

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2739 & 3037 of 2019

and

C.M.P.Nos.13928, 16531 & 21324 of 2019

C.M.A.No.2739 of 2019:

Sri Murugalaya Silk House,
No.130, 131, First Agraharam,
Salem.

... Appellant /1st Respondent

Vs.

1.Valarmathy
2.Sivasathya
3.Sangeetha
4.Sudha
5.Palani

...1 to 5 Respondents/
Claimants

6.The Divisional Manager,
The National Insurance Company Limited,
No.19, Officer's Line,
Vellore.

...6th Respondent/
2nd Respondent

C.M.A.No.3037 of 2019:

The Divisional Manager,
M/s.National Insurance Company Limited,
No.19, Officer's Line,
Vellore.

...Appellant/2nd Respondent

Vs.

1.Valarmathy
2.Sivasathya
3.Sangeetha
4.Sudha
5.Palani

...5th Respondents/
claimants

6.Sri Murugalaya Silk House,
No.130, 131, First Agraharam,
Salem.

.. 6th Respondent/
1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.03.2019 made in M.C.O.P.No.399 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

C.M.A.No.2739 of 2019:

For Appellant : Ms.A.L.Ganthimathi
For RR 1 to 5 : Mr.S.Panneer Selvam
For R6 : Mr.J.Michael Visuvasam

C.M.A.No.3037 of 2019:

For Appellant : Mr.J.Michael Visuvasam
For RR 1 to 5 : Mr.S.Panneer Selvam
For R6 : Ms.A.L.Ganthimathi

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award dated 02.03.2019 made in M.C.O.P.No.399 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

2.Both the appeals arise out of the same accident and same award. Hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

3.The appellant in C.M.A.No.2730 of 2019 is the 1st respondent and the appellant in C.M.A.No.3037 of 2019 is the 2nd respondent in M.C.O.P.No.399 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai. The respondents 1 to 5/claimants filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Subramani, who died in the accident that took place on 26.02.2016.

4. According to the claimants, on 26.02.2016 at 02.45 P.M., while the deceased was walking on the extreme left side of Theradi Street, opposite to Anbu Theatre at Tiruvannamalai, the rider of the Bajaj Platina motorcycle bearing Registration No. TN 54 D 2489 came in a rash and negligent manner and dashed against the deceased and caused the accident. Due to the said accident, the deceased sustained fatal injuries and immediately he was taken to Tiruvannamalai Government Medical College and Hospital. Despite treatment, the deceased succumbed to injuries on 27.02.2016. Therefore the claimants claimed a sum of Rs.20,00,000/- as compensation for the death of said Subramani against the respondents, being the owner and insurer of the motorcycle.

5. The 1st respondent filed counter statement and denied all the averments made by the claimants. The claimants have to prove the age, avocation and income of the deceased by producing valid documents. At the time of accident, the 1st respondent was having valid Registration Certificate and Insurance Policy and the 1st respondent's vehicle was not involved in the accident. Hence, the 1st respondent is not liable to pay any compensation to the claimants and prayed for dismissal of the claim petition.

6. The 2nd respondent filed counter statement and denied all the averments made by the claimants. According to the 2nd respondent, the deceased suddenly crossed the road without noticing the oncoming Bajaj Platina motorcycle and fell down before the motorcycle and invited the accident. Therefore, the deceased was a tort-feasor and hence, the claimants cannot claim any compensation against the 2nd respondent. The motorcycle belonging to the 1st respondent was not insured with the 2nd respondent at the time of accident and the rider of the motorcycle did not possess valid driving license at the time of accident. Therefore, the 2nd respondent is not liable to pay any compensation to the claimants. The claimants have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the claimants is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, on behalf of the claimants, five witnesses were examined as P.W.1 to P.W.5 and seventeen documents were marked as Exs.P1 to P17. On behalf of the respondents, four witnesses were examined as R.W.1 to R.W.4 and three documents were marked as Exs.R1 to R3.

8.The Tribunal considering the pleadings, oral and documentary evidence held that accident occurred due to rash and negligent riding by rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.12,15,250/- as compensation to the claimants at the first instance and then recover the same from the 1st respondent-owner of the motorcycle.

9.Challenging the said award dated 02.03.2019 made in M.C.O.P.No.399 of 2016, the 1st respondent-owner of the vehicle has come out with an appeal in C.M.A.No.2739 of 2019 and the 2nd respondent has come out with an appeal in C.M.A.No.3037 of 2019.

