

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.08.2020
Pronounced On	17.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3062 of 2013

and

M.P.No.1 of 2013

(Through Video Conferencing)

The Manager,
Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, College Road,
Chennai 600 006. Appellant/2nd Respondent

Vs.

1.Minor Kamesh

2.Minor Sridhar

Minors 1st and 2nd respondents are rep.
by next friend guardian Grand father
Mannar, 3rd respondent.

3.Mannar

... Respondents 1 to 3/Claimants 1 to 3

4.M.Prabhu

... 4th Respondents/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 11.04.2011, made in M.C.O.P.No.6 of 2010, on the file of Motor Accident Claims Tribunal (Sub Court), Tiruttani.

For Appellant : Mr.K.Poomalai

For R1 to R3 : Mr.S.Udayakumar

J U D G M E N T

The Insurance Company is the appellant. It is aggrieved by the impugned Judgment and Decree dated 11.04.2011 passed by the Motor Accidents Claims Tribunal (Sub Court) Tirutanni in

M.C.O.P.No.6 of 2010.

2. In this appeal, the appellant Insurance Company seeks to distance itself from the liability on the ground that the deceased was himself the rider of the insured motorcycle and therefore the Tribunal erred in overlooking the content of Exhibit A1 FIR by placing reliance on the deposition of PW.2, the alleged witness to the accident.

3 The case of 1st to 3rd respondents, who were the claimants before the Tribunal, is that the deceased aged about 32 years met with a fatal accident as a pillion rider on the insured motorcycle belonging to the 4th respondent on 08.06.2004. It is stated that the deceased was given treatment between 08.06.2004 to 14.06.2004 and eventually succumbed to the injuries.

4. It is the contention of the appellant that though the accident had taken place on 08.06.2004, however Exhibit A1 FIR is dated 14.06.2004. It is further submitted that charge sheet/final report of the police filed by the appellant as Exhibit R1 clearly establishes that the deceased was the rider of the motorcycle and therefore, the complaint in the Exhibit A1 FIR stood abated in the light of the death of the deceased.

5. It is submitted that the insured motorcycle belonged to the brother of the deceased and was not driven by Loganathan as has been made out by the claimants before the Tribunal. It is further submitted that Loganathan was not produced as a witness and therefore the Tribunal erred in relying on the evidence of PW.2 Kothandam, the alleged witness of the accident. It is submitted that PW.2 Kothandam was a stock witness and therefore the Tribunal ought not to have relied on the evidence of the said witness.

6. Defending the impugned Judgment and Decree, the learned counsel for the 1st to 3rd respondents/claimants has submitted that the said Loganathan had obtained bail petition fearing arrest due to the accident and therefore merely because Exhibit A1 FIR wrongly records the facts cannot be the basis to overlook the evidence in the form of the deposition of PW2. It is further submitted that, it was open for the appellant Insurance Company to produce the Loganathan rider of the insured motorcycle and since the appellant Insurance Company failed to do so, it cannot file an appeal in the light of the overwhelming evidence produced by the 1st to 3rd respondent's/claimant's. It is further submitted that deceased neither possessed driving license nor knew to ride a two wheeler and therefore there is no question of inferring that the deceased was the rider and therefore tortfeasor.

7. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company and the 1st to 3rd respondents/claimants. There is no contra evidence furnished or produced before the Tribunal by the appellant Insurance Company to demonstrate that the insured vehicle was driven by the deceased himself. In absence of any evidence and in the light of the overwhelming evidence in the form of proof affidavit of PW.2, I find no reasons to interfere with the impugned finding rendered by the Tribunal.

8. The Motor Vehicle Inspector's report vide Exhibit A3 names the said Loganathan as the rider of the insured motorcycle. The appellant Insurance Company has also not taken the plea that the deceased was not a 3rd party for the purpose of claiming compensation under section 166/163-A of the Motor Vehicles Act, 1988.

9. The 1st to 3rd respondents/claimants are the two minor children of the deceased and the father of the deceased. The deceased was aged about 32 years at the time of death. Neither the mother nor the wife of the deceased was a party to the aforesaid proceedings.

10. Therefore I find no reasons to interfere with the same notwithstanding the fact that the appellant Insurance Company has filed criminal complaints alleging falsification of evidence. However, barring filing of the aforesaid complaint and filing the present appeal, the appellant Insurance Company has not taken any other steps to take it to its logical end.

11. In the light of the above facts, I find no reasons to interfere with the impugned Judgment and Decree passed by the Tribunal. Under these circumstances, this appeal is liable to be dismissed.

12. Therefore, if the appellant Insurance Company has not deposited the compensation awarded by the Tribunal, it is directed to deposit the same together with interest as directed by the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment.

13. On such deposits, the 3rd respondent/3rd claimant is permitted to withdraw his share together with interest thereon as directed by the Tribunal, by filing suitable application. If the 1st and 2nd respondents/1st and 2nd claimants have attained the age of majority during the pendency of this appeal, they are permitted to file appropriate application for recording the age of majority to withdraw their respective share together with interest, before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

jen

To:

The Motor Accident Claims Tribunal
(Sub Court), Tiruttani.

Copy To

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

+1cc to Mr.S.Udayakumar, Advocate, S.R.No. 26764
+1cc to Mr.K.Poomalai, Advocate, S.R.No. 26928

C.M.A.No.3062 of 2013
and M.P.No.1 of 2013

RSV (CO)
GN(19/12/2020)

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