



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.381 of 2016
and C.M.P.No.2904 of 2016

United India Insurance Company Ltd.,
104-A, Peramanur Main Road,
Salem 7.

.. Appellant/2nd Respondent

Vs.

1.Chitra
2.Karthika

... Respondents 1 & 2/Claimants

3.Saravanan

4.Minor Srimathi

(minor rep by her mother 1st respondent)

5.Karunakaran

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.07.2015 in M.C.O.P.No.2123 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.C.Paranthaman
For Respondents : No appearance

J U D G M E N T

(This matter is heard through "video conferencing")

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 24.07.2015 in M.C.O.P.No.2123 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.2123 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. The respondents 1 to 4 filed the said claim petition against the 5th respondent and the appellant/Insurance Company, claiming a sum of Rs.7,00,000/- as compensation for the death of one Ragunathan, who died in the accident that took place on 21.04.2013.



3. According to the respondents 1 to 4, on the date of accident i.e., 21.04.2013 at about 2.50 p.m., while the deceased Ragunathan was riding the motorcycle bearing Registration No. TN 30 AZ 3585 belonging to the 5th respondent from Omalur to Dharmapuri Main road, nearing Balbakki Branch Road, unfortunately the deceased was fell down along with the motorcycle and thus the accident has occurred. Due to the sudden impact, the deceased sustained commuted fracture and grievous injury on the head and vital parts of the body and died. Hence, the respondents 1 to 4 filed the said claim petition, claiming compensation against the 5th respondent and the appellant-Insurance Company as owner and insurer of the motorcycle.

4. The owner of the motorcycle, 5th respondent remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement, denying the averments made in the claim petition. It is stated that the motorcycle was not in a good condition and the owner of the motorcycle was very well aware of the same. As per the rough sketch, the deceased drove the motorcycle in a rash and negligent manner without following traffic rules and regulation and fell down in the middle of the road. The accident has happened only due to own fault by the deceased and the owner of the vehicle and the same was also admitted by the complainant, the brother of the deceased. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 4. The appellant has also denied the age, nature of avocation and income of the deceased. In any event, the compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and marked 3 documents as Exs.P1 to P3. On the side of the appellant/Insurance Company, one Govindan, Special Sub Inspector, Omalur was examined as R.W.1 and one Jeyavel, eyewitness was examined as R.W.2 and marked 3 documents as Exs.R1 to R3.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 5th respondent and directed the appellant/Insurance Company as insurer of the motorcycle to pay a sum of Rs.4,73,200/- as compensation to the respondents 1 to 4 at the first instance and recover the same from the 5th respondent, owner of the motorcycle.



8. Against the said award dated 24.07.2015 made in M.C.O.P.No.2123 of 2013, the appellant/Insurance Company has come out with the Civil Miscellaneous Appeal.

9. Though the learned counsel appearing for the appellant/Insurance Company raised grounds with regard to quantum of compensation also, at the time of arguments, he restricted his arguments only with regard to negligence fixed by the Tribunal and contended that the deceased borrowed the motorcycle from the 5th respondent and while riding the said motorcycle he fell down, sustained injuries and died. The deceased being a tort-feasor, the respondents 1 to 4, who are the legal heirs of the deceased tort-feasor are not entitled to claim compensation against the appellant. The appellant is not liable to pay any compensation as deceased himself is a tort-feasor and prayed to set aside the award of the Tribunal.

10. Though the respondents 1 to 4 entered appearance through counsel, there is no representation for them, when the matter is taken up for hearing.

11. Though notice has been served on the 5th respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

12. Heard the learned counsel appearing for the appellant/Insurance Company and perused the entire materials on record.

13. From the materials on record, it is seen that on 21.04.2013, when the deceased was riding the motorcycle bearing Registration No.TN 30 AZ 3585 belonging to the 5th respondent and insured with the appellant, from Omalur to Dharmapuri Main road, he fell down and sustained fatal injuries. The respondents 1 to 4 filed the claim petition under Section 163(A) of the Motor Vehicles Act, against the 5th respondent and the appellant. When the deceased was riding motorcycle borrowed from the 5th respondent, owner of the motorcycle, the deceased stepped into shoes of owner of the motorcycle. This has been held in the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.]. In the said judgment, the Hon'ble Apex Court held that the owner of the vehicle cannot make any claim against this own insurer. In view of the judgment of the Hon'ble Apex Court referred to above, the respondents 1 to 4 are not entitled to claim compensation against the appellant as deceased stepped into shoes of owner of the vehicle and the accident occurred



only due to his own negligence. The deceased being a tort-feasor, the respondents 1 to 4, the legal heirs of the tort-feasor are not entitled to claim compensation from the appellant and the appellant is not liable to pay any compensation to the respondents 1 to 4. In view of the well settled judicial pronouncement, the award of the Tribunal directing the appellant to pay compensation at the first instance and recover the same from the 5th respondent, owner of the motorcycle alone is set aside. The 5th respondent, owner of the motorcycle is only liable to pay compensation to the respondents 1 to 4.

14. In the result, this Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.4,73,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 5th respondent, owner of the vehicle is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.A.C.T.O.P.No.2123 of 2013. On such deposit, the respondents 1 to 4 are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the award amount, lying in the deposit to the credit of M.A.C.T.O.P.No.2123 of 2013, if the entire award amount has already been deposited by them. It is made clear that if the respondents 1 to 4/claimants have already withdrawn the award amount, the appellant/Insurance Company is not entitled to recover the same from the respondents 1 to 4/claimants. It is open to the appellant/Insurance Company to recover the same from the 5th respondent, owner of the vehicle. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

vkr



To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

2.The Section Officer,
VR Section, High Court,
Madras.

+2cc to Mr.C.Paranthaman, Advocate SR.No.223

C.M.A.No.381 of 2016
and C.M.P.No.2904 of 2016

NMI (CO)
GN(17/02/2022)