

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2803 to 2805 of 2007
and
M.P.Nos.1, 1 and 1 of 2007

Royal Sundaram Alliance Insurance Co. Ltd.,
No.46, Whites Road, Chennai - 600 014.

.. Appellant in all CMAs/2nd Respondent

Vs.

1. Babu ..Respondent 1/Petitioner

2. Sivakumar
(R2 set exparte in Lower Court and hence
Notice may be dispensed with)

.. Respondents 2 in CMA.No.2803 of 2007/1st Respondent

1. Suseela

2. Sivakumar
(R2 set exparte in Lower Court and hence
Notice may be dispensed with)

.. Respondents in CMA.No.2804 of 2007

1. Ponnusamy

2. Ramayee

3. Sivakumar

(R3 set exparte in Lower Court and hence
Notice may be dispensed with)

.. Respondents in CMA.No.2805 of 2007

Prayer in all CMAs: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.03.2007 in M.C.O.P.Nos.200 to 202 of 2006 respectively, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.4, Bhavani, Erode District.

For Appellant : Mr.N.Vijayaraghavan in all CMAs

For Respondents : No appearance

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals arise out of the common judgment dated 13.03.2007 in M.C.O.P.Nos.200 to 202 of 2006, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.4, Bhavani, Erode District.

2.The facts of the case are as follows:-

On 20.02.2005 at about 02.30 hours, the first respondent in CMA.No.2803 of 2007, one Manikandan and Loganathan (3 persons) were travelling in the motorcycle bearing Reg.No.TN-36-F-9236, belonging to the second respondent and insured with the appellant Insurance Company in CMA No.2803 of 2007, on the Sathi to Athani Road, Athiappagounden Puthur. The motorcycle was ridden by Loganathan. Manikandan and the first respondent in CMA No.2803 of 2007 were the pillion riders. At that time, another motorcycle bearing Reg.No.TN-36-B-5356 came from the opposite direction in a rash and negligent manner and dashed against the motorcycle in which these three persons were travelling. Due to the impact, the said Manikandan and Loganathan sustained fatal injuries and died on the spot and the rider of the motorcycle (Babu) sustained head injuries. The rider of the motorcycle bearing Reg.No.TN-36-B-5356 by name Ravi and the pillion rider Dhandapani also sustained fatal injuries and died on the spot. The injured-Babu as well as the legal heirs of the deceased Manikandan and Loganathan, have filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal has awarded compensation and the details of the same are as under:-

CMA No.	MCOP No.	Amount of compensation (Rs.)
2803 of 2007	200/2006	21,710/-
2804 of 2007	201/2006	1,08,500/-
2805 of 2007	202/2006	1,41,500/-

These amounts have been awarded, with interest at the rate of 7.5% per annum from the respective dates of petitions.

3.Rendering a finding that the accident had occurred due to the rash and negligent driving of the riders of both the motorcycles, the Tribunal fixed 50% liability on the part of the appellant Insurance Company. Questioning the same, the present appeals have been filed.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in holding that the

Insurance Company is liable to pay compensation to the claimants in a case where the deceased was a pillion rider on the two-wheeler on which already there was another pillion rider being carried, which is impermissible in law. It is also submitted that since the rider of the two-wheeler, who also died in the accident, was at fault, the liability could not have been fastened on the insurer of the vehicle, for his death. In this connection, he relied upon the decision of the Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB). It is also submitted that the compensation amounts awarded by the Tribunal are excessive.

5.Despite notice to the respondents in all CMAs being effected through paper publication, there is no representation on behalf of the respondents. However, having regard to the efflux of time, this Court is inclined to decide these appeals on merits.

6.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

7.Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent riding of the riders of both the motorcycles, as there was head-on-collision between the two motorcycles, which factual finding is not in dispute. With regard to liability, the Tribunal has relied upon the judgment of the High Court of Rajasthan, Jaipur Bench in National Insurance Company Ltd. v. Mahendra Singh and another, reported in 2007 ACJ 60 and held that the appellant Insurance Company is liable to pay compensation to the injured as well as the deceased persons and accordingly fastened the liability on the appellant Insurance Company. But it is the contention of the learned counsel for the Insurance Company that the second pillion rider is not required to be covered under Section 147 of the Motor Vehicles Act and as such the insurer is not liable at all. It is apparently clear that in the motorcycle insured with the appellant Insurance Company, two persons have travelled as pillion riders apart from the rider. Further, the pillion rider is not required to be covered under Section 147 of the Motor Vehicles Act and in any case, a second pillion rider is not at all covered. The Tribunal has not dealt with this aspect in detail. The fact remains that there was violation of policy conditions by the owner of the vehicle. Hence, this Court deems it fit to direct the appellant Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle, the second respondent herein.

8. In respect the quantum of compensation amounts awarded by the Tribunal, the Tribunal has relied upon the exhibits, evidence of witnesses, medical bills and treatment records of the injured, Post Mortem Reports of the deceased persons, Legal Heir Certificates and all other aspects in a proper perspective and has awarded the compensation amounts under various heads to the claimants. Further, this Court is of the considered view that the compensation amounts awarded are reasonable and justifiable and hence the same are confirmed.

9. In the result, the appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, all the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. Thereafter, that the Insurance Company shall proceed to recover the compensation amounts from the second respondent, owner of the vehicle, in accordance with law.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

av/km

To

1. The Motor Accidents Claims Tribunal,
Fast Track Court No.4, Bhavani,
Erode District.

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

+3cc to Mr.N.Vijayaraghavan, Advocate SR.No.71580, 71581, 71582

C.M.A.Nos.2803 to 2805 of 2007
and
M.P.Nos. 1, 1 and 1 of 2007

BS (CO)
GMY (26/08/2020)