

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2876 of 2014
and M.P.No.1 of 2014

Royal Sundaram Alliance Insurance Co. Ltd.,
Having office at 46, Whites Road,
Chennai - 600 014.

...Appellant/2nd Respondent

vs.

1.Anithasri @ Surya
2.Minor Keerthana Devi
rep. by guardian & grand father Perumalsamy
3.Thiru.Perumalsamy .. Respondents 1 to 3/ Claimant 1 to 3
4.Santhanam .. 4th Respondent / 1st Respondent
5.D.Purushothaman .. 5th Respondents / 3rd Respondent
(4th respondent remained exparte)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree made in M.C.O.P.No.715 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District cum Sessions Judge, Fast Track Court No.3) at Coimbatore dated 02.06.2010.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Mr.A.E.Ravichandran for R1 & R2
R3 - No such address
R4 - exparte
Mr.B.Vijaya Kumar for R5

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JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Appellant Insurance Company challenging the Award dated 02.06.2010 passed by the Motor Accident Claims Tribunal, (Additional District cum Sessions Judge, Fast Track Court No.3) at Coimbatore , in M.C.O.P.No.715 of 2007.

2.Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant, Mr.A.E.Ravichandran, learned counsel for the respondents 1 and 2 and Mr.B.Vijaya Kumar, learned counsel for the fifth respondent. Under the impugned Award, no liability has been fixed against the third respondent and hence notice to the third respondent is dispensed with. The fourth respondent has remained exparte both before the Tribunal as well as before this Court.

3.The Motor Accident Claims Tribunal under the impugned Award has directed the Appellant Insurance Company to pay the respondents 1 to 3, who are the claimants, a compensation of Rs.5,58,000/- together with interest and cost for the death of Kalamani as a result of an accident on 31.12.2003 caused by a vehicle insured with the Appellant.

4.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Pecuniary loss	-	Rs.5,40,000/-
(Rs.3,000 x12 x 15)		
Transportation	-	Rs.500/-
Funeral expenses	-	Rs.2,500/-
Loss of love and affection	-	Rs.5,000/-
Medical Bill	-	Rs.10,000/-

Total		Rs.5,58,000/-

5.The Appellant Insurance Company has challenged the impugned Award questioning its liability to pay the compensation to the claimants. They have raised the following grounds in this appeal:

(a)The Tribunal ought to have rejected the claim as the motorcycle bearing Registration No.TN38-S-9825 owned by the fifth respondent and insured with the Appellant was falsely implicated in the impugned accident with the connivance of the owner of the vehicle was the husband of the deceased.

(b)The Tribunal ought to have rejected the case of the claimants who sought compensation for the death of Kalamani who travelled as a pillion rider in the insured motorcycle. According to the Appellant Insurance Company, the motorcycle was driven in a rash and negligent manner and it turned towards west and fell down on the road. In view of the absence of any damage to the motorcycle, the relationship of the owner of the motorcycle with the deceased, the vital discrepancy in hospital records and the pendency of the proceedings before the CB CID & CBI questioning the alleged accident and the investigation by the Police Authorities, the Appellant Insurance Company is not liable to compensate the claim.

(c)The Tribunal erred in not properly considering the fact as seen from Ex.R3 (MVI Report), that there was no damage to the insured motorcycle. According to them, if the accident had happened in the manner alleged in paragraph No.23 of the claim petition, there would have been some damage to the vehicle.

(d)The Tribunal ought to have rejected the evidence of RW2, the husband of the deceased cum owner of the vehicle as he was not speaking the truth since as per Ex.R5 accident register, he was the person who brought the deceased to the hospital.

(e)The Tribunal erred in not properly considering Ex.R2, the judgment of the criminal court where the rider of the motorcycle was acquitted as there was no evidence connecting the accident.

(f)The Tribunal ought to have rejected the evidence of PW2, an alleged eye witness to the accident as his presence was not proved.

(g)The Tribunal ought to have rejected the claim petition as the complaint with CB CID is pending as seen from Exs.R6 to R10.

