

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2089 of 2009

and

M.P.No.1 of 2009

1.M/s. United India Insurance Company Limited,
R.S.Puram, Coimbatore.

2.M/s. United India Insurance Company Limited,
Branch Office, 1940-B, Trichy Road,
Ramanathapuram,
Coimbatore - 641 045. ... Appellants

Vs.

1.Kulandhayammal

2.Arunkumar

3.Rajkumar

4.T.Subramanian

5.P.Shynev

... Respondents

(R5 remained exparte before Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.03.2008 passed in M.C.O.P.No.01 of 2006 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Coimbatore.

For Appellants : Ms.I.Malar

For RR 2 and 3 : Mr.M.N.Balakrishnan

For RR 1, 4 & 5 : No appearance

J U D G M E N T

The appellants / United India Insurance Company Limited are the second and fifth respondents in M.C.O.P.No.1 of 2006 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Coimbatore. The respondents 1 and 2 / claimants filed the claim petition under Section 166

of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the death of one Kalimuthu, husband of the first claimant and father of the second claimant in a road accident on 23.01.2005.

2. The case of the claimants in nutshell is as follows:

On 23.01.2005, the deceased was travelling as a pillion rider in a motorcycle bearing Registration No. TN 37 AJ 3848 on L & T bye pass road, near Bodipalayam junction and at about 20.00 hours, the rider of the motorcycle rode the vehicle rashly and negligently and hit another motorcycle bearing Registration No. TN 10 A 9376, as a result of which, the deceased sustained fatal injuries and died in the hospital on 02.02.2005. According to the claimants, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 37 AJ 3848 belonging to the third respondent was the cause of the accident and that since the said vehicle was insured with the first appellant / United India Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Coimbatore after analysing the evidence on record, awarded a compensation of Rs.2,36,400/- together with interest at the rate of 7.5% per annum to the claimants and directed the first appellant / United India Insurance Company Limited and the third respondent to pay the compensation amount jointly and severally and dismissed the claim petition as against the remaining respondents. Aggrieved over the orders passed by the Tribunal, the appellant / United India Insurance Company Limited has filed the present appeal under Section 178 of Motor Vehicles Act, 1988.

4. The appellants have filed the present appeal on the following grounds:

(i) The Tribunal was wrong in fixing negligence on the part of the rider of the motorcycle bearing Registration No. TN 37 AJ 3848.

(ii) The rider of the motorcycle bearing Registration No. TN 37 AJ 3848 did not possess a valid driving licence on the date of the accident.

(iii) At the time of accident, three persons were travelling in the motorcycle bearing Registration No. TN 37 AJ 3848.

5. Heard Ms.I.Malar, learned counsel appearing for the appellants and Mr.M.N.Balakrishnan, learned counsel appearing for the second and third respondents. No appearance on behalf of the respondents 1, 4 and 5.

6. A perusal of the records shows that the Tribunal had clearly come to the conclusion that the motorcycle bearing Registration No. TN 37 AJ 3848 was responsible for the accident. This is mainly based on the oral and documentary evidence adduced on both sides. Though it is contended by the Insurance Company that the rider of the offending vehicle was not in possession of a valid driving licence, no acceptable evidence was adduced by them. In fact, no notice either to the rider or the owner of the offending vehicle was issued by the Insurance Company requesting them to produce the driving licence. There is no evidence to prove that the accident took place only because three persons were travelling in the motorcycle bearing Registration No. TN 37 AJ 3848, and it cannot also be a ground to dismiss the entire claim petition. Therefore, all the grounds raised by the appellants fail and the appeal is liable to be dismissed.

7. In the result,

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

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

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Coimbatore.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras. (2 copies)

+1cc to Mr.T.Ravichandran, Advocate, S.R.No. 95341
+1cc to Mr.Balakirshnan, Advocate, S.R.No. 96133

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