IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2432 OF 2014
AND
M.P.NO.1 OF 2014

The Oriental Insurance Co. Ltd.,
No.69, West Madha Church Road,
Appavuoo Towners 1st Floor,
Rayapuram, Chennai 600 013. .. Appellant/ 2nd Respondent

Vs.

1.Santhi

2.Saravana Kumar (Minor)

3.Thaiyammal

4.Venkatasamy Naidu

5.Bhavani (Minor) ... Respondents 1 to 5/ Petitioners

6.T.Murugesan

7.J.Viswanathan .. Respondents 6 & 7/ Respondents 1 & 3

(Minor respondents 2 and 5 represented by their mother and next friend, Santhi)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.07.2013, made in M.C.O.P. No.38 of 2011, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tindivanam.

For Appellant : Mr.E.Rajadurai
for M/s.N.Vijayaraghavan
For Respondents: Mr.K.Balaji (For R1 to R5)
For R6 : Vacated
For R7 : Person not found

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 30.07.2013, made in M.C.O.P. No.38 of 2011, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tindivanam.

2.The appellant is the 2nd respondent in M.C.O.P.No.38 of 2011, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tindivanam. 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 Boopathy, who died in the accident that took place on 17.02.2008.

3.According to the respondents 1 to 5, on the date of accident, the deceased was traveling with his friend as a pillion rider in TVS Suzuki Motor Bike bearing Registration No.TN-59-L-6073 from Kollar to Chennai. While crossing G.S.T. Road between Tindivanam and Chennai, near Pathiri Village, the rider of the said TVS Motorcycle lost control in order to avoid hitting a Lorry which was proceeding in the same direction. Due to the said impact, the TVS Motorcycle hit against a roadside tree and rolled down the road side pit and caused accident. The accident occurred due to rash and negligent riding by the rider of the TVS Motorcycle. In the accident, the deceased who was thrown off, sustained fatal injuries and died on the spot. Hence, the respondents 1 to 5 filed claim petition claiming compensation against the respondents 6, 7 and appellant as owner, driver and insurer of the vehicle.

4.The respondents 6 and 7 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 rider of the TVS Motorcycle drove the vehicle slowly and carefully. When an unidentified Lorry was driven rashly and negligently, the rider swerved the vehicle to avoid the Lorry hitting the TVS Motorcycle, inspite of which the unidentified Lorry hit the TVS Motorcycle and caused the accident and ran away. The accident occurred only due to rash and negligent driving by the unidentified Lorry and the respondents 1 to 5 falsely lodged complaint against the rider of the TVS Motorcycle and filed the claim petition. At the time of accident, the rider of the TVS Motorcycle did not possess valid driving license. In any event, the respondents 1 to 5 have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined eye witness as P.W.2 and marked 5 documents as Exs.P1 to P5. The appellant examined its official as R.W.1 and marked copy of policy as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the TVS Motorcycle belonging to the 6th respondent and directed the 6th respondent as well as the appellant to jointly and severally pay a sum of Rs.5,44,000/- as compensation to the respondents 1 to 5. The Tribunal dismissed the claim petition as against the 7th respondent.

8.Challenging the liability fastened on them by the award dated 30.07.2013, made in M.C.O.P. No.38 of 2011, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the deceased was traveling as pillion rider at the time of accident and he was not covered as per the policy. The Hon'ble Apex Court has held that the Insurance Company is not liable to pay compensation to the pillion riders when the policy is only an Act policy. The Tribunal erred in fastening liability on the Insurance Company and prayed for setting aside the award of the Tribunal and allowing the appeal.

10.The learned counsel appearing for the respondents 1 to 5 made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 5 and perused the materials available on record.

12.From the materials available on record, it is seen that it is the contention of the appellant that the policy issued by the appellant is only an Act policy and liability of the pillion rider is not covered under the said policy. It is seen from the counter statement filed by the appellant before the Tribunal that the appellant has not taken such a stand that liability of the pillion rider is not covered under the Insurance Policy. On the other hand, the appellant has taken a stand that they have not issued policy in respect of offending vehicle and the rider did not possess driving license at the time of accident. R.W.1, Official of the appellant has stated that pillion rider is 3rd party. The appellant having failed to contend that policy issued by them did not cover the liability of the pillion rider in the counter statement, is not entitled to raise such an issue before this Court. In view of the same, the appeal is liable to be dismissed as devoid of merits.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.5,44,000/- 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 as well as the 6th respondent are jointly and severally 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.38 of 2011. On such deposit, the respondents 1, 3 and 4 are permitted to withdraw their share of the award amount 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 share of the minor respondents 2 and 5 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 and 5 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 5. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The I Additional District Judge,
(Motor Accident Claims Tribunal),
Tindivanam.

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

SRA(CO)
CS/02/03/2021