6.Before the Tribunal, the claimants have filed 16 documents which were marked as Exs.P1 to P16 and two witness were examined on their side namely, Thiru.Perumalsamy, the grand father of the deceased as PW1 and Thiru.Mani, an eye witness to the accident as PW2. On the side of the Appellant Insurance Company, 10 documents were filed which were marked as Exs.R1 to R10 and one witness was examined namely Mr.Vaitheeswaran, an official of the Insurance Company as RW1. The third respondent in the claim petition namely, Mr.D.Purushothaman was also examined as a witness (RW2).

7.The claimants have pleaded in their claim petition that the deceased Kalamani was travelling as a pillion rider in the motorcycle which was driven by Mr.Santhanam, the first respondent in the claim petition M.C.O.P.No.751 of 2007. According to them, the accident happened on 31.12.2003 at about 6.45 a.m. when the rider of the motorcycle Santhanam took a sudden west turn and due to the same, the deceased who was a pillion rider fell down from the motorcycle and suffered grievous injuries which resulted in her death on the same day.

8.The FIR has also been registered only against the rider of the motorcycle Mr.Santhanam based on the complaint lodged by Mr.Nagarajan as eye witness to the accident on the same day without any delay at about 10.00 a.m.

9. Before the Tribunal, the oral evidence adduced by the claimants through PW1 and PW2 (eye witness to the accident) are in consonance to the contents of the FIR (Ex.P1). There are no contradictions whatsoever between the pleadings as well as the oral evidence adduced by PW1 and PW2. PW1 and PW2 in their oral evidence have reiterated the contents of the FIR.

10. The contention of the Appellant Insurance Company before this Court as well as before the Tribunal was that the criminal proceedings against Santhanam, the rider of the motorcycle has ended in acquittal and that since the owner of the vehicle (insured) is none else than the husband of the deceased, they are not liable to pay the compensation.

11. It is settled law that a criminal Court judgment is not binding upon the Motor Accident Claims Tribunal. The Motor Accident Claims Tribunal decides any claim on preponderance of probabilities. Whereas the criminal court convicts the accused only when the case has been proved beyond reasonable doubt.

12. The learned counsel for the Appellant vehemently contended before this Court that as seen from the accident register (Ex.R5), it was only the husband of the deceased (D.Purushothaman) who had taken his wife to the hospital immediately after the accident. Therefore, according to him, it has not been established by the claimants that Mr.Santhanam was the rider of the insured motorcycle at the time of the accident as contended by the claimants.

13. This Court has perused and examined the accident register (Ex.R5). As seen from the accident register (Ex.R5), it is a printed form wherein there is column which reads as "brought by and address" wherein the name of the husband of the deceased Purushothaman along with his address has been filled up.

14. The learned counsel for the Claimants would vehemently oppose the contention of the learned counsel for the Appellant and submits that the accident register Ex.R5 gives only the details of the name of the husband of the deceased Purushothaman and it does not reveal that it was Purushothaman who brought the deceased to the hospital.

15. The husband of the deceased Mr.Purushothaman has also been examined as witness (RW2) before the Tribunal. He has categorically deposed that he was not present at the scene of the accident and the insured motorcycle was driven only by Mr.Santhanam. A consistent stand has been taken by the claimants that it was only Mr.Santhanam, who was the rider of the insured motorcycle at the time of the accident. The accident register (Ex.R5) is a printed form which does not

contain any other column apart from the column "brought by and address" which will disclose the name of the husband of the deceased and his address. There is no separate column in the accident register (Ex.R5) for disclosing the name of the husband of the deceased as well as his address. Since there is no separate column in the accident register (Ex.R5) to give the name and address of the husband of the deceased, necessarily the same will have to be filled up only under the column "brought by and address". Just because the name of the husband and his address has been filled up under the column "brought by and address", it cannot be inferred that it was only the husband who brought the deceased to the hospital. There must be supporting evidence to support the contention of the Appellant Insurance Company that the deceased brought to the hospital only by her husband.

