

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
13.03.2019	20.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE **RMT.TEEKAA RAMAN**C.M.A.Nos.1647 and 507 of 2012andM.P. Nos.1 and 1 of 2011andM.P. No. 1 of 2012 and CMP No.15212 of 2017

M/s. United India Insurance Co. Ltd.
Rep by its Divisional Manager,
No.39, TKM Complex,
Katpatpadi Road,
Vellore District

.... Appellant
(In both the cases)

Vs.

1. Tmt. Deiva Kumari
2. Mionr Rajathi
3. Minor Santhosh
4. Minor Sonia,
5. Minor N. Vijayalakshmi

.... Respondents
.... Respondents in both the cases
(in C.M.A. No.1647 of 2011)

1. Thiru Dharman
2. Tmt. D. Amutha
3. Minor. D. Sangeetha

.... Respondents
(in C.M.A. No.507 of 2012)

Common Prayer: Both Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.Nos.45 of 2006 and 33 of 2006 dated 14.12.2009 and 16.12.2009 respectively on the file of the Motor Accidents Claims Tribunal,(Sub-ordinate Judge), Gudiyatham.

For Appellant : Mr.J. Chandran
 For Respondents-1-4 : S. Santhan
 (In C.M.A. No.1647 of 2011)
 For Respondent-1-3 : D. RajaGopal
 (In C.M.A. No.507 of 2012)

COMMON JUDGMENT

Since both Civil Miscellaneous Appeals are directed against the Judgments and Decrees dated 14.12.2009 and 16.12.2009 made in M.C.O.P.Nos.45 of 2006 and 33 of 2006 on the file of the Motor Accidents Claims Tribunal,(Sub-ordinate Judge), Gudiyatham (for brevity, "the Tribunal"), these appeals are disposed of by this Common Judgment.

2. These appeals have been filed by the Insurance Company challenging on the point of liability of the Insurance Company and the quantum of compensation.

3. On account of accident, rider, Prabhakaran and pillion rider, Velmurugan travelling in the moped died on the spot. Hence, their legal representatives have filed Claim petitions in M.C.O.P. No.45 of 2006 and M.C.O.P. No.33 of 2006 respectively before the Motor Accidents Claims Tribunal, (Sub-ordinate Judge), Gudiyatham, alleging that on 04.11.2005 at about 5.25 PM while the deceased Prabhakaran from Agarmcheri to go to his home along with his friends by Hero Puch bearing registration No.KA 03 R 0191 in the Vellore to Ambur Road towards east side, on that time, in the opposite side a bus bearing Registration No. TN 51 U 2743 driven by its driver in a rash and negligent manner, in a very high speed without horn and control dashed against the aforesaid vehicle wherein rider and pillion riders are died on the spot due to heavy injuries sustained by them. The bus driver proceeded the bus with the aim to chase the government bus at the Agaramcheri bus stop to get the passengers. So, the driver of the bus was not cared the road users or the traveler in the said two wheeler. This is the real cause for the accident.

4. Insurance Company has filed Counter affidavit before the Tribunal alleging that at the time of the accident, three persons including deceased Prabhakaran and Velmurugan, whose legal representatives have

filed claim petitions before the Tribunal for compensation, had traveled in the Hero Push bearing Registration No.KA 03 R 0194 and the rider of the vehicle, namely, Prabhakaran had no valid driving licence to drive the two wheeler while he was driving the Moped along with his friends. Hence, the Insurance Company is not liable to pay compensation.

5. The Tribunal on appreciating the evidence on record, deemed it fit to award compensation to the claimants/legal representatives of the deceased in the aforesaid claim petitions against the respondents/appellant herein. Further, it is seen that the accident occurred on account of the rash and negligence on the part of the driver of the offending bus.

6. Being aggrieved by the said findings and compensation, the Insurance Company has preferred the aforesaid two appeals before this Court.

7. Heard both sides and perused the entire records placed before this Court.

8. The learned counsel for the Insurance Company has placed reliance on the decision of the case "' **National Insurance Co. Ltd. and others Vs. Thangadurai and others**" in C.M.A. Nos. 624 & 2413 of 2016 dated 13.04.2018 reported in 2018(2) TN MAc 168 (DB) and contended that since rider of the two wheeler Hero push does not possess valid driving licence at the time of the accident, 20% contributory negligence has to be fixed on the claimants as per the decision made in the aforesaid case.

9. On perusal of the Ex.P10, charge sheet, the Police have registered F.I.R. on the accident and filed the same as Ex.P1 wherein rash and negligence on the part of the driver of the bus bearing Registration No.TN 52 U 2743 was admitted by R.W.1 & R.W.2. After going through the Sketch, marked as Ex.R.1 and Ex.P1 to Ex.P10, this Court finds that due to rash and negligence on the part of the driver of the offending bus, the accident has taken place and version of P.W.2 who is occurrence witness is duly corroborated by the documentary evidence Ex.P10 and Ex.R1. Therefore, the Trial Court has rightly come to the conclusion that the accident has taken place due to rash and negligence driving of the driver of the offending bus.

10. In the instant case, the vehicle in which both deceased were traveling, is having engine capacity of 50CC and after going through the Ex.R1, Sketch, I do not find any contribution of negligence on the point of the deceased Prabakaran who was rider of the two wheeler.

11. Taking into consideration entirety of the circumstances and low engine capacity of the two wheeler in which they have travelled as well as considering Ex.P1, F.I.R, Ex.P10, Charge sheet, and version of P.W.2 Occurrence witness, it is found that the award of the Tribunal is reliable and trustworthy in the absence of any positive evidence to show or to demonstrate the rash and negligence on the part of the rider of the two wheeler namely, deceased Prabhakaran who died in the accident along with pillion riders.

12. In view of the above, this Court is of the considered view on the facts and circumstances of the case and in the result of the oral and documentary evidence as narrated the above, the ratio of contributory negligence on the part of the rider is not acceptable. Accordingly, the findings rendered by the Tribunal that the said accident is taken place due to rash and negligence on the part of the driver of the offending vehicle is hereby confirmed and quantum of compensation awarded by the Tribunal is just and reasonable.

13. In the result, both the C.M.A. Nos.1647 of 2011 and C.M.A. No.507 of 2012 preferred by the Insurance Company is liable for rejection and hence, the awards passed by the Tribunal in M.C.O.P.Nos.45 of 2006 and 33 of 2006 are hereby confirmed. The Insurance Company is directed to deposit the entire amount as per the award passed by the Tribunal in M.C.O.P. No.45 of 2006 and M.C.O.P. No.33 of 2006.

14. Accordingly, both the C.M.A. Nos.1647 of 2011 and C.M.A. No.507 of 2012 preferred by the Insurance Company are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

20.06.2019

lbm

Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

To

Motor Accidents Claims Tribunal,
(Sub-ordinate Judge), Gudiyatham

RMT.TEEKAA RAMAN,J.,
lbm



Pre-Delivery Judgment in
C.M.A.Nos.1647 and 507 of 2012
and
M.P. Nos.1 and 1 of 2011
and
M.P. No. 1 of 2012 and CMP No.15212 of 2017

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