



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD)No.731 of 2010

and

M.P. (MD)No.1 of 2010

National Insurance Co. Ltd.,
Pudukkottai

... Appellant / 2nd respondent

- Vs -

Ramajeyam (died)

1.Tmt.R.Lakshmi @ Jeyalakshmi

2.R.Govindaraj

... Respondents 1 & 2 /Petitioners

3.S.Selvaraj

... 3rd respondent / 2nd respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.11.2009 passed in M.C.O.P.No.39 of 2003 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Pudukkottai.

For Appellants : Mr.S.Srinivasa Raghavan

For R-1 & R-2 : Mr.K.Paranjothi
for Mr.K.Baalasundharam

For R-3 : No Appearance

J U D G M E N T

This appeal has been filed challenging the liability fixed on the appellant / Insurance Company. According to the appellant, the entire liability has been fixed on the appellant based on the deposition of R.W.3, FIR and the averments made in the claim petition.

2.According to the appellant, P.W.1 was the eye witness, who brought the injured to the hospital and deposed to the Doctor that the accident occurred due to the rash and negligent driving of the rider of the Bajaj M-80 bearing registration No.TN 55 F 2475. When



that being the case, according to the appellant / Insurance Company, the Court below without considering the statement made by P.W.1 before the Doctor, wrongly come to the conclusion based on the another eye witness viz., R.W.3, FIR and on the basis of the averments made in the claim petition. Challenging the said finding, the appellant herein filed the present appeal to set aside the Judgment and decree passed by the Court below.

3.The learned counsel for the respondent / claimant would contend that the Court below has correctly fixed the liability as the vehicle involved in the present case is bearing registration No.TN 55 F 2475. By virtue of the ignorance, P.W.1 stated before the Doctor that the vehicle involved in the accident was M-80 instead of TVS 50. Further, he submitted that P.W.1 is not an eye witness, but R.W.3 is the eye witness, who deposed in his evidence stating that he saw the accident and the vehicle involved in the accident is not M-80, but TVS 50 bearing registration No.TN 55 F 2475. On the basis of his complaint, the FIR also registered wherein it has been stated that the vehicle involved in the instant case is TVS 50. Therefore, the finding of the Court below is correct and there is no infirmities in the order passed by the Court below and prayed for dismissal of the appeal.

4.Heard the learned counsel appearing on both sides and perused the materials available on record.

5.On perusal of Ex.P1-FIR, it has been clearly stated that the accident occurred due to the rash and negligent driving of the driver of TVS 50 bearing registration No.TN 55 F 2475. Further, on perusal of the deposition of R.W.3, it is clear that the accident occurred due to the rash and negligent driving of the driver of the two wheeler bearing registration No.TN 55 F 2475, which is TVS 50. Further, in the claim petition also, the claimants made that the vehicle involved in the accident is not M-80 but TVS 50.

6.On perusal of deposition of P.W.1 it appears that she was not there at the time of accident and she was informed by a third person and upon hearing the information about the accident, she immediately rushed to the hospital and since she was there in the hospital along with the deceased, the doctors stated as if she only got the injured to the hospital. But the fact remains that the injured was brought to the hospital by the persons standing around the accident place. Therefore, this Court is not in a position to accept the statement of P.W.1 before the Doctor, wherein she has stated that the vehicle involved in the accident is M-80. However, on perusal of the evidence of R.W.3, FIR and also the claim statement, it appears that the accident occurred due to the rash and negligent driving of the rider of the TVS 50 bearing registration No.TN 55 F 2475. In these circumstances, this Court is of the view that this Court does not find any infirmity in the Judgment and decree dated 20.11.2009

<https://hccourts.in/hccases> P.No.39 of 2003 by the learned Chief Judicial



Magistrate, Motor Accidents Claims Tribunal, Pudukkottai.
Accordingly, this appeal is liable to be dismissed.

7.In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. The appellant / Insurance Company is directed to deposit entire award amount with accrued interest and costs, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw their respective share with accrued interest and costs, less the amount already withdrawn, by filing an application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

rj2

To:

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Pudukkottai.

Copy to:

The Record Keeper, (2 Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-100785[F] dated 22/11/2019)

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-100199[F] dated 21/11/2019)

C.M.A. (MD) No. 731 of 2010
20.11.2019

JMN(17.12.2019) 3P : 6C