



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2020

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.M.A. (MD) No.1479 of 2012

and

M.P. (MD) No.1 of 2012

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The Oriental Insurance Company Ltd,
Oriental House, II Floor,
New No.216, (Old No.115),
Prakasam Salai,
Broadway, Chennai. ... Appellant/3rd Respondent

Vs.

1.Selvin
2.Rajakumari
3.Selvakumari
4.Selvaraj ... 1 to 4 Respondents/1 to 4 Petitioners
5.Celestine Raj ... 5th Respondent / 1st Respondent
6.Manoharan ... 6th Respondent / 2nd Respondent

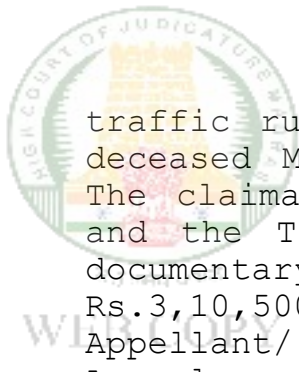
Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the award made in M.C.O.P.No.36 of 2010, dated 03.04.2012, on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Padmanabhapuram.

For Appellant	: Mr.K.Bhaskaran
For R1 to R4	: Mr.T.Selvakumaran
For R5 & R6	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order passed in M.C.O.P.No.36 of 2010, dated 03.04.2012, on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Padmanabhapuram.

2. The respondents 1 to 4/ claimants filed a claim petition before the Subordinate Judge, Padmanabhapuram in M.C.O.P.No.36 of 2010, claiming compensation for the death of one Mohan. On 30.08.2009 at about 02.00 p.m the deceased Mohan was travelling as a pillion rider in a motorcycle driven by Rajan and at that time, a Mahindra Van bearing Registration No.TN-22-A.Z-9684 driven by its driver came in a rash and negligent manner without adhering to the



traffic rules and hit against the motorcycle. Due to which, the deceased Mohan sustained multiple injuries and died on the spot. The claimants are the legal representatives of the deceased Mohan and the Tribunal, after taking into consideration the order and documentary evidence filed by both sides, awarded a sum of Rs.3,10,500/- as compensation for the claimants. Against which, the Appellant/ Insurance Company preferred this Civil Miscellaneous Appeal.

3. On the side of the appellant, it is stated that the vehicle, involved in the accident, did not have a valid fitness certificate or permit at the time of accident and there is no coverage in the Insurance policy. An official from the Road Transport Office was examined as R.W.2 and he deposed that the permit expired on 21.06.2009 and that the accident took place only on 30.08.2009 and that there was a breach of policy condition as there was no fitness certificate. It is further stated that the Tribunal failed to consider the contributory negligence and prayed that the award is to be set aside.

4. On the side of the respondents 1 to 4 / claimants, it is stated that the Tribunal has rightly awarded the compensation, which does not require any interference.

5. A perusal of the records reveals that the deceased/ Mohan was travelling in a two wheeler as a pillion rider and the van dashed against the two wheeler. The deceased is a third party and the rights of the third party cannot be deprived due to the fault of the owner of the vehicle or that of the insurer. The vehicle is insured with the appellant/ Insurance Company and the fact of insurance was not denied by the appellant.

6. In the above circumstances, the Insurance Company cannot deny the liability to a third party. The quantum fixed by the Tribunal is very reasonable and the appellant has not raised any dispute on the quantum. Hence, it is decided that there is nothing sufficient enough to interfere with the order of the Tribunal.

7. Hence, this Civil Miscellaneous Appeal is dismissed and the award passed in M.C.O.P.No.36 of 2010, dated 03.04.2012, on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Padmanabhapuram, is confirmed.

8. The appellant / Oriental Insurance Company Ltd., is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and cost within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the respondents 1 to 4 herein / claimants are permitted to withdraw the amount after deducting amount, if any, already received by them. No costs. Consequently, connected Miscellaneous



Petition is closed. The claimants are not entitled for interest for the default period, if there is any default.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

Ls

To

1.The Motor Accidents Claims Tribunal
Subordinate Judge,
Padmanabhapuram.

2.The Section Officer, (2 COPIES)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.BASKARAN, Advocate (SR-6422[F] dated 14/02/2020)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-6805[F]

C.M.A. (MD)No.1479 of 2012

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SMA/20/05/2020/3P/6C