10.The learned counsel appearing for the 1st respondent contended that the motorcycle belonging to 1st respondent was not involved in the accident. The person who gave the complaint is not an eyewitness. In Ex.P1/F.I.R., the Registration Number of the vehicle is mentioned as TN 25 AK 0383. Only based on the F.I.R., the vehicle of the 1st respondent has been implicated. The Tribunal failed to see that there is difference in Registration Number of the vehicle involved in the F.I.R. and final report and the Tribunal erred in accepting the evidence let in, which are contrary to the F.I.R. and final report. The Tribunal erred in holding that vehicle of the 1st respondent was involved in the accident based on the Motor Vehicle Inspector's report and evidence of the Officer, saying that he sent the vehicle for inspection. The 1st respondent examined the rider of the motorcycle as R.W.2 who deposed that he did not ride the motorcycle on the date of accident and motorcycle of the 1st respondent was not involved in the accident. When R.W.2 has denied the involvement of the vehicle, the Tribunal gave a finding contrary to the evidence of R.W.2. The Tribunal erred in ordering pay and recovery on the ground that R.W.2 did not possess a valid driving license at the time of accident. Without prejudice, the learned counsel appearing for the 1st respondent further contended that the vehicle was insured with the 2nd respondent-Insurance Company at the time of accident and the 2nd respondent alone is liable to pay the compensation and prayed for setting aside the portion of the award directing the 2nd respondent to recover the amount from the 1st respondent and for allowing C.M.A.No.2739 of 2019 and dismissal of C.M.A.No.3037 of 2019.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company made similar contentions made by the learned counsel appearing for the 1st respondent with regard to non-involvement of the motorcycle belonging to the 1st

respondent. The learned counsel appearing for the 2nd respondent-Insurance Company further contended that the Tribunal failed to consider the specific plea of non-involvement of the motorcycle in the accident taken in the additional counter statement filed by the 2nd respondent and erred in not exonerating the 2nd respondent-Insurance Company from its liability. The Tribunal erred in relying on the evidence of P.W.4, the then Inspector of Chetpet Police Station and Ex.P13, when Ex.P13 was not filed before the concerned Judicial Magistrate. The claimants in collusion with P.W.4 taking advantage of non filing of the charge sheet, fabricated the 2nd final report, Ex.P13 falsely implicating the motorcycle belonging to the 1st respondent to get compensation illegally. The Tribunal erred in rejecting the evidence of R.W.2 on the ground that he failed to challenge the criminal case foisted against him. R.W.2/Arivazhagan is not the Arivazhagan who took the deceased to the hospital. R.W.2 is son of Arasu and the said Arivazhagan who took the deceased to the hospital is son of Karuppan. In any event, the compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and for allowing C.M.A.No.3037 of 2019 and dismissal of C.M.A.No.2739 of 2019.

12.The learned counsel appearing for the claimants contended that the deceased was aged 55 years at the time of accident and was a motor mechanic and was earning a sum of Rs.15,000/- per month. The Tribunal fixed a meagre sum of Rs.9,000/- per month as notional income of the deceased and awarded a sum of Rs.9,80,100/- towards loss of income. The Tribunal considering the entire materials on record, awarded a total sum of Rs.12,15,250/- as compensation to the claimants, which is not excessive. The learned counsel appearing for the claimants further contended that the Tribunal considering the entire materials on record, held that the motorcycle belonging to the 1st respondent was involved in the accident and R.W.2 without any license rode the motorcycle in a rash and negligent manner and caused the accident and prayed for dismissal of both the appeals.

13.Heard the learned counsel appearing for the 1st respondent as well as the learned counsel appearing for the 2nd respondent and the learned counsel appearing for the claimants and perused the entire materials on record.

14.It is the contention of both the respondents 1 and 2 that the Bajaj Platina motorcycle bearing Registration No. TN 54 D 2489 was not involved in the accident and claimants in collusion with P.W.4 have falsely implicated the motorcycle. To substantiate this contention they relied on the Ex.P1/F.I.R.,

wherein the Registration Number of the motorcycle is mentioned as TN 25 AK 0383. They also relied on the evidence of R.W.2, who was alleged to be the rider of the motorcycle as well as R.W.3 and R.W.4, official and investigator of the 2nd respondent-Insurance Company. On the other hand, P.W.2/eyewitness has categorically stated that the motorcycle involved in the accident is Bajaj Platina motorcycle bearing Registration No. TN 54 D 2489, belonging to the 1st respondent. The Tribunal considered the evidence of P.W.4, the then Inspector of Police, who deposed that he only seized the Bajaj Platina motorcycle bearing Registration No. TN 54 D 2489 and sent for inspection and P.W.3/Special Sub Inspector of Police, Chetpet Police Station and Ex.P8 and Ex.P13, held that accident took place due to rash and negligent driving by R.W.2 and motorcycle bearing Registration No. TN 54 D 2489 belonging to the 1st respondent insured with the 2nd respondent was involved in the accident. It is pertinent to note that in the F.I.R., the make of the motorcycle involved in the accident is correctly mentioned as Bajaj Platina and the alleged vehicle having Registration No. TN 25 AK 0383 is only a scooty. R.W.3 and R.W.4 are not the eyewitnesses to the accident. R.W.4 admitted that he investigated the case only after one year from the date of accident and no details of persons examined by him is furnished and no statement of persons alleged to have been examined was recorded. The 2nd respondent in the counter statement originally filed has stated in paragraph No.11 that deceased suddenly crossed the road without noticing the oncoming Bajaj Platina motorcycle bearing Registration No. TN 54 D 2489 in a negligent manner and fallen before it. Having taken such a specific stand in the counter statement before the Tribunal by the 2nd respondent-Insurance Company, the stand taken by the 2nd respondent-Insurance Company in the additional counter statement that Bajaj Platina motorcycle bearing Registration No. TN 54 D 2489 was not involved in the accident is not acceptable. The Tribunal appreciating the stand of the 2nd respondent in paragraph No.11 of the counter statement originally filed, rejected the contention of the respondents that Bajaj Platina motorcycle bearing Registration No. TN 54 D 2489 was not involved in the accident.

