

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1913 of 2012

and

M.P.No.1 of 2012

The Divisional Manager,
United India Insurance Company Limited,
Gandhi Nagar, Kancheepuram. .. Appellant/2nd Respondent

Vs.

1.Tamilselvi
2.Minor. Praveen
3.Minor. Shirmila
4.Sarathaammal
5.T.Munusamy
6.M.Elanchezhan .. Respondents/1st Respondent

(Minor respondents 2 and 3 are represented by their mother, Tamilselvi)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.10.2010 passed in M.C.O.P.No.286 of 2005 on the file of the Motor Accident Claims Tribunal / Sub Court, Kancheepuram.

For Appellant : Mr.S.Arun Kumar
For RR 1 to 4 : Mr.S.D.S.Philip
For R6 : No appearance

J U D G M E N T

The appellant / United India Insurance Company Limited is the second respondent in M.C.O.P.No.286 of 2005 on the file of the Motor Accident Claims Tribunal / Sub Court, Kancheepuram. The respondents 1 to 5 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.8,00,000/- for the death of one Asokan, husband of the first claimant, father of the second and third claimants and son of the fourth and fifth claimants in a road accident on 25.05.2005.

2. The case of the claimants is that on 25.05.2005, the deceased Asokan was travelling as a pillion rider in a

motorcycle bearing Registration No. TN 21 F 3992 on Manampathy - Marudham Road, near Sevilimedu Palar River Bridge and at about 11.00 P.M., the rider of the motorcycle hit a bullock cart, as a result of which, the deceased fell down sustained fatal injuries and died in the hospital on 05.06.2005. According to the claimants, the rash and negligent riding of the rider of the motorcycle belonging to the sixth respondent was the cause of the accident and that since the vehicle was insured with the present appellant / United India Insurance Company Limited, the owner and the insurer of the motorcycle are jointly and severally liable to pay compensation.

3. The owner of the motorcycle remained absent before the Tribunal and therefore he was set ex-parte. The appellant / United India Insurance Company Limited, contested the claim petition on all the grounds available to the insured. The learned Subordinate Judge / Motor Accidents Claims Tribunal, Kancheepuram while awarding compensation of Rs.6,11,000/- together with interest at the rate of 7.5% per annum to the claimants, also held that since three persons were travelling in the motorcycle, the Insurance Company should pay the award amount in the first instance and then recover the same from the owner of the motorcycle.

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

5. Heard, Mr.S.Arun Kumar, learned counsel appearing for the appellant and Mr.S.D.S.Philip, learned counsel appearing for the respondents 1 to 4.

6. No appearance on behalf of the fifth and sixth respondents.

7. A perusal of the records shows that three persons were travelling in the motorcycle in violation of policy conditions. In such circumstances, the observation of the Tribunal directing the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the vehicle cannot be found fault with.

8. 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.

(iii) The present appellant / United India Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.6,11,000/- (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.286 of 2005 on the

file of the Motor Accident Claims Tribunal / Sub Court, Kancheepuram, within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the motor cycle on the same cause of action.

(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(CCC)

//True copy//

Sub Assistant Registrar

krk

To

The Motor Accidents Claims Tribunal,
The Sub Court,
Kancheepuram.

Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.S.Arun Kumar, Advocate SR.No.96816

+1cc to Mr.S.D.S.Philip, Advocate SR.No.96473

C.M.A.No.1913 of 2012

VG II(CO)
GMY(26/08/2020)

सत्यमेव जयते

WEB COPY