



C.M.A.No.3119 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.06.2022

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THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3119 of 2017

and

C.M.P.No.19120 of 2017

M/s.TATA AIG General Insurance Company Limited,
No.1, Ethiraj Salai, Egmore,
Chennai 600 008

... Appellant

Vs

1.S.Jayakumar

2.A.Moorthy

... Respondents

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.6861 of 2014, dated 07.04.2017 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For Respondents 1 and 2 : Mr.K.Prem Kumar

For Respondent-3 : Mr.P.Prashanth



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J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal (Chief Court of Small Causes, Chennai) in M.C.O.P.No.6861 of 2014, the second respondent-Insurance Company is the appellant before this Court.

2. The facts in brief are as follows:-

(i) The father and mother of one Monica had filed the above referred claim petition seeking compensation for the death of their daughter in a road accident that had occurred on 05.05.2014 involving the motor-cycle, in which the deceased was travelling pillion and the Transport Corporation Bus bearing Registration No.TN 32N 2343, .

(ii) It is the case of the respondents 1 and 2 herein that on 05.05.2014 at about 11.40 a.m., their daughter, the deceased Monica was travelling pillion in a motor cycle belonging to the third respondent



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before the tribunal and insured with the appellant-Insurance Company.

They had claimed a compensation of a sum of Rs.10,00,000/-.

3. The third respondent/owner of the vehicle has entered appearance through counsel and filed a counter statement, in which, he resisted the claim stating that it was the deceased Monica, who was riding the motor cycle and the said Sathishkumar was riding pillion. It is only on account of the negligence on the part of the deceased Monica, the accident had taken place. The other allegations were denied and the respondents 1 and 2 were put to strict proof with regard to age, occupation and income of their daughter. The third respondent also contended that their vehicle was insured with the appellant-Insurance Company and therefore, it is the appellant who has to indemnify the third respondent.

4. The appellant herein had resisted the above claim *inter alia* contending that the vehicle was driven by Monica in a rash and negligent manner, which has resulted in the accident. The claim petition filed



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stating that she had travelled pillion, is an absolute falsehood. Therefore, it is the contention of the appellant that the respondents 1 and 2 could not claim any compensation for the death of a tort-feasor herself. In all other respects, the appellant has denied the claim of the respondents 1 and 2.

5. The Tribunal below, after considering the evidence on record, held that the accident was only on account of the negligence on the part of the driver of the motor-cycle. The Tribunal ultimately awarded a compensation of Rs.10,88,000/-. Challenging the same, the Insurance Company is before this Court.

6. The main ground on which the appeal is focused is whether it was the said Monica, who was driving the motor-cycle or whether it was Sathishkumar who was the rider.

7. Mr.N.Vijayaraghavan, learned counsel appearing on behalf of the appellant-Insurance Company would submit that from the final report that has been filed by the Police, it is seen that the Police have recorded



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that it was Monica, who was driving the motor-cycle. He would also draw the attention of the Court to the details of the witnesses that were to be questioned by the Magistrate and the contents in brief of what they proposed to depose. He would rely upon a portion of the evidence of P.W1-the father of the deceased, where they have taken a different stand that the driver of the motor-cycle was one Moorthy, whereas in the claim petition, it is stated that the motor-cycle was driven by Sathish Kumar. He would therefore submit that the respondents 1 and 2 have not come to Court with a definite case. Further, eye-witnesses have not been examined to prove the accident as claimed by the respondents 1 and 2 herein. He would further submit that, at the best, the appellant would be entitled to compensation as provided under Section 140(4) of the Motor Vehicles Act. That apart, the name of the Driver has not been mentioned in the F.I.R. The Post-Mortem Report would further reveal that no serious injuries have been sustained by the deceased Monica. He would therefore submit that the Insurance Company cannot be made liable, since the deceased was not in possession of a valid driving licence. The learned counsel would further submit that the injuries sustained by



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Monica would clearly go to show that she was the driver of the vehicle and not Satishkumar.

8. Per contra, Mr.Prem Kumar, learned counsel appearing on behalf of the respondents 1 and 2 would submit that the said argument has not been taken before the Tribunal. Further, the final report, which has been filed, does not contain a date and that apart, it has not been marked through the Author of the said report. He would further submit that a serious argument has been put across that the F.I.R-Ex.P1 has been registered with a delay of 4 days. Therefore, the Tribunal below has considered all these aspects from its proper perspective and held that the vehicle was driven by Satish Kumar only and not Moorthy, as pleaded by the Insurance Company. Aggrieved by the same, the appellant has filed the above appeal.

9. The two main grounds on which the appeal is based are:

a) Whether the motor-cycle was driven by the deceased Monica and then since the accident has



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occurred only on account of her rash and negligent driving, the Insurance Company was not entitled to compensate her, as it is a self-inflicted accident.

b) That apart, the respondents 1 and 2 have not come to Court with clean hands. In the claim petition, they would submit that the motor-cycle was driven by the said Satishkumar, which statement is reiterated in the F.I.R, but, however when P.W2 was examined, he would introduce the name of Moorthy and therefore, the claim deserves to be dismissed. The learned counsel appearing for the respondents 1 and 2 would re-iterate the contention made in the Award of the Tribunal.

10. Heard the learned counsel appearing on either side and perused the records available on record.

11. In order to prove that the motor-cycle in question was driven by the deceased Monica, the appellant would rely upon the final report of the Police. This report does not contain a date, nor does it contain any authentication. The motor-cycle inspector's report would speak about the



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damages that have been sustained by the vehicle belonging to the third respondent.

12. Though the appellant-Insurance Company would submit that the factum of the injuries sustained by the deceased has been proved through their investigator, they have not bothered to put in place the said report, and therefore, not much reliance can be placed upon the same. Further, it is the contention of the Insurance Company that the injuries sustained by both Monica and Sathish would clearly show as to who had driven the vehicle. The contention of the appellant is that the deceased Monica suffered serious injuries and that Sathishkumar had not sustained the same, is totally incorrect. The accident register of Sathishkumar would clearly show the grievous injuries that he has sustained on his face, neck and teeth. The said Monica has also sustained injuries. However, a mere perusal of the Accident register and her injuries clearly indicates that she could not have been the rider of the vehicle. Therefore, in the light of the above, the subject matter of challenge has to necessarily be confirmed. Accordingly, this Civil Miscellaneous Appeal



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is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes / No

Speaking Order : Yes/No

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To

1. The Motor Accident Claims Tribunal,
Chief Court of Small Causes, Chennai.
2. The Section Officer, V.R.Section High Court, Madras



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P.T.ASHA, J.,

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