



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2318 OF 2017

AND

C.M.P.NO.12412 OF 2017

The Oriental Insurance Company Limited,
No.73B-1, Salai Road,
Lakshmi Complex, Thillai Nagar,
Trichy - 18.

...Appellant / 2nd Respondent

Vs.

1.Periyasamy
2.Kanaga
3.Balakumar

...Respondents / Petitioners &
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 28.03.2017 made in M.C.O.P.No.159 of 2016 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 3 : Served - No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Award dated 28.03.2017 passed by the Motor Accident Claims Tribunal (Principal District Judge, Perambalur) in M.C.O.P.No.159 of 2016.

2. The appellant/Insurance Company has challenged the impugned award on the ground that they are not liable to pay the compensation. Since the deceased himself was a tortfeasor and he has borrowed the insured vehicle from the insured.

3. The respondents have been duly served with notice and their names have been printed in the cause-list today.



4. Before the Tribunal, the Insurance Policy issued by the appellant for the Motorcycle bearing Registration No.TN 48-X-5547 was marked as Exhibit.R5.

5. Admittedly, the deceased Maheshwaran was the rider of the Motorcycle bearing Registration No.TN 48-X-5547. Therefore, he cannot be considered as a third party to the accident. Further the F.I.R (Exhibit.P1) was registered only against the opposite vehicle bearing Registration No.TN 28-AF-9456. In the claim petition, the first respondent/claimant has categorically pleaded that only due to the rash and negligent driving by the rider of the Motorcycle bearing Registration No.TN 28-AF-9456, the accident happened. In the claim petition, the first respondent/claimant has not pleaded that the insured vehicle bearing Registration No.TN 48-X-5547 was responsible for the cause of the accident. However, the Tribunal under the impugned award, without appreciating the evidence available on record, has held that the appellant/Insurance Company is liable to pay the compensation. The evidence available on record will clearly establish that it was only the Motorcycle bearing Registration No.TN 28-AF-9456, which is at fault and not the vehicle bearing Registration No.TN 48-X-5547 insured with the appellant. The deceased Maheshwaran is not a third party to the accident as he was the rider of the Motorcycle bearing Registration No.TN 48-X-5547 insured with the appellant. The Tribunal has failed to take into consideration the aforementioned admitted evidence. Therefore, this Court is of the considered view that the Tribunal has erroneously held that the appellant/Insurance Company is liable to pay compensation, though they are not liable to pay the same.

6. Accordingly, the impugned award dated 28.03.2017 passed by the Motor Accident Claims Tribunal, Principal District Judge, Perambalur in M.C.O.P.No.159 of 2016 is hereby set aside and this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsi

To

1.The Motor Accident Claims Tribunal,
The Principal District Judge,
Perambalur.



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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.52376

C.M.A.No.2318 of 2017
and
C.M.P.No.12412 of 2017

KK(CO)
RVM(01/12/2021)