15.The main contention of the respondents 1 and 2 is that the Bajaj Platina motorcycle bearing Registration No. TN 54 D 2489 was not involved in the accident and the claimants in collusion with P.W.2 has falsely implicated the said vehicle belonging to the 1st respondent, insured with the 2nd respondent-Insurance Company. The respondents relied on the contents of F.I.R. and charge sheet, wherein the Registration Number of the vehicle involved in the accident was mentioned as TN 25 AK 0383

and P.W.4, the then Inspector of Chetpet Police Station corrected the same without permission from the concerned Magistrate. These contentions are not acceptable for the following reasons:

(i) The complaint based on which F.I.R. was registered was not given by an eyewitness.

(ii) In the F.I.R., the offending vehicle was mentioned as Bajaj Platina motorcycle and the Registration Number has been mentioned as TN 25 AK 0383. The said Registration Number relates to a scooty and not the Bajaj Platina motorcycle.

(iii) The Police after investigation seized the Bajaj Platina motorcycle bearing Registration No. TN 54 D 2489 from the 1st respondent and took R.W.2, alleged to be the rider of the motorcycle for questioning.

(iv) The motorcycle was sent to the Motor Vehicle Inspector for inspection. R.W.2 informed the Motor Vehicle Inspector that he is not possessing a valid driving license. The 1st respondent and R.W.2 alleged that the Police forcefully seized the motorcycle and took signature from R.W.2 by threatening him.

(v) The 1st respondent and R.W.2 did not object to the seizure of the motorcycle, enquiring R.W.2, filing of charge sheet against R.W.2 and inspection of vehicle by the Motor Vehicle Inspector. They did not send objections to the Higher Authorities about the action of the Police.

(vi) R.W.3 and R.W.4, official and investigator of the 2nd respondent-Insurance Company are not eyewitnesses. Report of the enquiry alleged to have been conducted by the 2nd respondent was not filed.

(vii) The Tribunal is not bound by contents of charge sheet and criminal proceedings. The Tribunal has to consider the materials on record placed before it and come to a conclusion about the negligence.

(viii) The Tribunal considering the evidence of P.W.2/eyewitness, P.W.3, P.W.4 and Exs.P8, P13 and P16, held that accident took place only due to rash and negligent driving by R.W.2 and offending vehicle is the motorcycle bearing Registration No. TN 54 D 2489.

There is no error in the said finding of the Tribunal warranting interference by this Court.

16.As per the materials on record, R.W.2, who was riding the motorcycle at the time of accident did not possess valid driving license. The 1st respondent knowing fully well that R.W.2 did not possess driving license, permitted R.W.2 to drive the motorcycle and violated the policy condition. For violating the policy condition by the 1st respondent, the order of the Tribunal directing the 2nd respondent-Insurance Company to pay the compensation amount to the claimants at the first instance and then recover the same from the 1st respondent is proper. There is no error in the award passed by the Tribunal warranting interference by this Court.

17.As far as quantum of compensation is concerned, the claimants have contended that the deceased was aged 55 years at the time of accident and was a motor mechanic and was earning a sum of Rs.15,000/- per month. They failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, a sum of Rs.9,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal considering the entire materials on record has awarded a total sum of Rs.12,15,250/- as compensation to the claimants, which is just and reasonable and hence, the same is confirmed.

18.The learned counsel appearing for the appellant in C.M.A.No.3037 of 2019 submitted that since the owner of the vehicle appeared before this Court challenging the order of pay and recovery, this Court may give a direction to the owner of the vehicle to pay the amount deposited by the appellant-Insurance Company. No such direction can be given in this Court while dismissing both the appeals. It is open to the Insurance Company to recover the same from the owner of the vehicle by initiating appropriate proceedings as per the mode incorporated in paragraph 7 of the judgment of the Hon'ble Apex Court reported in (2004) ACC 524 (SC), [Oriental Insurance Co. Ltd., Vs. Shri Nanjappan and others], which is incorporated as follows:-

"For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the insured

was the subject matter of determination before the Tribunal and as if the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured/owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured".

19. In the result, both the Civil Miscellaneous Appeals are dismissed and the amount of Rs.12,15,250/- awarded by the Tribunal as compensation to the claimants, along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount 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 to the credit of M.C.O.P.No.399 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai, at the first instance and then recover the same from the 1st respondent, owner of the vehicle. On such deposit, the claimants are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

true Copy

Sub-Assistant Registrar

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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruvannamalai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+2 ccs to M/s.A.L.Ganthimathi Advocate sr15739 & 15740

+1 cc M/s.J.Michael Visuvasam Advocate sr15178

+1 cc to M/s.S.Panneer Selvam Advocate sr15029

C.M.A.Nos.2739 & 3037 of 2019

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