



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 05.03.2021
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A(MD)No.1608 of 2010

and
M.P(MD)No.1 of 2010

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The Branch Manager
United India Insurance Company Limited,
Kumbakonam. .. Appellant/2nd Respondent
vs.

1.Rukmani
2.Minor Sukasini
3.Minor Dhineshkumar .. Respondents 1 to 3/Petitioners
4.Herun Rasheed .. 4th Respondent/1st Respondent

(minor R3 and R3 are represented by their mother, the first respondent)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree in MCOP No.564 of 2007 dated 10.03.2010 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Court, Kumbakonam.

For Appellant : Mr.J.S.Murali
For Respondents : No appearance

J U D G M E N T

This appeal is directed against the Judgment and award passed by the Motor Accident Claims Tribunal, Additional Subordinate Court, Kumbakonam in MCOP No.564 of 2007.

2.The appellant is the second respondent in the claim petition. The claim petition was filed by the respondents 1 to 3 herein claiming compensation of Rs.10,00,000/- for the death of the first claimant's husband and the father of the claimants 2 and 3, namely, Rasu Mudaliar, in an accident, which took place on 24.02.2007. According to the claimants, on the said date, at 04.00 p.m, the deceased was travelling as pillion rider in a two wheeler bearing registration No.TN-50-Y-2081 and the same was driven by his friend Kumar. It is alleged that the said Kumar drove the motorcycle in a high speed and applied sudden brake, in which, the pillion rider, the said Rasu Mudaliar fell down and sustained injuries. Immediately, he was carried to a hospital at Velangaiman, where he was declared as brought dead. Since the first respondent is the owner of the two wheeler and it got insured with the appellant herein, both are liable to pay compensation.



3.The claim was resisted by the respondent by filing counter stating that the deceased did not travel in the motorcycle bearing registration No.TN-50-Y-2081. It is specifically stated that the said vehicle was in the custody of the first respondent and it was not used either by the said Kumar or the deceased Rasu Mudaliar. It is further stated that the deceased was an employer of one Ismath Basha and he travelled in his vehicle, as it was not insured, the vehicle of the first respondent was wrongly introduced in this case.

4.Before the Tribunal, the first claimant gave evidence as P.W.1. P.W.2 was examined as eyewitnesses to the incident and he has stated that the deceased, at the relevant point of time, was a pillion rider in the motorcycle bearing registration No.TN-50-Y-2081 and it was driven by one Kumar. Since the vehicle was driven in a high speed, the deceased had fallen down and succumbed to the injuries. The owner of the vehicle Haroon Rasheed examined himself as R.W.1 and in his evidence, he has categorically stated that the vehicle was never used by the said Kumar or the deceased. That apart, R.W.2 and R.W.3 gave evidence corroborating the evidence of R.W.1. However, the Tribunal, considering the fact that the second respondent, the appellant herein, has not examined any witness from the Regional Transport Office, came to the conclusion that the vehicle was driven by the friend of the deceased Rasu Mudaliar, viz., Kumar and in the accident, the deceased died. After giving the said finding, the Tribunal assessed the compensation at Rs.3,52,000/-.

5.Mr.J.S.Murali, learned counsel for the appellant contended that the Tribunal has erred in coming to the conclusion that the vehicle was involved in the accident and testimony of R.W.1 to R.W.3 was not properly considered by the Tribunal.

6.When the matter was taken up for hearing on 01.03.2021, there was no representation for the respondents and hence, the matter is posted today under the caption for orders, but today also, none represented on behalf of the respondents.

7.In the present case, it is not in dispute that the respondents 1 to 3 herein are the legal heirs of the deceased Rasu Mudaliar who died in a motor vehicle accident on 24.02.2007. It is the case of the claimants that the deceased travelled as pillion rider in the motorcycle bearing registration No.TN-50-Y-2081, but it was contested by the owner as well as the insurer stating that the said vehicle was not at all involved in the accident. The claimants mainly relied on the evidence of P.W.2. Perusal of his evidence would show that after the accident, he did not accompany the deceased to the hospital nor he lodged the complaint. It is seen that the First Information Report (Ex.P.1) was registered on the basis of the complaint given by the first claimant Rukmani. P.W.2, in the cross examination, admitted that he did not prefer the



complaint.

8.In the claim petition, it is stated that the deceased was working as Assistant in the rice mill owned by Ismath Batcha. R.Ws.1 to 3 consistently deposed that the deceased was an employee of the said Ismath Batcha and he travelled in his Bajaj Scooter at the relevant point of time and the deceased did not travel in the the motorcycle bearing registration No.TN-50-Y-2081. The Tribunal without properly appreciating the evidence of R.Ws.1 to 3 and the admission made by P.W.2 in his cross examination, held that the said vehicle bearing registration No.TN-50-Y-2081 was involved in the accident. So, I am of the considered view the Tribunal ought to have disbelieved the evidence of P.W.2 and held that the vehicle was introduced by the claimants to make false claim against the appellant Insurance Company.

9.For the foregoing reasons, the finding of the Tribunal is liable to be set aside. Accordingly, the same is set aside and the Civil Miscellaneous Petition is allowed.

10.It is represented that the entire award amount has been deposited before the Tribunal. Hence, the Tribunal is directed to return the amount lying to the credit of the claim petition to the appellant Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

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/ /2021

Sub Assistant Registrar(CS)

To

1. The Additional Subordinate Judge
The Motor Accident Claims Tribunal,
Kumbakonam.

2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-9395[F] dated 08/03/2021)
C.M.A(MD)No.1608 of 2010and
M.P(MD)No.1 of 2010
05.03.2021

PM(CO)

KK(27.05.2021) 3P 5C

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