

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.937 of 2017
and C.M.P.No.4600 of 2017

The Manager,
United India Insurance Company Ltd.,
No.100, South Car Street,
Chidambaram

.. Appellant/2nd Respondent

Vs.

1.Vetriselvi
2.Panneerselvam
3.Radha
4.Saranya : Respondents 1 to 4/Claimants 1 to 4
5.R.Radhakrishnan : 5th Respondent/1st Respondent
6.Karthick : 6th Respondent/3rd Respondent
7.Sankar : 7th Respondent/4th Respondent

(R6 is set exparte before the Tribunal,
hence notice may be dispensed with in this appeal.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.12.2015 made in M.C.O.P.No.131 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Chidambaram.

For Appellant : M/s.I.Malar
For Respondents : Mr.Mr.T.Gobinath for R1 to R4
Mr.P.Parthikannan for
Mr.S.Kaithamalai Kumaran for R5
No appearance for R6 & R7
RR6 & 7- Sd - NA

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 22.12.2015 made in M.C.O.P.No.131 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Chidambaram.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.131 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Chidambaram. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Kaviarasan, who died in the accident that took place on 17.05.2013.

3.According to the respondents 1 to 4, the deceased was travelling in the motorcycle as a pillion rider along with fifth respondent from Jeyankondam to Ariyalur Main road, near Sun Cement Factory in a slow and cautious manner. At that time, the driver-cum-owner of the Bolero vehicle/sixth respondent driven the vehicle in a rash and negligent manner and dashed against the deceased. As a result of which, the deceased died on the spot. Therefore, the respondents 1 to 4 have filed the above claim petition for claiming compensation against the respondents 5 to 7 and appellant.

4.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the motorcycle involved in the accident was not insured with the appellant as stated in the FIR and MV Report. At the time of accident, the rider of the motorcycle did not possess valid driving license and R.C.Permit. Hence, the appellant is not liable to pay the compensation to the respondents 1 to 4 and prayed for dismissal of the claim petition.

5.Before the Tribunal, on behalf of the respondents 1 to 4, the respondents 1 and 2 examined themselves as P.W.1 and P.W.2. One Manivanan eyewitness was examined as P.W.3 and 14 documents were marked as Exs.P1 to P14. The appellant has not let in any oral and documentary evidence.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the fifth respondent who is the driver of the motorcycle as well as the sixth respondent who is the driver of the Bolero pickup vehicle and directed the appellant to pay entire compensation i.e., 7,56,000/- and recover the 50% of award amount from the seventh respondent.

7.Challenging the liability fastened on them by the award dated 05.07.2018, made in M.C.O.P.No.484 of 2016, the appellant-Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fixing 50% contributory negligence on the part of the rider of the motorcycle. It is also contended that even though the Tribunal

has accepted that the car was not insured with any Insurance Company, the Tribunal erred in directing the appellant/Insurance Company, being the insurer only for the motorcycle, to pay the entire compensation and recover 50% of the same from the owner of the car/ seventh respondent herein. In view of such finding, the Tribunal ought to have directed the owner of the offending vehicle/seventh respondent herein to pay 50% of the award amount and prayed for setting aside the award of the Tribunal.

9. Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the Tribunal after considering the entire materials and documents, held that the 50% contributory negligence on the part of the rider of the motorcycle. The Tribunal rightly directed the appellant/Insurance Company, being the insurer only for the motorcycle, to pay the entire compensation and recover 50% of the same from the owner of the car/ seventh respondent herein and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as the learned counsel for the respondents 1 to 4 and learned counsel for the fifth respondent and perused the entire materials on record. Though notice has been served on the respondents 6 and 7 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

11. The only issue to be decided in the appeal is whether the Tribunal is not correct in directing the appellant/Insurance Company to pay the entire compensation and thereafter, recover 50% of the award amount from the owner of the car/7th respondent herein for 50% liability fixed on the part of the driver of the car. Being the insurer of the motorcycle in question, the appellant/Insurance Company is liable to pay compensation only for 50% negligence fixed on the part of the rider of the motorcycle. In the circumstances, the order of the Tribunal is modified to the extent that the appellant/Insurance company is directed to pay 50% of the award amount along with proportionate interest relating to the negligence fixed on the part of the rider of the motorcycle. Further, in respect of 50% negligence fixed on the part of the driver of the car, only the owner of the car has to pay the compensation. Accordingly, the owner of the car/ 7th respondent herein is directed to pay balance 50% of the award amount along with proportionate interest for negligence caused on the part of the driver of the car.

11. As far as quantum of compensation is concerned, the Tribunal considering the entire materials, awarded compensation under different heads which are not excessive, warranting interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.7,56,000/- along with interest and costs is confirmed. The appellant and seventh respondent are each directed to deposit 50% of the award amount along with proportionate interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4 are permitted to withdraw the award amount equally along with proportionate interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.131 of 2013 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Chidambaram, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vkr

To

The Motor Accident Claims Tribunal,
The II Additional District Court,
Chidambaram.

Copy to: The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mrs.I.Malar, Advocate, SR.No.6096.

+1cc to Mr.T.Gopinath, Advocate, SR.No.6136.

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