

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2019

PRONOUNCED ON : 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 2188 of 2012

and

M.P.No.1 of 2012

The Divisional Manager,
M/s.New India Assurance Company Ltd.,
Divisional Office -I,
Bharathi Road,
Cuddalore - I ... Appellant / 2nd Respondent

.. Vs ..

1.Jothi
2.Minor Sivasankaran
3.Minor Sivasankari
(Minor Respondents 2 & 3 rep by Next Friend Mother/Guardian 1st
Respondent Jothi)
4.Latchammal ... Respondents 1 to 4/petitioners
5.G.Selvaraj ... 5th Respondent/ 1st respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the Judgment and Decree passed in M.C.O.P.No. 1931 of 2010 on 20.01.2012, on the file of the Motor Accident Claims Tribunal (Principal District and Presiding Officer) at Cuddalore District.

For Appellant : Mr.J.Chandran

For Respondents : No appearance

JUDGMENT

The above appeal has been filed by the appellant, challenging the Judgment and Decree dated 20.01.2012 made in M.C.O.P.No.1931 of 2010, on the file of the learned Motor Accident Claims Tribunal (Principal District and Presiding Officer), Cuddalore District.

2 The brief facts that are essential for the disposal of this appeal are as follows:

The respondents 1 to 4 are the legal representatives of the deceased Sadasivam and they have filed the claim petition in M.C.O.P.No.1931 of 2010, alleging that on 24.04.2010 at about 9.30 AM, the deceased, who is the husband of the first

respondent herein, was travelling as pillion rider of the motor cycle bearing Registration No. TN.31.BY.0765, which was driven by the fifth respondent herein from Kothattai to B.Mutlore direction, near Sambandham E.B.Office, in an uncontrollable speed and lost his control and skidded on the road side, due to which, the pillion rider Sadhasivam fell down and sustained fatal injuries. Despite best treatment, he died on 25.04.2010. The accident was solely due to the rash and negligent driving of the fifth respondent herein. The deceased was aged about 35 years and was earning a sum of Rs.15,000/- per month by running Provision Store. The first respondent remained ex-parte before the Tribunal.

3 The Insurance Company as a second respondent filed counter statement before the Tribunal alleging that while the owner of the vehicle was riding motor cycle along with pillion rider (deceased herein), an unknown car hit the motor cycle and fled away from the scene of the occurrence and hence, the Insurance Company being the insurer of the motor cycle cannot be mulcted over liability and they also filed petition under Section 170 of the Motor Vehicle Act, 1988. The Tribunal held that the accident took place due to the rash and negligent driving on the part of the first respondent, who was driving the two wheeler and accordingly, awarded a sum of Rs.9,02,500/- as compensation and hence, the appeal by the Insurance Company.

4. The first claimant examined herself as PW1 and one Arumugam, who is the eye-witness to the occurrence, was examined as PW2 and documents Exs.P1 to P7 were marked on the side of the claimants. On the side of the respondents before the Tribunal, one Mr.Ramu, Field Investigator was examined as RW1 and the fifth respondent herein was examined as RW2 and Ex.R1 series was marked.

5 The Tribunal, after considering both oral and documentary evidence adduced on either side, awarded a sum of Rs.9,02,500/- together with interest at 6% per annum from the date of petition till realization. Challenging the correctness of the award passed by the Tribunal, the Insurance Company has preferred this appeal before this Court.

