

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.4104 of 2008 and
M.P.No.1 of 2008

M/s. The Oriental Insurance Co Ltd
Third Party Cell
No.11/3, C.V.Naidu Street
Opposite to Babu Theatre
Thiruvallur

Appellant / 2nd Respondent

Vs

1. Revathi
2. Minor R.Pavithra
3. Minor R.Vinothini
(2nd and 3rd petitioners are Represented by their next friend and natural guardian Revathi)
4. Poongavanam
5. M.Krishnan ... Respondents 1 to 5 /Claimants
6. K.Ventakeswaran
7. Chandru ...Respondents 6 & 7/Respondents 1 & 3

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.06.2008 made in MCOP No.101 of 2006 on the file of the Motor Accidents Claims Tribunal/Additional District Judge, Fast Track Court no.I, Chengalpattu.

For Appellant : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award passed by the Tribunal in MCOP No.101 of 2006 dated 24.06.2008.

2.In an accident that took place on 06.02.2006 at about 10.00 am, one K.Ravi proceeding in a TVS Victor motorcycle bearing Regn.No.TN22 V 4460, as a pillion rider, died on the spot, due to the rash and negligent riding of the rider of Hero

Honda Dawn motorcycle bearing Regn.No.TN22 AC 1940. Hence, the respondents 1 to 5, who are the legal heirs of the deceased, filed a claim petition claiming a sum of Rs.6,00,000/- as compensation. The Tribunal after analysing the oral and documentary evidence adduced by the parties, awarded a total compensation of Rs.4,15,000/- with interest at 7.5%pa from the date of petition. Aggrieved over the same, the appellant insurance company has filed this appeal.

3.The learned counsel for the appellant has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the Tribunal has erred in relying on the testimony of P.W.1 and P.W.2, who are the interested witnesses, to hold that the rider of the motorcycle bearing Regn.No.TN22 AC 1940 was responsible for the accident. According to the learned counsel, the rider of the motorcycle bearing Regn.No.TN22 V 4460, due to his rash and negligent act, skidded and dashed against cement pavement and thereby, himself invited the accident. As such, the appellant is not liable to pay any compensation to the respondents/claimants.

4.Heard the learned counsel for the appellant and perused the materials available on record.

5.Despite the service of notice and the name of the respondents/claimants having been printed in the cause list, there is no representation on their behalf.

6.To prove the factum and the manner of the accident, P.W.1/wife of the deceased and P.W.2/eyewitness to the accident were examined. P.W.1 has stated that the Hero Honda motorcycle bearing Regn.No.TN22 AC 1940 hit the motorcycle, where the deceased was going as a pillion rider. P.W.2, who was stated to be the eyewitness to the accident, has deposed that he is working as Clearner in a lorry; on 06.02.2006, he came in the lorry from Tambaram to Chengalpattu; while nearing Kilambakkam opposite to Mahendra Show room, all of sudden, the motorcycle bearing Regn.No.TN22 AC 1940 without any signal, turned the vehicle to left side; due to the said impact, the motorcycle in which, the deceased was going, was skidded in front of the lorry, where P.W.2 was travelling; and the accident was occurred only due to the negligent act on the part of the rider of the motorcycle bearing Regn.No.TN22 AC 1940. The evidence of P.W.1 and P.W.2 was totally denied by the appellant/insurer of the vehicle bearing Regn.No.TN22 AC 1940. According to them, the accident had happened only due to the rash and negligent act on the part of the rider of the motorcycle bearing Regn.No.TN22 V 4460, in which, the deceased was going as a pillion rider. They further pleaded that the rider of the motorcycle bearing Regn.No.TN22 AC 1940 alone lodged a complaint, which was

registered as Ex.P1 First Information Report. However, the Tribunal was of the view that the rider of the motorcycle bearing Regn.No.TN22 AC 1940 was not examined to prove that the accident had occurred only due to the rash and negligent riding of the rider of the vehicle bearing Regn.No.TN22 V 4460. Further, taking note of the evidence of P.W.3, who registered Ex.P1 First Information Report, the Tribunal has concluded that the accident took place only due to the rash and negligent act on the part of the rider of TN22 AC 1940 by accepting the evidence of P.W.2/eyewitness to the accident. Consequently, the Tribunal has fastened the liability on the appellant, who is the insurer of the motorcycle bearing Regn.No.TN22 ACT 1940. This Court is of the view that the findings so rendered by the Tribunal are based on the materials and evidence adduced by the parties and hence, the same need not be interfered.

7. There is no dispute with regard to the quantum of compensation awarded by the Tribunal and hence, the same is hereby confirmed as such.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. The appellant / Insurance Company shall deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the respective Bank Accounts of the claimants / respondents 1, 4 and 5, as per the ratio of apportionment made by the Claims Tribunal, through RTGS, within one week thereafter. In respect of the minor claimants/Respondents 2 and 3, the Tribunal shall invest their shares in any one of the Nationalised banks till they attain majority and the interest accrued thereon shall be permitted to be withdrawn by the first respondent/claimant once in three months, on making proper application.

Sd/-

Assistant Registrar (Arbitration)

//True Copy//

Sub Assistant Registrar

srk/vrn/rk

To

1. Additional District Judge
Fast Track Court No.I,
Motor Accident Claims Tribunal,
Chengalpat.
2. The Section Officer
V.R.Section
Madras High Court
Chennai 104

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 67645

C.M.A.No.4104 of 2008 and
M.P.No.1 of 2008

SV(CO)
GN(26/06/2020)