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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

and

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) .No.151 of 2017

and

C.M.P. (MD) .Nos.1492 and 1493 of 2017

The Branch Manager,
The Oriental Insurance Company Limited,
K.J.R. Complex, 1st Floor,
16, North Veli Street,
Madurai.

... Appellant/2nd Respondent

Vs.

1. P.Pothumponnu,
2. P.Seetha
3. P.Vijayan
4. S.Jayasingh

... Respondents 1 to 3/Petitioners 1 to 3

... 4th Respondent/1st Respondent

(4th Respondent Remained Exparte before Lower Court)

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.1489 of 2012, dated 29.01.2016, on the file of the Motor Accident Claims Tribunal cum VI Additional District Judge, Madurai.

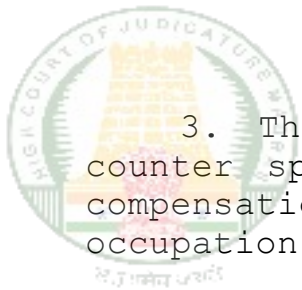
For Appellant : Mr.K.Bhaskaran
For R1 to R3 : Mr.M.Sarangan
For R4 : No appearance

J U D G M E N T

(Judgment of the Court was made by **K. KALYANASUNDARAM, J.**)

This appeal is directed against the award of the Motor Accident Claims Tribunal (VI Additional District Judge), District Court, Madurai passed in M.C.O.P.No.1489 of 2012, dated 29.01.2016.

2. The claim petition was filed by the legal heirs of the deceased one Palani claiming compensation of Rs.20,00,000/-. According to the claimants, on 10.10.2011, at 17.00 hours, the deceased was travelling as a pillion rider in a two wheeler bearing Registration No.PY 01 5283 belonging to the first respondent. The rider drove the vehicle in a rash and negligent manner and caused an accident. Due to the injuries sustained by the accident, he died on the same day.



3. The appellant resisted the claim petition by filing a counter specifically contended that they are not liable to pay compensation. They have also disputed the age, income and occupation of the deceased.

4. The Tribunal, upon consideration of the oral and documentary evidence, held that the rider of the two wheeler was responsible for the accident and since the vehicle had insurance coverage on the date of accident, awarded compensation of Rs.25,62,920/- and directed the appellant to pay the award amount.

5. Mr.K.Bhaskaran, learned counsel for the appellant would state that the two wheeler had only act policy and hence, the Insurance Company is not liable to pay the award amount. The learned counsel relying upon the decision of the Hon'ble Apex Court reported in **2006 (1) TN MAC 36 (SC) (United India Insurance Company Limited, Shimla v. Tilak Singh and others)**, would argue that the Insurance Company is not liable to pay compensation.

6. Per contra, Mr.M.Sarangan, learned counsel for the claimants would state that this stand was not taken by the appellant in the counter filed in the claim petition and further, the policy was not marked and hence, the appellant cannot be permitted to take a new stand in the appeal.

7. Perusal of the records would show that the policy of the offending_vehicle was not produced before the Tribunal. So, in order to enable the parties to adduce evidence, we are of the opinion that the matter can be remanded for fresh consideration.

8. In such view of the matter, the judgment and decree passed in M.C.O.P.No.1489 of 2012, dated 29.01.2016 is set aside and the matter is remitted back to the Tribunal for fresh consideration. The parties are permitted to let fresh evidence. Since the accident had taken place in the year 2011, the Tribunal shall dispose of the claim petition as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

9. With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //



To
The Motor Accident Claims Tribunal
cum VI Additional District Judge,
Madurai.

+1 CC to M/s.K.BHASKARAN, Advocate (SR-58676[F] dated
03/04/2019)

AKV

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