

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.282 of 2007

and

M.P.Nos.1 of 2007 and 1 of 2010

Royal Sundaram Alliance Insurance Company Ltd,
46, Whites Road,
Chennai - 600 014. .. Appellant/2nd Respondent

Vs.

1.B.Agilandeswari
2.Minor. B.Poojasri
3.R.Jayalakshmi
4.Ramasamy ..1 to 4 Respondents/Petitioners
5.M.Duraisamy .. 5th Respondent/1st Respondent

(Minor second respondent represented by guardian and next friend B.Agilandeswari)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 14.10.2006 passed in M.C.O.P.No.189 of 2005 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court No.5, Coimbatore at Tiruppur.

For Appellant : Mr.N.Vijayaraghavan

For RR 1 to 4 : Mr.S.S.Swaminathan

For R5 : No appearance

J U D G M E N T

The appellant / Royal Sundaram Alliance Insurance Company is the second respondent in M.C.O.P.No.189 of 2005 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court No.5, Coimbatore at Tiruppur. The respondents 1 to 4 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.15,00,000/- for the death of one R.Balasubramaniam in a road accident on 29.03.2003.

2. The case of the claimants is that on 29.03.2003, R.Balasubramaniam was riding his motorcycle bearing registration No. TN 39 F 3335 on Tirupur - Perumanallur Road

and at about 01.15 A.M., when he was nearing Sakthi mess, a speeding motorcycle bearing Registration No. TN 37 V 0121 hit him, as a result of which, he sustained injuries and died in the hospital on 31.03.2003. According to the claimants, the rash and negligent riding of the rider of the motorcycle belonging to the fifth respondent was the cause of the accident and that since the said vehicle was insured with the present appellant / Royal Sundaram Alliance Insurance Company, the owner and the insurer of the motorcycle are jointly and severally liable to pay compensation.

3. The owner of the motorcycle bearing Registration No. TN 37 V 0121 remained absent before the Tribunal and therefore he was set ex-parte. The appellant / Royal Sundaram Alliance Insurance Company, contested the claim petition on all the grounds available to the insured. The learned Additional District Judge / Motor Accidents Claims Tribunal, Fast Track Court No.5, Coimbatore at Tiruppur after analysing the evidence on record, awarded a compensation of Rs.11,73,330/- together with interest at the rate of 7.5% per annum to the claimants and directed the appellant / Royal Sundaram Alliance Insurance Company to pay the compensation amount.

4. Questioning their liability to pay compensation to the claimants, the appellant / Royal Sundaram Alliance Insurance Company has filed the present appeal under Section 178 of Motor Vehicles Act, 1988.

5. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant / Royal Sundaram Alliance Insurance Company contended that the motorcycle bearing Registration No. TN 37 V 0121 belonging to the fifth respondent was not involved in the accident. He further contended that there is a delay of two days in registering the First Information Report and the investigator of the Insurance Company had also filed a report stating that the vehicle has been falsely implicated in the instant case. Therefore, he would contend that the Insurance Company is not liable to pay compensation.

6. Heard Mr.S.S.Swaminathan, learned counsel appearing for the respondents 1 to 4. No appearance for the fifth respondent.

7. It is true that there is a delay of two days in lodging the First Information Report. However, merely because of the same, it cannot be concluded that the motorcycle bearing Registration No. TN 37 V 0121 belonging to the fifth respondent was not involved in the accident, especially, when the police, after completing investigation had filed a final report before the Judicial Magistrate Court No.1, Tiruppur, as evidenced by the copy of the final report (Ex.P2). Moreover, the registration Number of the offending vehicle belonging to

the fifth respondent was mentioned in the Accident Register. In the circumstances, the Tribunal was right in concluding that the fifth respondent's vehicle was involved in the accident and I do not see any reason to interfere with the findings recorded by the Tribunal.

8. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(ii) The orders passed by the Tribunal is upheld.

(iii) The appellant / Royal Sundaram Alliance Insurance Company is directed to deposit the compensation awarded by the Tribunal i.e., Rs.11,73,330/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.189 of 2005 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court No.5, Coimbatore at Tiruppur within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1 to 4 / claimants are at liberty to withdraw the same as per the ratio of apportionment made by the Tribunal after following due process of law.

Sd/-

Assistant Registrar (CS-III-MDU)

//True copy//

Sub Assistant Registrar

krk

To

The Additional District Judge
Motor Accidents Claims Tribunal,
Fast Track Court No.5,
Coimbatore at Tiruppur

Copy To

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.96191

+1cc to Mr.Mr.S.S.Swaminathan, Advocate SR.No.95397

+1cc to Special Government Pleader SR.No.95236

C.M.A.No.282 of 2007

CP (CO)

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GMI (24/08/2020)