

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2482 of 2015

and

M.P.No.1 of 2015

The Divisional Manager,
M/s.Oriental Insurance Co. Ltd.,
Having office at
Jambu Bala Complex,
Arcot Road,
Vellore.

... Appellant/2nd Respondent

Vs.

1.Mrs.Parameswari

2.Mrs.Vijaya

3.Mr.Thirunavukarasu

... Respondents 1 to 3/Petitioners

4.Mr.K.Kumar

... 4th Respondent/1st Respondent

5.The Divisional Manager,
M/s.United India Insurance Company Ltd.,
having office at
Katpadi Road,
Vellore.

... 5th Respondent 3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.04.2015 in MCOP.No.456 of 2011 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court at Vellore District.

For Appellant : Mr.J.Chandran

For RR1 to 3 : Mr.M.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 18.04.2015 in MCOP.No.456 of 2011 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court at Vellore District.

2.The brief facts is as follows:

On 21.02.2011 at about 15.30 hrs when the 1st petitioner husband Vinothkumar was driving his Hero Honda Splendor+ bearing Reg.No.TN-23-AF-9322, the driver of Bajaj Platina TN-02-AE-5602 drove rashly and negligently and dashed against the petitioner's husband thereby the petitioner's husband Vinothkumar sustained severe injuries and he also died on 07.03.2011. The claimants claimed that the accident occurred only due to rash and negligent on the part of the driver of the rider of the Bajaj Platina. In this connection, a case in Bagayam P.S.Crime No.153/2011 u/s.279, 337 IPC @ 304 (A) IPC was registered. The claimants claimed a sum of Rs.30,00,000/- as compensation.

3.The respondent/Insurance Company in the counter statement totally denied the mode of accident as stated in the claim application. The other contention raised by the respondent/Insurance Company is that the motorcyclist who involved in the accident namely Mr.Vijayakumar must be added as party to this petition and very much disputed for adding only Mr.K.Kumar as a party. The sum claimed by the claimants by way of income at Rs.6,000/- per month and his age, avocation and income are very much denied. In the absence of any proof, the sum claimed by the claimants is very excessive. Further, the respondent raised the contention that the said Baja Platina motorcycle bearing Reg.No.TN-02-AE-5602 driven by Vijayakumar was not insured with this respondent on the date of accident and therefore without proving the insurance on the date of accident, this respondent cannot be made liable to pay any compensation to the claimants. Hence, the respondent denied the liability as well as the claim made by the claimant.

4.The Tribunal after analyzing the evidence and documents has awarded a sum of Rs.7,45,000/- as compensation to the claimants and directed the 1st and 2nd respondents therein to pay the said amount. Aggrieved against the compensation and liability the 2nd respondent/Insurance Company, who is the appellant herein has preferred this appeal.

5.On perusal of records, it is seen that the accident occurred only due to rash and negligent driving on the part of the motorcycle bearing Reg.No. TN-02-AE-5602, Ex.P1/FIR was observed by the Tribunal that the said FIR has been lodged against the deceased based on the complaint given on 21.02.2011 by one Vijaykumar. The Tribunal has also given finding that though RW1 had deposed that the erring vehicle was not insured with the respondent at the time of the accident, in view of the fact that no contra evidence has been adduced to show the respondent is not the insurer, the Tribunal fixed the liability

on the 2nd respondent being the insurer of the vehicle.

6.It is the grievance of the appellant/Insurance Company that the accident occurred on 21.02.2011 at about 03.30 pm, the 1st respondent paid premium on 22.02.2011 the next day of the accident. Therefore there was no Insurance on the date of accident i.e. On 21.02.2011, hence insurance company is not liable.

7.Heard Mr.J.Chandran, learned counsel appearing for the appellant / Insurance Company and Mr.M.Sivakumar, learned counsel appearing for the respondents 1 to 3 and perused all the materials available on record.

8.The appellant argued in the aspect that on the date of accident there is no policy in the name of the 1st respondent and hence the 2nd respondent is not liable to pay compensation. The copy of the policy also brought to the notice of this Court. It is seen that the said policy was taken on 22.02.2011, whereas the accident occurred on 21.02.2011. Hence, there is no doubt on the date of accident, this Insurance Company is not liable and however the sum determined by the Tribunal has to be paid by owner of the vehicle. R1 in the claim application Mr.K.Kumar is liable to pay compensation determined by the Tribunal. The liability as against the appellant/Insurance Company is set aside. The order of the Tribunal is modified accordingly.

9.In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.The appellant/Insurance Company is permitted to withdraw the amount deposited if any. The owner of the vehicle/4th respondent herein is directed to pay the compensation awarded by the Tribunal along with interest within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw the respective share of the award amount on the basis of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

mtl

To

1.The I Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Vellore.

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

Copy To
Mr.K.Kumar,
S/o.Kannan,
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Chennai-600 106.

+1cc to Mr.J.Chandran, Advocate SR.No.52772

+1cc to Mr.C.Prabakaran, Advocate SR.No.53088

C.M.A.No.2482 of 2015
and
M.P.No.1 of 2015

GP (CO)
GMY (15/06/2020)



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