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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.596 of 2011
and
MP.No.1 of 2011

The New India Assurance Co.Ltd.,
145, Moore Street,
Chennai-01

... Appellant

Versus

1.S.Rani

2.A.Kumar

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in MACTOP.No.5717 of 2005 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai dated 30.08.2010.

For Appellant : Mr.M.Krishnamoorthy

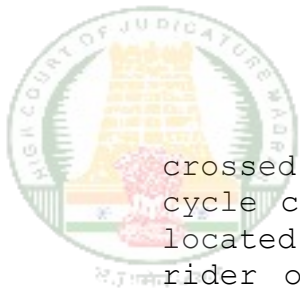
For Respondents : No Appearance

J U D G M E N T

This appeal has been laid as against the judgment and decree made in MACTOP.No.5717 of 2005 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai dated 30.08.2010, thereby awarded the compensation to the tune of Rs.3,50,000/-.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that the deceased was riding the motor cycle as pillion rider. The rider of the vehicle one, Sekar was driving the motor cycle in a rash and negligent manner. While being so, one bullock cart suddenly

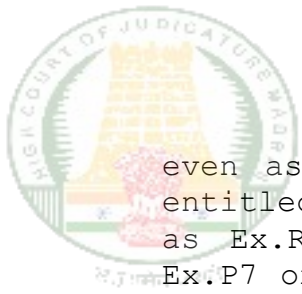


crossed east coast road and due to which the rider of the motor cycle could not control his motor cycle and hit a tree which is located on the left hand side of the road, thereby the pillion rider of the motor cycle sustained grievous injuries and died. Therefore, the claimants filed claim petition seeking compensation at Rs.7,00,000/-.

4. Resisting the same, the second respondent filed counter stating that the deceased only rode the motor cycle and he himself hit the tree and sustained grievous injuries and died. The insurance policy was taken by the first respondent for two wheeler only and it is act only policy and it covers only third parties and owner cum driver of the motor cycle. The deceased is being pillion rider of the vehicle he is a tort feaser and insurer i.e. the second respondent is not at all held to be liable to pay any compensation and sought for dismissal of the claim petition.

5. On the side of the claimants, they examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.10. On the side of the respondents they examined R.W.1 and marked Ex.R.1 to Ex.R.3. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal fixed liability on the second respondent and awarded a sum of Rs.3,50,000/- as compensation payable by the respondents 1 and 2 jointly and severally with interest at the rate of 7.5%. Aggrieved by the same, the second respondent has filed the present appeal.

6. The learned counsel for the appellants would submit that the investigation report is marked as Ex.R2, and it categorically revealed that the deceased only rode the motor cycle and he himself hit the tree, due to which he sustained injuries and died. The father of the deceased lodged complaint i.e. the second petitioner therein / claimant alleging that the rider of the motor cycle drove the motor cycle in a rash and negligent manner and hit the tree due to which the pillion rider i.e. the deceased sustained grievous injuries and died. The investigation done by the second respondent revealed that the deceased only rode the motorcycle and due to his rash and negligent driving, the accident took place. Due to which, he sustained grievous injuries and died. The Police registered FIR in Cr.No.386 of 2005 for the offences under Sections 277, 337 and 304(a) of IPC as against the rider of the motor cycle. Since one, Raja who is the deceased in the present case rode the motor cycle and died, therefore, the entire charges were abated as against the rider of the motor cycle. He further submitted that



even assuming that the deceased is a pillion rider, he is not entitled for any compensation since the policy which is marked as Ex.R3 on the side of the second respondent and marked as Ex.P7 on the side of the claimants meant act only policy and it does not cover pillion rider of the vehicle. The deceased being rider of the motor cycle, the rider of the motor cycle is not also entitled for compensation since policy covers under compulsory personal accident to owner cum driver. Admittedly, the rider of the motor cycle is not the owner of the two wheeler and the first respondent is the owner of the vehicle. Without even considering the same, the Tribunal fixed the entire liability on the vehicle owned by the first respondent and awarded compensation payable by both the respondents.

7. Though notice was served and the counsel also entered appearance, no one appeared on behalf of the first respondent today.

8. Heard, Mr.M.Krishnamoorthy, the learned counsel for the appellants.

9. On perusal of the investigation report which is marked as Ex.R2, revealed that one, Raja, the rider of the motor cycle drove the motor cycle in a rash and negligent manner and hit the tree. Therefore, he died on the spot and the pillion rider one, Sekar sustained grievous injuries. The claimants filed the present claim petition on the death of the said Raja, who is none other than their son. The insurance policy is marked as Ex.R3 and it revealed that the policy does not cover the pillion rider of the motor cycle and it is only act only policy. The personal accident also covers the owner cum driver of the motor cycle. Admittedly, the rider of the motorcycle is not the owner of the motor cycle which is owned by the first respondent. Even assuming that the deceased either driver of the motor cycle or pillion rider of the motor cycle, he is not entitled for any compensation. Therefore, the second respondent is not held to be liable to pay any compensation as awarded by the Tribunal.

10. In view of the above, this civil miscellaneous appeal is allowed and the order passed in MACTOP.No.5717 of 2005 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai dated 30.08.2010 is set aside. Consequently, connected miscellaneous petition is closed. No costs. The second respondent / appellant is not held to be liable for any compensation. Further the deceased is being tort feaser, the first respondent / second petitioner herein is also not held to be liable to pay compensation. The amount already



deposited by the second respondent / appellant before the Tribunal is permitted to be withdrawn with accrued interest, if any.

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Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Lok

To

1. The Chief Judge, Court of Small Causes,
The Motor Accidents Claims Tribunal, Chennai

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

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.25530

C.M.A.No.596 of 2011

SVI (CO)
GN(25/11/2021)