

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23.04.2019

Judgment Delivered on : 06.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

C.M.A.No.3395 of 2011

and

M.P.No.1 of 2011

National Insurance Co.Ltd.,
by its Branch Manager,
No.62, T.S.R.Big street,
Kumbakonam,
Tanjore District.

... Appellant / 2nd Respondent

..Versus..

1.Thangaiyan
2.Rajathi
3.Manoharan

... Respondents/Petitioner 1 & 2,
and 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the award and decree dated 30.11.2010 made in M.C.O.P.No.80 of 2009, on the file of the Motor Accidents Claims Tribunal [Additional Subordinate Judge] at Mayiladuthurai District.

For Appellant

:Mrs.R.Sreevidhya

For R1toR2

: Mr.S.Sounthar

For R3

: [Not ready in notice]

J U D G M E N T

The Insurance Company is the appellant herein challenging the award of compensation granted in M.C.O.P.No.80 of 2009, on the point of liability.

2. The first and second respondents herein, who are the parents of the deceased Ramadoss who died in the accident, have filed in the claim petition alleging that the deceased had borrowed the two-wheeler from the owner of the vehicle, namely the first respondent. While he was returning on the said vehicle

after giving Seervarisal in connection with the Pongal, to avoid from hitting the buffalo crossing the road, he lost his balance and skid and fell into the river side (Veerasozhan River) and succumbed to injuries.

3. The appellant/Insurance Company filed a counter statement before the Tribunal alleging that the deceased drove the motorcycle in a rash and negligent manner and also denied that in order to avoid the accident with the buffalo, and in the process, he skid and fell down on the river. It is the further statement of the Insurance Company that on the ill-fateful day, the deceased fell down on the river with motorcycle. Due to flow of heavy water in the river, he died. He was rescued by the fire brigades. There is no cause for any motor accident. This case is not coming under the Motor Vehicles Act. The claimants are not entitled to file the application under the provisions of this Act. The police registered a case under Sec.174 of Cr.P.C only. The deceased drove the vehicle negligently and fell down in the river. So, he is a wrong doer. It was his negligence which led to the accident. The claimants cannot claim compensation from the appellant-Insurance Company on the basis of theory of no found fault. A tort-feasor cannot claim compensation from the other for his own fault and also denied that the deceased had valid driving license at the time of the accident.

4. Before the Tribunal, P.W.1 and P.W.2 are examined and Exhibits P1 to P17 were marked. On behalf of the respondent-Insurance Company, an Officer from the Insurance Company was examined as R.W.1 and another person was examined as R.W.2 and Ex.R-1 was marked.

5. Based upon the oral and documentary evidence, the Tribunal has held that the deceased Ramadoss had borrowed the vehicle from the owner of the vehicle, namely Manohar and while he was driving on the road in order to avoid and dash the buffalo, he turned the vehicle and lost the balance and skid on the road and fell down in the nearby river and he died. However, the Tribunal held that it is due to the rash and negligence driving of the driver of the two wheeler that the accident had occurred.

6. It remains to be stated that the person who died in the accident drove the vehicle and in fact, he borrowed the vehicle from the owner of the two wheeler and a person who met with an accident being the borrower of the vehicle, cannot claim compensation from the Insurance Company. In the decision reported in 2009 (2) TNMAC 169 [Ningamma v.United India Insurance Co.Ltd.,], the Hon'ble Supreme Court has held as follows:-

"Deceased had borrowed motor cycle from its owner, dashed against a bullock cart proceeding ahead and died of the injuries sustained in the accident. Legal representatives of the deceased filed a claim petition under Section 163-A of the Act. The Apex Court held that the legal representatives of a person driving a vehicle after borrowing it from the owner meets with accident without involving any other vehicle would not be entitled to claim compensation under Section 163-A and the borrower steps into the shoes of the owner; the owner cannot himself be a recipient of compensation as liability to pay the same is on him."