16.This Court has perused the material and evidence available on record. There is evidence whatsoever available to prove that the husband of the deceased was a person who brought the deceased to the hospital. The Tribunal has rightly appreciated the evidence available on record under the impugned Award.

17.Any accident claims before the Motor Accident Claims Tribunal is decided on preponderance of probabilities. The evidence adduced by the claimants conclusively establishes that the rider of the motorcycle was Mr.Santhanam at the time of the accident.

18.The Tribunal under the impugned Award has considered all these factors based on the materials and evidence available on record and has rightly held that the Appellant is liable to compensate the claim.

19.Further, it was contended by the learned counsel for the Appellant that there was no vehicle damage and therefore the involvement of the vehicle in the accident is doubted.

20.In the case on hand, there was no collision between two vehicles. It was a case where the deceased was a pillion rider who fell down due to the sudden turning of the motorcycle to the west side of the road. Due to the sudden jerk, the deceased fell down which resulted in her death. Even though, the oral evidence adduced by the claimants themselves would reveal that the motorcycle also fell down, the impact to the motorcycle may not have caused any damage to the vehicle as there was no collision between two vehicles or the insured motorcycle dashed against any other object like wall etc. Therefore, the MVI Report (Ex.R3) does not reveal any damage to the vehicle. This cannot be exploited by the Appellant Insurance Company to its

advantage in order to absolve itself from liability. The surrounding factors and the evidence available on record will clearly reveal the involvement of the vehicle in the accident and the rider of the motorcycle was only Mr.Santhanam and not Mr.Purushothaman (insured) as alleged by the Appellant.

21.Insofar as the second contention raised by the Appellant Insurance Company that the alleged rider of the motorcycle Mr.Santhanam did not sustain injury and hence the accident is doubted is concerned, the same also will have to be necessarily rejected by this Court for the following reasons:

(a)The deceased was travelling as a pillion rider. It is normal for ladies in India, who wear sarees to put both their legs on the same side while travelling as a pillion rider in a motorcycle. Due to the sudden turning of the motorcycle to the west side as contended by the claimants, the deceased would have fell down from the motorcycle, whereas the rider of the motorcycle who has put his legs on either side of the motorcycle has got better balance since both his legs would have supported him and prevented him from falling down despite the sudden jerk. In the case on hand, the deceased lady had fallen down whereas the rider has escaped without any injuries. Just because the rider of the motorcycle did not sustain injuries, it cannot be said that the pillion rider also ought not to have sustained any injuries. The Tribunal has rightly appreciated the evidence available on record and has rightly held that the rider of the motorcycle was Mr.Santhanam and the deceased died only due to the rash and negligent driving by Mr.Santhanam. Therefore, this contention is also rejected by this Court.

22.No contra evidence has also been produced by the Appellant before the Tribunal to establish that the rider of the insured vehicle was not involved in the accident which resulted in the death of Kalamani.

23.For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal.

24.Accordingly, the appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 7.5% p.a. from the date of claim till the date of realization to the credit of M.C.O.P.No.715 of 2007, on the file of the Motor Accidents Claims Tribunal, (Additional District cum Sessions Judge, Fast Track Court No.3) at Coimbatore, within a period of four weeks from the date of receipt of a copy of this Judgment. Since the second respondent is minor, her share amount shall be deposited in any nationalised bank till she attains majority and the third respondent is permitted to withdraw the accrued

interest once in six months. On such deposit being made, the Tribunal is directed to transfer the Award amount along with accrued interest lying to the credit of M.C.O.P.No.715 of 2007 to the bank account of the respective claimants through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accidents Claims Tribunal,
(Additional District cum Sessions Judge, Fast Track Court No.3)
at Coimbatore.

Copy To:

The Section Officer,
Vernacular Section,
Madras High Court.

VBA (CO)
RMP (27/04/2021)

C.M.A.No.2876 of 2014



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