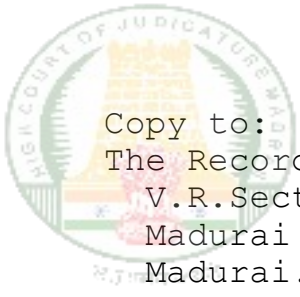
Assistant Registrar(P and A)

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Sub Assistant Registrar(CS-I)

To

The Additional District Judge,
The Motor Accident Claims Tribunal,
Pudukkottai.



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The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. 2Copies.

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- 1 CC TO Mr.A.ILANGO , ADVOCATE IN SR No.92265.
- 1 CC TO Mr.K.BALASUNDHARAM , ADVOCATE IN SR No. 91541.
- 1 CC TO Mr.M.E.ILANGO , ADVOCATE IN SR No. 91968.
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