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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.2253 of 2014  
and M.P. No. 1 of 2014

Royal Sundaram Alliance Insurance Co. Ltd.,  
No.46, Whites Road,  
Chennai 14.

.. Appellant/2<sup>nd</sup> Respondent

Vs.

1.Kavitha

2.Minor Monicka

3.Minor Manasa  
(Minor respondents 2 and 3 rep. By  
their mother and natural guardian,  
1<sup>st</sup> respondent.)

4.Parkavi Devi

5.Venkatachalapathy ... Respondents 1 to 5/Petitioner

6.P.J.Moorthy ... 6<sup>th</sup> Respondent/1<sup>st</sup> Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.12.2010, made in M.C.O.P. No.631 of 2007, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Vellore.

For Appellant : Mr. K.Vinod  
for M/s. Elveera Ravindran  
For Respondents : No appearance (For R1 to R5)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 07.12.2010, made in M.C.O.P. No.631 of 2007, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Vellore.



2.The appellant is the 2<sup>nd</sup> respondent in M.C.O.P. No.631 of 2007, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Vellore. The respondents 1 to 5/claimants filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Prathab Chowdhiri who died in the accident that took place on 22.08.2005.

3.According to the respondents 1 to 5, on the date of accident, when the deceased was traveling as pillion rider in the Motorcycle bearing Registration No. TN-23-AZ-7296 belonging to the 6<sup>th</sup> respondent, from Arcot to Vellore, near Krishna Mahal at Rangapuram village, the rider of the Motorcycle drove the same in a rash and negligent manner. As a result of which, the Motorcycle got skid and the deceased fell down from the Motorcycle and sustained fatal injuries. The accident occurred only due to rash and negligent riding by rider of the Motorcycle belonging to the 6<sup>th</sup> respondent and hence, the respondents 1 to 5 filed claim petition claiming compensation against the 6<sup>th</sup> respondent as owner and appellant as insurer of the offending vehicle.

4.The 6<sup>th</sup> respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 5 in the claim petition. According to the appellant, the deceased traveled as pillion rider in the Motorcycle and he is not covered under third party as per policy and Act. The deceased traveled as gratuitous passenger, in violation of policy conditions and hence, the appellant is not liable to pay compensation to the respondents 1 to 5. The appellant filed additional counter statement and submitted that as per FIR, one accused V.Prabhu Prakash drove the Motor cycle and he himself is the complainant. But as per the final report filed by the Police on 22.08.2005, the deceased himself drove the Motorcycle under the influence of alcohol, got skid while driving Motorcycle over the sand which was kept for construction work and got abdominal injuries and died on 29.08.2005. The Police officials submitted the final report as mistake of fact, which has been accepted by the Judicial Magistrate No.V, Vellore in RCS Order vide RCS No.01/2006 dated 10.03.2006. The deceased, 6<sup>th</sup> respondent-owner of the Motorcycle and the complainant-cum-accused colluded together and filed this claim petition in order to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1<sup>st</sup> respondent examined herself as P.W.1, examined one Prabhu Prakash as P.W.2 and marked 8 documents as Exs.P1 to P8. The appellant examined three witnesses as R.W.1 to R.W.3 and marked 3 documents Exs.R1 to R3.



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7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by P.W.2, rider of the Motorcycle belonging to the 6<sup>th</sup> respondent and directed the appellant, as insurer of the vehicle, to pay a sum of Rs.3,35,000/- as compensation to the respondents 1 to 5.

8.Challenging the liability fixed on them by the Tribunal in the award dated 07.12.2010, made in M.C.O.P. No.631 of 2007, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in holding that the appellant is liable to pay compensation, when the deceased rode the Motorcycle in a drunken mood, fell down and sustained injuries. R.W.1 - Administrative Official deposed that when deceased was riding the Motorcycle in a rash and negligent manner, accident occurred and FIR was closed as 'mistake of fact' and the same was filed by them before the learned Judicial Magistrate. R.W.2-Doctor deposed that in the Accident Register it has been mentioned that the deceased, while driving, fell down from the Motorcycle under the influence of alcohol. The Tribunal erroneously rejected the independent evidence of R.W.1 and R.W.2. The Tribunal erred in accepting the interested evidence of P.W.2, brother of the deceased and failed to see that P.W.2 did not object to referred charge sheet notice served on him. The deceased was alive and conscious when he was admitted in the Hospital and if he was really a pillion rider, he would have said so to the Hospital authorities and there is no necessity for him to tell that he fell from the Motorcycle in the drunken mood. The respondents 1 to 5 have not let in any independent evidence to prove their contention and prayed for setting aside the award of the Tribunal and allowing the appeal.

10.Though the respondents 1 to 5 entered appearance through their counsel and his name is printed in the cause list, when the matter is taken up for hearing, there is no representation.

11.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

12.From the materials on record, it is seen that it is the contention of the respondents 1 to 5 that the deceased was traveling as pillion rider in the Motorcycle driven by his brother, P.W.2. P.W.2 drove the Motorcycle in a rash and negligent manner and caused the accident. In the accident, the deceased sustained fatal injuries and hence, the respondents 1 to 5 claimed compensation for the death of the deceased. To substantiate their contention, the respondents 1 to 5 examined



1<sup>st</sup> respondent as P.W.1 and brother of the deceased who was rider of the Motorcycle at the time of accident as P.W.2. The respondents 1 to 5 marked FIR as Ex.P1, which was registered against P.W.2. On the other hand, in the counter statement, the appellant took a stand that deceased was pillion rider and not a third party. He is a gratuitous passenger and hence, the appellant is not liable to pay compensation to the respondents 1 to 5. The appellant filed additional counter statement and took a contrary stand that deceased was driving the Motorcycle in a drunken mood and Motorcycle got skid while driving over the sand which was kept for construction work. The Police filed final report as mistake of fact and the same was accepted by the Judicial Magistrate No.V, Vellore vide RCS Order vide RCS No.01/2006 dated 10.03.2006. To substantiate this, the appellant examined Sub-Inspector of Police, who deposed to the stand taken by the appellant in the additional counter statement.

13.From the award of the Tribunal, it is seen that R.W.1 was not an Investigating Officer, he has not filed copy of final report and also has not filed any acknowledgment card for having served RCS notice on P.W.2, the complainant. The appellant also not filed any proof to show that the Judicial Magistrate No.V, Vellore took the final report on file and closed the case. R.W.1 has admitted that case records could not be traced out, due to shifting of Police Station. The Tribunal also held that appellant failed to obtain certified copy of final report from the Magistrate Court and prove their case. R.W.2 Doctor from C.M.C. Hospital, Vellore, deposed with regard to Accident Register. From the evidence of R.W.2, it is clear that he admitted that he is not the author of the Accident Register and he has not treated the deceased. He also admitted that no test was conducted to find out the percentage of alcohol contents in the blood level of the deceased. Considering the above materials, the Tribunal held that the appellant failed to prove their contention that deceased has driven the Motorcycle in drunken mood at the time of accident and he was the tort-feasor. Considering all the above materials in its entirety, I hold that there is no error in the finding of the Tribunal holding that appellant failed to prove their case.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.3,35,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the award amount, along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.631 of 2007. On such deposit, the respondents 1, 4 and 5 are permitted to withdraw their share of the award amount,



along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1<sup>st</sup> respondent, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 3. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Principal District Judge,  
(Motor Accident Claims Tribunal),  
Vellore.

Copy To

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

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.42386

C.M.A. No.2253 of 2014

RSI (CO)  
GN(27/08/2021)