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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08.03.2021

JUDGMENT DELIVERED ON : 21.04.2021

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.2839 OF 2011

AND

M.P.NO.1 OF 2011

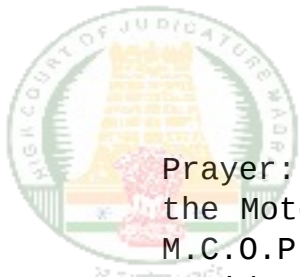
Bajaj Alliance General Insurance Co. Ltd.,
No.25/26, Prince Towers,
College Road, Nungambakkam,
Chennai - 6.

... Appellant/4th Respondent

Vs.

1. B.Jeeva
W/o. Babu @ Kannadi Babu
2. B.Thanthoni
W/o. Loganathan
3. B.Kaniga
D/o. Babu @ Kannadi Babu
4. B.Vijayan
S/o. Babu @ Kannadi Babu
5. A.Nazhar
6. Reliance General Insurance Co. Ltd.,
Heavitree Unit No. 1, No.23,
Spur Tank Road, Chetpet, Chennai - 31.
7. V.Muthukumaraswamy

...Respondents/Petitioners/
Respondents 1 to 3



Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.737 of 2006 dated 21.09.2010 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC-II), Poonamallee.

For Appellant : Mr.S.Arun Kumar

For Respondents : No Appearance

JUDGMENT

(This case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 21.09.2010 passed in MCOP.No.737 of 2006 by the Motor Accidents Claims Tribunal, Additional District Court (FTC-II), Poonamallee.

2. As per the claim petition on 23.07.2006 at 9.40 hrs, one Kannadi Babu was travelling in the motor cycle as a pillion rider bearing Registration No. TN-22-U-5145 at Vandalur to Walajabad near Murugathamman Temple, Karasangal Samathuvapuram, the driver of the third respondent's Maruti Car bearing Reg. No.TN-10-L-8102 drove the same in a rash and negligent manner, dashed against the deceased, as a result of which, he sustained grievous injuries and multiple fractures all over the body. Immediately, he was taken to Hospital, he died on the spot.

3. Mr.S.Arun Kumar, learned counsel for the appellant/Insurance Company has submitted his arguments. As per his submissions, the Tribunal failed to appreciate the facts that the deceased was drunk on the date of accident and was riding the motorcycle with two persons who were the pillion riders, which is the violation of the Motor Vehicles Act. By overtaking the auto and coming in front of the path of the car, the deceased had caused the accident, he is the tortfeasor. In the counter filed in the claim petition, the respondent/Insurance Company had clearly denied the liability on them regarding the death of the deceased. There is evidence before the Tribunal that the petitioner/claimant failed to prove the liability of the respondent/Insurance Company. In spite of the same, the Tribunal had fixed the liability on the insurance



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company and directed the Insurance Company to pay compensation to the tortfeasor. The Tribunal ignored the law regarding the claim cases. Therefore, this appeal has to be allowed and the respondents 5 & 7 are to be exonerated.

4. Though the notice was served to the respondents, there is no representation on their behalf. Therefore, the appeal is taken up for disposal.

5. Whether the appellant/Insurance Company is entitled to setting aside the order passed by the Tribunal.

6. Perused the claim petition filed by the respondents/claimants before the Motor Accident Claims Tribunal/Additional District Court (FTC-II), Poonamallee, in MCOP No.737/2006, the counter filed by the second respondent/Insurance Company and the order passed by the Motor Accident Claims Tribunal.

7. On perusal of the award passed by the Tribunal and the Charge Sheet (Ex.R.6) filed by the Investigating Officer, it is found that the investigation regarding the accident was dropped. The investigating officer stated that the deceased was riding the two wheeler bearing Registration No. TN-22-U-5145 had accompanied by pillion riders viz., Murugesan and Srinivasan. The said three people were travelling on a motor cycle and hit against the Maruti Car bearing Registration No. TN-10-L-8102 and the three persons fell down on the middle of the road after hitting the right side of the car. The said three persons were under influence of alcohol on the date of accident. The Kannadi babu died on the spot. Since the deceased is a tortfeasor, he is not entitled to claim compensation. The contention of the R4/appellant is that the deceased/Kannadi Babu was a rider of the two wheeler and the accident occurred only due to his rash and negligent riding of the two wheeler with three persons. The rider of the motorcycle came from the opposite direction of the car, overtaking the auto rickshaw, lost his balance and hit against the right rear seat of the car. Therefore, they fell on the road. The owner of the car, who was in rear side of the car, got down from the car and took the injured persons to Government Hospital, Chrompet with the help of the general public who were attending the temple festival at Karasangal Murugathamman Temple. The Doctors declared that the



said Kannadi Babu died. The other two persons were referred to Rajiv Gandhi Hospital. Therefore, the deceased himself had been responsible for the accident, he is the tortfeasor. The legal heirs of the Kannadi Babu had filed MCOP.No.736 of 2006 and the fourth respondent/Insurance Company having clearly narrated the facts, the Tribunal ignored the same and mechanically passed the award. The learned counsel for the appellant/Insurance Company had clearly pointed out the contents in the appeal which is supported by R.W.1 and the documents were marked as Exs.R1 to R6. Therefore, as per the evidence available before the Tribunal, the claim petition is not at all maintainable. Hence, the award passed by the Tribunal is set aside.

8. The point for consideration is answered in favour of the appellant/Insurance Company and against the respondents/Claimants.

In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(L.A)

// True Copy //

Sub Assistant Registrar

dh

To

The Additional District Judge,
Fast Track Court - II,
The Motor Accidents Claims Tribunal,
Poonamallee.

Copy To

The Section Officer,
V.R Section, High Court, Madras.

+1cc to Mr.P.Natarajan, Advocate, S.R.No.24382

+2ccs to Mr.S.Arun Kumar, Advocate, S.R.No.24408 & 23407

C.M.A.No.2839 of 2011

KK(CO)

RLP(29/10/2021)