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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1010 of 2014

and

M.P.No.1 of 2014

The Oriental Insurance Company Ltd.,
Branch Office, No.17, Krishnagiri Road,
S.K.S.Complex, Ranipettai,
Vellore District.

...Appellant/2nd Respondent

Vs.

1.C.Dinesh
2.G.Santhoshkumar
3.Chinnaiah
4.Krishnamurthy

...Respondents/Petitioners
...Respondents/Respondent-1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.09.2013 in M.C.O.P.No.251 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni.

For Appellant : Mr.K.Vinod for
M/s.Elveera Ravindran

For Respondents : Mr.S.Sivashanmugam for R4
No appearance for R1 to R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 13.09.2013 in M.C.O.P.No.251 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.251 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni. The respondents 1 to 3 filed



the said claim petition against the 4th respondent and the appellant/Insurance Company, claiming a sum of Rs.5,00,000/- as compensation for the death of one Kanthammal, who died in the accident that took place on 09.07.2008.

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3. According to the respondents 1 to 3, on the date of accident i.e., on 09.07.2008, at about 2.15 p.m., while the deceased Kanthammal and 2nd respondent were walking on Arcot to Polur by e-pass road towards Irumbedu Village and when they were nearing one Krishna Gounder's land, the 4th respondent, rider of the Hero Honda motorcycle bearing Registration No.TN 23 Z 8258 rode the same in a rash and negligent manner, without any horn, hit the deceased and caused the accident. In the said accident, the deceased sustained head injury and died on the very next day in the hospital i.e., on 10.07.2008. Therefore, the respondents 1 to 3 filed the claim petition seeking compensation against the appellant as insurer and 4th respondent as owner-cum-rider of the vehicle.

4. The 4th respondent filed counter statement and contended that he did not ride the motorcycle in a rash and negligent manner as alleged by the respondents 1 to 3. The accident occurred only due to negligence on the part of the deceased. Hence, the 4th respondent is not liable to pay any compensation to the respondents 1 to 3. In any event, the total compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

5. The appellant/Insurance Company filed counter statement denying the entire averments made by the respondents 1 to 3 and submitted that at the time of accident, one Vinayagam who rode the motorcycle, did not possess a valid driving license and hence, the appellant is not liable to pay any compensation to the respondents 1 to 3. In any event, the accident did not occur due to rash and negligent riding by the rider of the motorcycle and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 2nd respondent examined himself as P.W.1 and one Manivelan, eye-witness was examined as P.W.2 and marked 5 documents as Exs.P1 to P5. The 4th respondent examined himself as R.W.1 and one Palanisamy, Official of the Insurance Company was examined as R.W.2 and the appellant/Insurance Company has marked 18 documents as Ex.R1 to R18.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due



to rash and negligent riding by the 4th respondent, rider of the motorcycle and the appellant has failed to prove that the motorcycle was driven only by Vinayagam at the time of accident. The Tribunal further held that since the motorcycle was insured with the appellant at the time of accident, the 4th respondent as owner of the vehicle and the appellant as insurer of the vehicle are liable to pay compensation and awarded a sum of Rs.4,52,000/- as compensation to the respondents 1 to 3.

8. Against the said award dated 13.09.2013 in M.C.O.P.No.251 of 2008, granting compensation to the respondents 1 to 3, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal failed to see that at the time of accident, one Vinayagam alone was riding the motorcycle. The First Information Report was registered only against the said Vinayagam and he was prosecuted by the Police. He did not possess driving license at the time of accident. Due to the same, the 4th respondent claimed that he was riding the motorcycle at the time of accident. If really 4th respondent was riding the motorcycle, he ought to have surrendered before the Police and faced the prosecution. The award of the Tribunal is erroneous and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the 4th respondent extensively referred to the award of the Tribunal and submitted that the appellant has not proved their contention before the Tribunal by examining eye-witness to the accident and prayed for dismissal of the appeal.

11. Though the respondents 1 to 3 entered appearance through counsel, there is no representation for them, when the matter is taken up for hearing.

12. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 4th respondent and perused the entire materials available on record.

13. According to the respondents 1 to 3, the accident occurred due to rash and negligent riding by the rider of the motorcycle. The First Information Report was registered only against one Vinayagam. The 4th respondent entered appearance and filed counter statement stating that at the time of accident, he



rode the motorcycle, accident did not occur due to his negligence and the accident occurred only due to negligence on the part of the deceased. It is the case of the 4th respondent that at the time of accident, he was riding the motorcycle slowly and carefully. At that time, the deceased who suddenly crossed the road, invited the accident. So, the 4th respondent is not responsible for the accident and he deposed as R.W.1 to that effect. He denied the suggestions that one Vinayagam was riding the motorcycle at the time of accident. It is the case of the appellant/ Insurance Company that only Vinayagam was riding the motorcycle at the time of accident and he did not possess valid driving license. The First Information Report was registered against the said Vinayagam and he was prosecuted. The appellant did not examine any eye-witness or examine the Investigating Officer to prove their contention that the said Vinayagam was only riding the motorcycle at the time of accident.

14.From the award of the Tribunal, it is seen that no document has been produced to show that statement has been recorded from the witnesses by the Investigating Officer to show that Vinayagam was riding the motorcycle at the time of the accident. R.W.2 examined by the appellant has stated that as per the investigation report, only Vinayagam was riding the motorcycle. The appellant has not examined the investigator or filed investigation report. The 4th respondent as R.W.1 has deposed that Vinayagam was acquitted in the criminal case and the same was not disputed by the appellant. The 4th respondent further deposed that he was riding the motorcycle at the time of accident. The appellant has not let in any contra evidence to the evidence of R.W.1 that he was riding the motorcycle at the time of accident. The Tribunal considering all the materials and by giving valid and cogent reasons, held that the appellant has failed to prove that Vinayagam was riding the motorcycle at the time of accident. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.4,52,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any 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.251 of 2008. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount alongwith proportionate interest and



costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkrr

To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Arni.

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

+1 CC to Mrs.Elveera Ravindran, Advocate sr 60371

+1 CC to Mr.S.Sivashanmugam, Advocate sr 60908.

C.M.A.No.1010 of 2014 and
M.P.No.1 of 2014

SR II (CO)
SP(12/01/2022)