

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.559 of 2020
and C.M.P.No.3444 of 2020

New India Assurance Company Limited
Motor Third Party Cell
6th floor, Bombay Mutual Building
NSC Bose road, Chennai-600 001. ... Appellant /2nd Respondent

Vs.

1.P.Kumar
2.Thilagam
3.Gowtham

... Respondents/
Petitioners 1 & 2 and
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.10.2019 made in M.C.O.P.No.7699 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellant :Ms.G.Sukumari

For R1 & R2 :Mr.K.Doraisamy, Senior Counsel
for Mr.Muthumani Doraisamy (Caveator)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 24.10.2019 made in M.C.O.P.No.7699 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.7699 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai. The respondents 1 & 2 filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of their son viz., Vinoth Kumar, who died in the accident that took place on 01.01.2011.

3.According to the respondents 1 & 2, on the date of accident, i.e., on 01.01.2011 at about 3.00 hours, while the deceased was travelling as a pillion rider in the motorcycle at EC road, opposite to Kottivakkam Megha mart from South to North direction, the rider of the motorcycle belonging to the 3rd respondent rode the same in a rash and negligent manner, hit the centre median and caused the accident. Due to the accident, the deceased sustained multiple injuries on his head and died. Therefore, the respondents 1 & 2 have filed the above claim petition claiming compensation against the 3rd respondent and appellant/Insurance Company.

4.The 3rd respondent, owner of the motorcycle, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident has occurred due to negligence on the part of the rider of the motorcycle and the deceased, who did not wear helmet at the time of accident. The rider of the motorcycle belonging to the 3rd respondent did not possess driving license at the time of accident. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 & 2. In any event, the compensation claimed by the respondents 1 & 2 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 2nd respondent, mother of the deceased examined herself as P.W.1 and examined one Harikrishnan as P.W.2 and marked thirteen documents as Exs.P1 to P13. On the side of the appellant/Insurance Company, one Vasanthan, officer of the appellant/Insurance Company was examined as R.W.1 and three documents were marked as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 3rd respondent and directed the appellant/Insurance Company being insurer of the said

motorcycle, to pay a sum of Rs.13,19,600/- as compensation to the respondents 1 & 2.

8.Against the said award dated 24.10.2019 made in M.C.O.P.No.7699 of 2016, the appellant/Insurance Company has come out with the present appeal.

9.Though the learned counsel appearing for the appellant/Insurance Company has raised various grounds in the grounds of appeal with regard to quantum of compensation, at the time of arguments, she has restricted her arguments only with regard to liability fixed on the part of the appellant/Insurance Company.

10.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in holding that the accident has occurred due to rash and negligent riding by the rider of the motorcycle, in which the deceased travelled as a pillion rider and directing the appellant/Insurance Company to pay entire compensation to the respondents 1 & 2. The rider of the motorcycle did not possess driving license at the time of accident. The appellant has examined R.W.1/officer of the appellant/Insurance Company and marked the copy of policy, copy of notice issued to the 3rd respondent and returned cover as Exs.R1 to R3. The Tribunal ought to have directed the 3rd respondent to pay the compensation as he permitted the rider of the motorcycle to ride the motorcycle without possessing driving license, contrary to the statutory provision. In any event, the Tribunal ought to have ordered pay and recovery and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned Senior Counsel appearing for the respondents 1 & 2/caveators contended that the appellant/Insurance Company has not proved that the rider of the motorcycle did not possess driving license at the time of accident. The Tribunal considering the materials available on record and evidence of P.W.2/eye-witness to the accident, held that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle, who also died in the accident and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 & 2 and perused the entire materials available on record.

13.It is the contention of the respondents 1 and 2 that the rider of the motorcycle, in which the deceased was travelling as a pillion rider, drove the same in a rash and negligent manner and caused the accident. Due to the injuries sustained in the accident, the son of the respondents 1 & 2 died. The respondents 1 & 2 examined P.W.2/eye-witness to the accident to prove that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle. The appellant except examining official from the Insurance Company as R.W.1 with regard to policy, has not let in any evidence to disprove the contention of the respondents 1 & 2. Though the learned counsel appearing for the appellant/Insurance Company contended that the rider of the motorcycle did not possess driving license at the time of accident, they have not summoned any official from the R.T.O. to prove the same. Merely issuing notice to the 3rd respondent, owner of the motorcycle, will not absolve burden of the appellant to prove that the rider of the motorcycle did not possess driving license at the time of accident. In view of the failure on the part of the appellant to prove that the rider of the motorcycle did not possess driving license at the time of accident, the contention of the learned counsel appearing for the appellant that the Tribunal ought to have ordered pay and recovery is without merits. The Tribunal considering the materials available on record properly, rightly held that the accident has occurred due to rash and negligent riding by the rider of the motorcycle and directed the appellant/Insurance Company to pay compensation to the respondents 1 & 2.

14.For the above reason, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.13,19,600/- awarded by the Tribunal as compensation to the respondents 1 & 2 along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 & 2/claimants are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kj

To

1.The II Judge, Special Sub Court
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court
Madras.

+1 cc to Mr.R.Sivakumar Advocate sr13659

+1 cc to M/s.Muthumani Advocate sr13389

C.M.A.No.559 of 2020

ssv(co)
aa19/11/2020



WEB COPY