

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3305 of 2017
and C.M.P.No.29893 of 2017

United India Insurance Co. Ltd.,
104-A, Peramanur Main Road,
Salem 7.

... Appellant/2nd Respondent

Vs.

1.Lakshmi
2.Minor Yokesh
3.Minor Naveen
(Minors are rep. by their guardian
mother lakshmi)

4.Dhanam

5.Lakshmanan ... Respondents/Petitioner 1 to 4,
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.10.2016 made in M.C.O.P.No.1506 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Ms.I.Malar

For Respondents: Mr.P.Jagadeesan for R1 to R4
No appearance for R5

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award dated 18.10.2016 made in M.C.O.P.No.1506 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellant/Insurance Company is the second respondent in M.C.O.P.No.1506 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. The respondents

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1 to 4 filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Raman, who died in the accident that took place on 17.07.2012.

3. According to the respondents 1 to 4, on the date of accident, i.e., on 17.07.2012, at about 08.30 p.m., while the deceased was riding the motorcycle along with one Selvam from West to East direction from Belur to Salem main road, near Koottathupatty, on the extreme left side of the road, one Chinnusamy was riding his bicycle and suddenly crossed the road from North to South direction, the motorcycle hit against Chinnusamy and the deceased fell down on the road. In the accident, the deceased sustained grievous head injuries and died on the way to hospital. Hence, the respondents 1 to 4, who are the legal heirs of the deceased, filed the claim petition, claiming compensation against the 5th respondent as owner and appellant as insurer of the said motorcycle.

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

5. The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 to 4. According to the appellant, the deceased rode the motorcycle in a dark place without any light ignition on the Salem to Belur main road, a cyclist Chinnusamy suddenly crossed the road and the deceased did not apply the brake, dashed and hit against the cyclist and caused the accident. Due to the accident, both the deceased and pillion rider fell down on the road and the deceased died on the way to hospital. The deceased only was responsible for the accident and the First Information Report was registered against him. The accident has occurred only due to the negligence on the part of the deceased. The claim petition was not maintainable because of the negligence on the part of the deceased. Hence, for violation of policy conditions, the appellant is not liable to pay any compensation to the respondents 1 to 4 and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Selvam, pillion rider was examined as P.W.2 and marked six documents as Exs.P1 to P6. The appellant examined one Muruganantham, Assistant in Regional Transport Office as R.W.1 and one Deenakarunaharan, Deputy Manager in appellant/ Insurance Company as R.W.2 and marked copy of the policy as Ex.R1. The Authorisation Letter and Driving Licence of the deceased were marked as Exs.X1 and X2.

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7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the deceased, the rider of the motorcycle belonging to the fifth respondent and fixed 25% contributory negligence on the part of the deceased and directed the appellant, being insurer of the said motorcycle to pay a sum of Rs.9,85,000/- as compensation to the respondents 1 to 4.

8.Againt the said award dated 18.10.2016 made in M.C.O.P.No.1506 of 2013, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal failed to consider that the accident has occurred only due to rash and negligent riding by the deceased. The Tribunal erred in awarding compensation under Section 166 of the Motor Vehicles Act, fixed 25% negligence on the part of the deceased, when the deceased was responsible for the accident and the First Information Report was registered against the deceased. The Tribunal having held that the accident has occurred due to rash and negligent riding by the deceased erred in directing the appellant to pay 75% compensation awarded by the Tribunal. The Tribunal failed to consider that the deceased did not possess driving license to ride the motorcycle at the time of the accident. The respondents 1 to 4 are entitled to compensation only under Section 140 of the Motor Vehicles Act under no fault liability and prayed for setting aside the award of the Tribunal.

10. Per contra, Mr.P.Jagadeesan learned counsel appearing for the respondents 1 to 4 contended that while the deceased was riding the motorcycle from Belur to Salem main road, near Koottathupatty, one Chinnusamy suddenly crossed the road in his bicycle and he was responsible for the accident. The Tribunal erred in fixing 25% negligence on the part of the deceased. The Tribunal ought to have awarded entire compensation to the respondents 1 to 4 and prayed for dismissal of the appeal.

11.Though notice has been served on the fifth respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials available on record.

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13.It is the contention of the respondents 1 to 4 that when the deceased was riding the motorcycle from West to East direction, from Belur to Salem road, near Koottathupatty, on 17.07.2012 at 8.30 p.m., one Chinnusamy suddenly came from North to South direction in his bicycle, dashed against the motorcycle, rode by the deceased and due to the said impact, the deceased fell down on the road and died on the way to hospital. To substantiate this contention, the first respondent examined herself as P.W.1 and pillion rider was examined as P.W.2. The Tribunal after considering the pleadings, oral and documentary evidence let in by the respondents 1 to 4 and the appellant, held that the accident has occurred only due to rash and negligent riding by the deceased. Having held so, the Tribunal in the later part of the award held that the deceased was responsible for only 25% negligence, as he did not possess an endorsement to ride the motorcycle. The said finding is erroneous. When the Tribunal held that the deceased was solely responsible for the accident, the respondents 1 to 4 are not entitled to any compensation from the appellant. The appellant is the insurer of the motorcycle driven by the deceased, which belong to his brother the fifth respondent herein. For own negligence of the deceased, the respondents 1 to 4 are not entitled to maintain the claim petition as against the owner and the insurer of the vehicle. For the above reason, the award of the Tribunal, granting compensation to the respondents 1 to 4 is set aside and the respondents 1 to 4 are entitled to only a sum of Rs.50,000/- as per Section 140(2) of the Motor Vehicles Act under no fault liability.

14.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.9,85,000/- is set aside. The appellant is directed to deposit a sum of Rs.50,000/- as per Section 140(2) of Motor Vehicles Act under no fault liability together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, 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.1506 of 2013. On such deposit, the respondents 1 and 4 are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, 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 Banks, till the minors attain majority. The 1st 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. The appellant-Insurance Company is permitted to withdraw excess amount, if any, lying in the

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deposit to the credit of M.C.O.P.No.1506 of 2013, if the entire award amount has already been deposited. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

vkrr

To

1.The Special District Judge
Motor Accident Claims Tribunal,
Salem.

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

+1cc to Mr.T.Ravichandran, Advocate SR.17082

+1cc to Mr.P.Jagadeesan, Advocate SR.17298

C.M.A.No.3305 of 2017
and C.M.P.No.29893 of 2017

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