6 To substantiate the plea of involvement of the two wheeler and rash and negligence on the part of the rider of the two wheeler, in the scene of occurrence, PW2-Arumugam was examined as witness. He has stated in his evidence that on 24.04.2010 at about 09.30 A.M., when he was standing near Sambandam E.B Office on the left side, one Sadhasivam was travelling as pillion rider of the motor cycle bearing Registration TN.31.BY.0765, which was driven by the fifth respondent herein from Kothattai to B.Mutlore direction, near

Sambandham E.B.Office, in an uncontrollable speed and fifth respondent herein lost his control and skidded on the road side. Due to which, Sadhasivam fell down and sustained fatal injuries and he was immediately taken to Government Hospital, Cuddalore and first aid was given there and subsequently, the injured was taken to Government General Hospital, Pondicherry. Despite best treatment, he died on 25.04.2010 and post-mortem was done there. The accident was solely due to the rash and negligent driving of the fifth respondent herein. As per his evidence, PW2 has fixed the negligence on the fifth respondent herein and PW1 has corroborated the evidence of PW2.

7 On a perusal of records, it is seen that PW2, who is the eye-witness to the occurrence, has categorically stated about the manner of the accident. Hence, the finding of the Tribunal that due to the rash and negligent driving on the part of the rider of the vehicle, the accident had taken place, does not call for any interference by this Court.

8 It is seen from the lower Court records that on behalf of the Insurance Company, one Mr.Ramu, Field Investigator was examined as RW1 and marked Ex.R1 series on their behalf. The Tribunal has rightly appreciated Ex.R1 in its entirety and held that they are hearsay witness, since no one had witnessed the accident furthermore. RW1 has admitted in the cross examination that necessary premium has been collected for pillion rider and thereby, rider was also included in the insurance coverage of the policy. In Ex.R1, it appears that a rough sketch was marked on behalf of the Insurance Company and the Tribunal has appreciated the Rough Sketch filed under Ex.R1 through RW1 and held that going by the rough sketch, the spot that has been indicated as a scene of accident is on the wrong side of the road and the spot indicated in the rough sketch filed by RW1 shows that place of accident is depicted as the extreme eastern side abutting the E.B.Office and if the version of RW1 is taken into consideration, the rider of the two wheeler was riding the vehicle on the wrong side of the road.

9 Hence, the Tribunal has recorded a finding that fifth respondent herein has proceeded on the wrong side, that is the cause for the accident and hence, rash and negligent driving on the part of the fifth respondent herein, who is rider of the vehicle stands proved and the said finding does not call for the any interference by this Court as the same appears to be the proper interpretation of the rough sketch and the reports therein. Hence, the finding recorded by the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the two wheeler is well merited and well considered and in the absence of any positive contra evidence on behalf of the Insurance Company, the same is hereby confirmed.

10 In view of the policy coverage extended to the pillion rider as admitted by RW1 in the cross-examination, the finding of the Tribunal as to the liability of the appellant/Insurance Company does not call for any interference and the same stands negatived.

11 On the point of quantum, after perusing the quantum arrived at by the Tribunal, this Court finds that the same is just and reasonable and accordingly, the appeal filed by the Insurance Company is liable to be dismissed.

12 In the result,

[i] the Civil Miscellaneous Appeal is dismissed and the Judgment and decree dated 20.01.2012 made in M.C.O.P.No.1931 of 2010 on the file of the learned Motor Accidents Claims Tribunal (Principal District and Presiding Officer), Cuddalore, is confirmed.

[ii] Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

[iii] If the award amount with accrued interest has not been deposited, the appellant/Insurance Company is directed to deposit the entire award amount along with interest at the rate of 6% per annum from the date of claim petition, less the amount already deposited, if any, to the credit of M.C.O.P.No.1931 of 2010 on the file of the learned Motor Accidents Claims Tribunal (Principal District and Presiding Officer), Cuddalore, within a period of eight weeks from the date of receipt of a copy of this Judgment.

[iv] On such deposit being made, the respondents herein/claimants are permitted to withdraw the entire award amount with proportionate interest, in the same apportionment as apportioned by the Tribunal, less the amount already withdrawn, if any.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Principal District and Presiding Officer
Motor Accident Claims Tribunal
Cuddalore District.

2.The Section Officer,
V.R. Section, High Court,
Madras.

C.M.A.No. 2188 of 2012

SSD(CO)
SP(02/03/2020)



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