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C.M.A.(MD)No.473 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.04.2021

Delivered On : 17.06.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.473 of 2016
and
C.M.P.(MD)No.6093 of 2016

The United India Insurance Co. Ltd.,
Rep. Through its Divisional Manager,
Door No.52, South Masi Street,
Madurai 625 001.

.. Appellant/2nd Respondent

Vs.

1.Manthiyan
2. K.Vijay
3. K.Karthika
4.Minor K.Krishnaveni
5.Minor K.Krishnan

(Minor respondents 4 & 5 are rep.
Through their grandfather and next
friend of A.Manthaiayan, 1st respondent)

6.J.Amalrose Mary

..Respondent 1 to 5/Petitioners
..6th Respondents/1st Respondent

(Respondents 2 and 3 are declared as majors
and discharged from the guardianship of R1, vide
Court order dated 14.11.2019 made in
C.M.P.(MD)No.9037, 9039 and 9042 of 2019
made in C.M.A.(MD)No.473 of 2016)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.850 of 2012, dated 27.10.2015 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, Communal Clash Cases Court, Madurai.

For Appellant	: Mr.J.S.Murali
For 1 st Respondent	: Mr.C.Godwin
For Respondents 4 & 5	: Minor
For 6 th Respondent	: No Appearance



JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.850 of 2012 dated 27.10.2015, on the file of the Motor Accident Claims Tribunal/District and Sessions Court, Communal Clash Cases Court, Madurai.

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2.The appellant herein is the second respondent, the respondents 1 to 5 herein are the petitioners and the sixth respondent herein is the first respondent in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.850 of 2012, claiming compensation for the death of one Irulayee in an accident that took place on 09.07.2011.

3.A brief substance of the claim petition in M.C.O.P.No.850 of 2012 is as follows:

On 09.07.2011, at about 02.00 p.m., the first claimant's wife was travelling as the pillion rider in a motorcycle bearing registration No.TN-58-R-2124 from Kumaram to Madurai. The vehicle was driven by its driver in a moderate speed observing all the traffic rules. A Bajaji CT 100 motorcycle bearing Registration No.TN-59-AB-5949 which was driven by its driver in a rash and negligent manner from the opposite direction, dashed against the motorcycle of the claimant and the wife of the first claimant died on the spot. The first claimant is the husband of the deceased. The claimants 2 to 5 are the minor children of the deceased. The claimants claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

4.The brief substance of the counter filed by the appellant/second respondent is as follows:

The mode of accident is denied. The accident was not due to the negligence driving of the driver of the motorcycle bearing Registration No.TN-59-AB-5949. The accident took place only due to rash and negligence driving of the rider of the motorcycle bearing Registration No.TN-58-R-2124. The manner of the accident contradicts the FIR of the case. The FIR was lodged only against the first respondent herein. The 6th respondent herein is not the owner of the motorcycle and only her husband is the owner of the two wheeler. Since the accident took place due to rash and negligence driving of the first respondent herein, the claimants are not entitled to get compensation from the respondents. The compensation claimed is excessive.

5.After trial, the Tribunal has awarded a sum of Rs.4,65,000/- (Rupees Four Lakhs and Sixty Five Thousand only) as compensation to be paid to the claimants. Against which, the appellant has preferred this Civil Miscellaneous Appeal.



6. On the side of the appellant, it is stated that the appellant is not liable to pay any compensation. The rider of the vehicle bearing Registration No. TN-59-AB-5949 was not having any driving licence at the time of accident. The first respondent herein was under the influence of alcohol. The FIR is against the husband of the deceased. Subsequently, he died. The insurer of the vehicle of the deceased was not included in the case and prayed the appeal to be allowed.

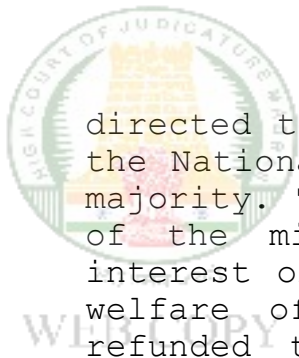
7. On the side of the first respondent, it is stated that the minor claimants are represented through their grandfather. The petition was filed only under Section 163 of Motor Vehicles Act. There is no necessity to prove the liability. The Tribunal has discussed two judgments reported in 2014 ACJ 2145 and 2014 ACJ 2537, wherein it was held that there was no necessity to implead all the vehicles involved in the accident to claim compensation under Section 163 of Motor Vehicles Act and that the citation is applicable to the present case and prayed the appeal to be dismissed.

8. It is seen that the FIR was registered against the husband of the deceased. There was no document on the side of the appellant to prove that the husband of the deceased who was the rider of the motorcycle bearing Registration No. TN-58-R-2124 was under the influence of alcohol and that he had no driving licence. The claim petition was filed only under Section 163(2) of Motor Vehicles Act and there was no necessity for the claimants to prove negligence. There is no serious objection regarding the validity of the policy. Hence, it is decided that the appellant is liable to pay compensation to the claimants.

9. A perusal of the records reveals that the quantum fixed by the Tribunal is reasonable.

10. In view of the above, there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.850 of 2012 on the file of the Motor Accidents Claims Tribunal, District and Sessions Judge, Communal Clash Cases Court, Madurai. Hence, this Civil Miscellaneous Appeal is dismissed.

11. The appellant is directed to deposit Rs.4,65,000/- (Rupees Four Lakhs and Sixty Five Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. Since the respondents 2 and 3 are declared as majors by this Court vide order dated 14.11.2019, On deposit of award amount, the respondents 1 to 3 are permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. The Tribunal is



directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the next friend and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. Excess amount, if any deposited shall be refunded to the appellant. The claimants are not entitled for interest for the default period, if there is any. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Motor Accidents Claims Tribunal/District and Sessions Judge,
Communal Clash Cases Court
Madurai.

2.The Section Officer, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.GODWIN, Advocate (SR-19444[F] dated 17/06/2021)

+1 CC to M/s.J.S.MURALI, Advocate (SR-19714[F] dated 21/06/2021)

C.M.A. (MD) No.473 of 2016
17.06.2021

KMK(CO)
KB(30.07.2021) 4P 6C