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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	01.12.2021
DELIVERED ON	22.12.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.602 of 2011

and

C.M.P. (MD)No.1 of 2011

Cholamandalam MS General Insurance Company,
Reptd. By its Branch Manager,
23/73-B, Kalluri Nagar, 32nd Floor,
Palayamkottai Road,
Tuticorin-628 101

...Appellant/3rd Respondent

Vs.

1.Muniyandi

2.Shanmugathai

3.Duraipandi

4.Murugeswari

5.Minor Jayalakshmi

...R-1 to R-5/Petitioners

[Minor represented by her father and next friend 1st claimant]

6.S.V.Velraj

7.N.Mari Selvam

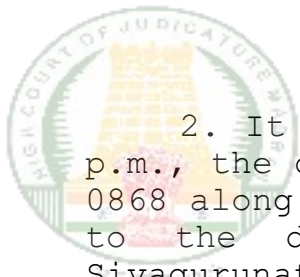
...R-6 & R-7/R-1 & R-2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 27.11.2006 made in M.C.O.P.No.123 of 2006 on the file of the learned Motor Accident Claims Tribunal, I Additional District Court, Tirunelveli.

For Appellant	:Mr.S.Srinivasa Ragavan
For R-1	:Mr.P.Prabhakaran
For R-2 to R-4	:Mr.E.Robert Chandra Kumar
For R-6	:Mr.G.Sridharan
For R-5	:No appearance

ORDER

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree, dated 27.11.2006 in M.C.O.P.No.123 of 2006, passed by the learned Motor Accident Claims Tribunal, I Additional District Court, Tirunelveli.



2. It is a case of fatal accident. On 07.09.2005, at about 9 p.m., the deceased was riding a motor cycle bearing Regn. No.Y.N.69-0868 along with one Kutty as a pillion rider. He was going pursuant to the direction of the 6th respondent and his agent one Sivagurunathan. While so, he dashed against an electric post and sustained grievous injuries. Due to the accident, the deceased succumbed to the injuries on 10.09.2005 at about 07.00 a.m.

3.The claimants have filed a claim petition in M.C.O.P.No.123 of 2006 on the file of the learned Motor Accident Claims Tribunal, I Additional District Court, Tirunelveli, seeking compensation.

4.Before the Tribunal, on the side of the claimants one witness was examined as P.W.1 and marked five documents as Exs.P.1 to P.5 and two witnesses were examined as R.W.1 & R.W.2 and marked Ex.R.1 & Ex.R.2.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondent and also on appreciating the evidences on record, directed the appellant/insurance company to pay a sum of Rs.2,54,260/-as compensation. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed.

6.Heard on either side. Perused the material documents available on record.

7. This Civil Miscellaneous Appeal has been filed on the ground of liability fixed by the Tribunal.

8.The claimants have filed a claim petition in M.C.O.P.No.123 of 2006 before the Tribunal seeking compensation for the death of the son of 1st and 2nd claimants who died in road accident on 07.09.2005 at 09.00 p.m. when he was going in a motor cycle bearing Regn. No.YN 69 0868 as a pillion rider. The two wheeler dashed in a electric post and the deceased sustained injuries and died in a hospital.

9.The accident was happened only by the rash and negligent manner of the driver of the two wheeler. The First Information Report was also registered against the driver of the two wheeler. The Tribunal has awarded a sum of Rs.2,54,260/-to the claimants with 7.5% interest and directed the appellant/insurance company to pay the compensation. Aggrieved by the said award passed by the tribunal, the appellant/insurance company is before this Court.

10.The learned counsel appearing for the appellant/insurance company raised an objection that the insurance company is not liable to pay compensation, since the deceased was driving the two wheeler was not covered under the policy.



11. Firstly, the deceased is not a owner of the alleged vehicle. He was only a rider and 3rd party of the vehicle.

12. Further, the learned counsel appearing for the appellant has pointed out that the deceased has borrowed the two wheeler. Since he was the owner of the two wheeler, the insurance policy was not covered for the owner of the two wheeler. He also relied upon a Judgment reported in **2009 2 TNMAC 169 SC and 2020(1) TNMAC 1 SC**. Since the deceased has not borrowed the alleged two wheeler, both the Judgments are not at all applicable to the case on hand.

13. In this case, the deceased was a rider. The policy covered a driver who is holding valid licence. The 6th respondent is owner of the vehicle. It also clearly stated in the claim petition.

14. The owner of the vehicle/6th respondent herein was examined as R.W.1. He admitted in his evidence that he sold the vehicle to one Mari Selvam. But, at the time of accident, a valid policy was in force for the two wheeler. Therefore, the appellant/insurance company is liable to pay compensation to the claimants.

15. Hence, the tribunal has rightly fixed the liability on the appellant/insurance company. This Court has no valid reason to interfere with the award passed by the Court below.

16. Finally, this Civil Miscellaneous Appeal stands dismissed by confirming the order and Decree, dated 27.11.2006 in M.C.O.P.No.123 of 2006, passed by the learned Motor Accident Claims Tribunal, I Additional District Court, Tirunelveli. The appellant/insurance company is directed to deposit the entire award amount, within a period of Four weeks, from the date of receipt of copy of the order. After depositing the amount, the 1 to 4 claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs. The minor's share amount is to be deposited as ordered by the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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To

The Motor Accident Claims Tribunal,
I Additional District Court,
Tirunelveli.

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Copy to

The Section Officer, V.R.Section
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.G.SRIDHARAN, Advocate (SR-40039[F] dated 22/12/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-40054[F] dated 22/12/2021)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-40057[F] dated 22/12/2021)

C.M.A. (MD).No.602 of 2011
22.12.2021

SJ(CO)

KB(17.02.2022) 4P 7C