7. Furthermore, it is to be stated that the Tribunal has granted Rs. 1 lakh as the total compensation for the claimants stating the clause under Ex.P-3 policy copy, and the said clause which is classified under the liability as per Ex.P-2 report is relating to personal accident benefits, for which, the owner, if he met with an accident, when he drives the vehicle, he is entitled for Rs.1 lakh and not a person who borrowed the vehicle from the owner and hence, the reasoning given by the Tribunal is unsustainable in law, when admittedly the person (deceased) is the borrower of the vehicle from its owner. He is not entitled to receive the personal accident policy benefits, since it is only meant for the owner of the vehicle and not for the borrower of the vehicle. Hence, the Insurance Company cannot be fastened with the liability and the appellant-Insurance Company is exonerated from the liability and the owner of the vehicle (third respondent herein) has to pay the compensation to the claimants.

8. In the above view of the matter,

(i) Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The third respondent-owner of the vehicle is directed to pay the compensation to the claimants awarded by the Tribunal at the rate of 7.5% per annum from the date of claim petition till the date of payment, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1&2/claimants are permitted to withdraw the entire amount, after following due process of law, as apportioned by the Tribunal.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

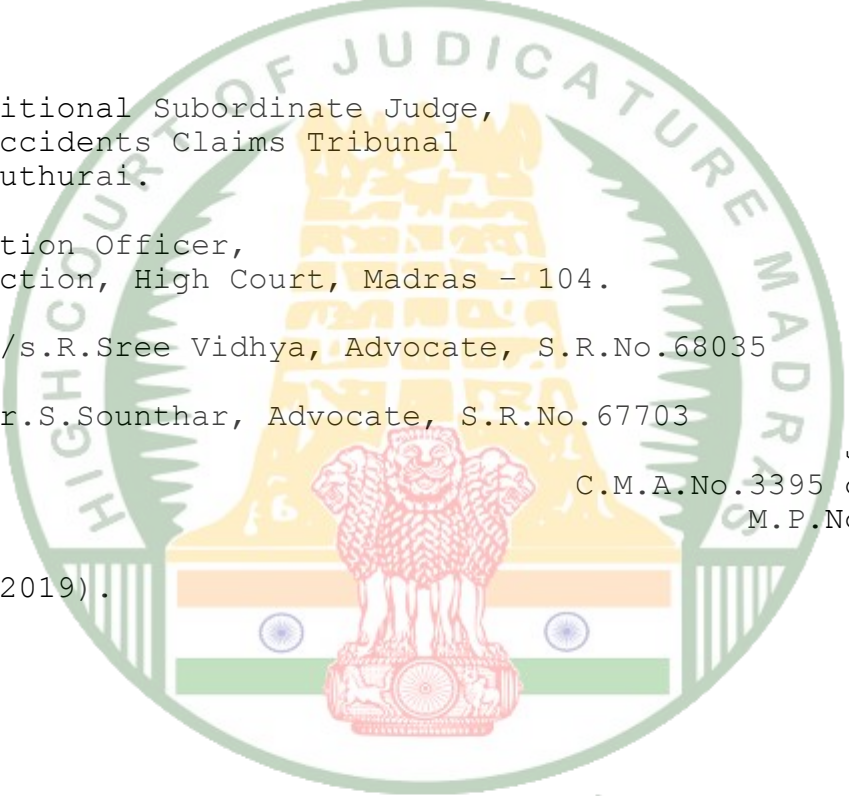
1. The Additional Subordinate Judge,
Motor Accidents Claims Tribunal
Mayiladuthurai.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to M/s.R.Sree Vidhya, Advocate, S.R.No.68035

+1 cc to Mr.S.Sounthar, Advocate, S.R.No.67703

Judgment in
C.M.A.No.3395 of 2011 and
M.P.No.1 of 2011

PA(CO)
SSM(03/10/2019).



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