



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.12.2020

DATE ON WHICH PRONOUNCED : 11.01.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A. (MD) .No.99 of 2011
in
MP(MD)No. 1 of 2011

United India Insurance Company Ltd.,
By its Branch Manager,
Sivakasi.

:Appellant /4th Respondent

Vs.

1.N.Arumugasamy

2.A.Karpagam

: Respondents 1 & 2/Petitioners

3.G.Murugan

4.The Oriental Insurance Co.Ltd.,
by its Branch Manager,
Dindigul.

5.B.Kurtralingam

: Respondents 3,4 & 5/
Respondents 1,2 & 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.105 of 2002 dated 09.12.2005, on the file of the Motor Accidents Claims Tribunal, Sub Court, Sivakasi.

For Appellant : Mr.J.S.Murali

For R2 : Mr.J.Ashokkumar

For R1 & R3 : Dismissed vide order dated 29.11.2017

For R4 & R5 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 09.12.2005, passed in M.C.O.P.No.105 of
<https://hcservices.ecourts.gov.in/hcservices/>



2002 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sivakasi.

2.The case of the claimant before the Tribunal is that on 11.02.2002, at about 07.00 p.m, the lorry bearing Registration No.TDF-4249 was halted on the Sattur - Sivakasi main road near Veerapandiapuram and the indicator lamp was not lighted. The Motorcycle bearing Registration No.TN-67-T-6538, in which, the deceased was riding as a Pillion rider, was proceeding from Sivakasi to Sattur. At that time, the Motorcycle dashed on the rear side of the lorry, the deceased fell down and the rider of the two wheeler sustained injury and they were taken to Government Hospital, Sattur. The driver of the two wheeler namely, Gurusamy died on the spot. The pillion rider of the two wheeler namely, Kesavan was taken to Government Rajaji Hospital, Madurai, he also died.

3.In respect of offence, a case in Crime No.58 of 2002 for the offence under Section 279, 337 @ 304(A) IPC was registered. Claiming a compensation amount of Rs.10,000,00/- for the death of Kesavan, they moved the Tribunal.

4.The case of the 4th respondent before the Tribunal is that the manner of the accident as spoken in the petition was disputed and negligence on the part of the third respondent driver were also disputed and the other facts were denied. With regard to the possession of driving license of the respective drivers and the income and age of the deceased were denied.

5.Before the Tribunal, on the side of the petitioners, one witness was examined and seventeen documents marked. On the side of the respondents, two witness were examined and six documents marked.

6. At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving of drivers of both the vehicle and fixed the composite negligence at 50 : 50 %.

7.Regarding quantum, taking into account age of the deceased and his avocation, the Tribunal assessed the same at Rs.4.50 lakhs and both the Insurers namely the respondents 2 & 4 were also directed to bear the compensation at 50 : 50% along with their respective insured. Challenging the same, the 4th respondent has filed this appeal mainly on the ground that the two wheeler rider was not having proper driving license and so, pay and recovery ought to have been ordered by the Tribunal.



8. At the time of arguments, the learned counsel for the appellant confined his argument only with regard to the liability and with regard to the quantum, he has no grievance. So, only the question, which got to be answered in this appeal is ***whether in the light of the evidence on the side of the appellant, pay and recovery ought to have been ordered by the Tribunal?***

9. There is a finding by the Tribunal to the effect that the rider of the two wheeler namely Gurusamy did not produce the driving license at the time of Motor Vehicle Inspector's Inspection. But, the Tribunal went to held that it cannot be taken advantage of by the Insurance Company to avoid liability. Whenever, there is a policy violation not only statutory duty, but, also has been settled law, now that the Insurance Company must be directed to pay compensation on behalf of the insured and recover the same from the owner through EP proceedings. Ex.P.4 is the Motor Vehicles Inspector's Report, where in also it has been mentioned that Gurusamy was not owning proper driving license at the time of the accident and it was also not produced. In respect of non possession of the driving license, the appellant/Insurance Company issued notice to the father of the deceased namely, Mr. Shanmugam to produce the driving license in respect of Gurusamy. But, that was not served, since the addressee refused to receive the notice. Similarly, the third respondent who is the owner of the two wheeler was also served with notice by the Insurance Company for producing driving license and other documents. It was received by the third respondent and the acknowledge card was marked as Ex.R.5. In spite of that, he did not respond. Moreover, he fails to appear before the Tribunal also. So, all these documents and coupled with the oral evidence of appellant officials, it is established that the rider of the two wheeler, in which, the deceased was travelling as a pillion rider did not own proper driving license. Silence on the part of the third respondent, when was required to produce the driving license of the deceased lead to an inference that the driver was not owning proper driving license. So enough materials is available on record to record the findings that there is a policy violation and as such, the insurer can be directed to pay their part of the compensation and recover the same from the third respondent.

10. In the result, the appeal is partly allowed and the appellant is directed to deposit their portion of the compensation awarded by the Tribunal within a period of two months from the date of receipt of this order copy on behalf of the 5th respondent herein and recover the same from him through EP proceedings and in respect of compensation, it is confirmed. No costs. Consequently, connected miscellaneous petition is closed. On



deposit, the claimants are permitted to withdraw the respective shares with interest and proportionate cost immediately.

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Sd/-

Assistant Registrar (CS-I)

/ /2021

Sub Assistant Registrar(CS)

dss

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.

To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sivakasi.
- 2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.S.MURALI, Advocate (SR-907[F] dated 18/01/2021)

Judgment made in
C.M.A. (MD) .No.99 of 2011
in
MP (MD) No. 1 of 2011
11.01.2021

KM (17.02.2021) 4P 5C