

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.1995 & 2002 of 2015
and
M.P.No.1 & 1 of 2015

C.M.A.No.1995 of 2015

United India Insurance Co. Ltd.,
No.104-A, Peramanur Main Road,
Peramanur,
Salem-7.Appellant/3rd Respondent

/versus/

1.A.Prabakaran1st Respondent/ Claimant
2.B.Shanmugasundaram
3.S.Jawahar2nd 3rd Respondents/1st and
2nd Respondents

C.M.A.No.2002 of 2015

United India Insurance Co. Ltd.,
No.104-A, Peramanur Main Road,
Peramanur,
Salem-7.Appellant/3rd Respondent

/versus/

1.P.Ramasamy
2.Rajathi1st & 2nd Respondent/Claimants
3.B.Shanmugasundaram
4.S.Jawahar ...3rd & 4th Respondents/1st and
2nd Respondent

Prayer in CMA.No.1995 of 2015: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the decree and judgment dated 04.03.2015 passed in MCOP No.845 of 2010 on the file of Motor Accident Claims Tribunal, Special District Court at Salem.

Prayer in CMA.No.2002 of 2015: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the decree and judgment dated 04.03.2015 passed in MCOP No.668

of 2010 on the file of Motor Accident Claims Tribunal, Special District Court at Salem.

For Appellant : Mr.C.Paranthaman in both CMAs

For Respondents: No appearance in both CMAs

J U D G M E N T

(The case has been heard through video conference)

These appeals are filed by the Insurance Company aggrieved by the quantum of compensation awarded by the Tribunal to the accident victims.

2. On 30.10.2009 at about 15.30 hours on the Krishnapuram-Veppanthattai main road within the limit of Arumbavur police station, Perambalur District, a Bajaj tempo bearing registration No. TN 30 AA 1040 hit the motorcycle bearing registration No. TN 30 Q 2163. The rider of the motorcycle Mr.Sampath Kumar died on the spot and the pillion rider Prabhakaran sustained severe injury. The claim petition was filed by the parents of Sampath Kumar for Rs.10,00,000/-. The said claim petition was numbered as M.C.O.P.No.668 of 2010. The injured Prabhakaran filed a claim petition in M.C.O.P.No.845 of 2010 for a sum of Rs.5,00,000/-.

3. The claim petitions was contested by the Insurance Company on the ground that the accident occurred not due to the rash and negligence driving of the tempo driver, but due to negligence and rashness of the deceased Sampath Kumar, the rider of the two wheeler. He tried to over take a car going front of him in the main road. Therefore, there was contributory negligence on the part of the rider of the two wheeler. For the cause of accident, the owner of the motorcycle and its insurer were not impleaded in the claim petition. Therefore the claim petition has to be dismissed for non joinder of the necessary parties. Further, it was also contended by the Insurance Company in the counter that the tempo van had no fitness certificate and permit to ply on the road and two persons were travelling in the driver seat leading to violation of policy and permit condition.

4. The Tribunal conducted a joint trial and ordered a sum of Rs.4,82,400/- for the claimants/parents of the deceased Sampath Kumar in M.C.O.P.No.668 of 2010 and awarded Rs.80,460 as compensation to the injured Prabhakaran, who is the petitioner in M.C.O.P.No.845 of 2010. The Tribunal directed the Insurance Company to pay the said amount with interest at the rate of 7.5% and recover the same from the vehicle owner, since there was policy violation.

5. Aggrieved by the award as mentioned above, the Insurance Company has preferred C.M.A.Nos.1995 & 2002 of 2015 against the award passed by the Tribunal in M.C.O.P.Nos.668 & 845 of 2010.

6. The learned counsel appearing for the appellant would emphasis that the accident occurred due to contributory negligence of the deceased Sampath Kumar, who was the rider of the two wheeler. Therefore, the Tribunal ought to have substantially deducted the compensation amount for his contribution and ought to have directed the owner of the tempo van to pay the compensation instead of applying the principle of "pay and recovery". The learned counsel would further submit that the Tribunal has failed to consider the evidence of RW-1, who has deposed that the tempo van had no valid permit and fitness certificate and the owner has not paid the road tax.

7. This Court on consideration of the plea as well as the evidence let in by the claimants finds that the Tribunal has rightly assessed the loss of compensation based on the material placed before it. At the same time, permitted the Insurance Company to recover the money from the owner of the vehicle after paying the same to the claimants. Regarding the contribution to the accident, this Court finds that no evidence that the rider of the two wheeler contributed to the accident. Therefore, this Court finds that there is no merit in these appeals.

8. In the result, these Civil Miscellaneous Appeals are dismissed. Consequently, connected miscellaneous petitions are also closed. No costs. The award of the Tribunal is confirmed.

9. The learned counsel for the appellant submits that at the time of admission, deposited the entire award amount with interest in the respective MCOP account. If it is so, the respondents/ claimants are permitted to withdraw the same on filing appropriate petition.

Sd/-
सतयजोय जयति
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal, Special District Judge at Salem.

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

+2ccs to Mr.C.Praranthaman, Advocate, sr no.33492 & 33493

C.M.A.Nos.1995 & 2002 of 2015
and M.P.Nos.1 & 1 of 2015

NR (CO)
RMP (11/06/2021)



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