



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.03.2022
CORAM:
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

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CMA.Nos.3404 and 3511 of 2017
and
CMP No.22524 of 2017

1.T.Prabakaran
2.Minor P.Vinitha
3.Minor P.Agila
(Minor petitioners 2 and 3 are represented
by their father/guardian 1st appellant)

...Petitioners / Appellants in CMA No.3404 of 2017

1.M.Neela
2.R.Sudhalakshmi
3.M.Baby
4.R.Manonmani
5.M.Subha
6.C.Chinna Kulandai

...Petitioners / Appellants in CMA No.3511 of 2017

v.

1.K.Settu
2.The Manager,
National Insurance Company Ltd.,
Motor Third Party HUB,
No.751, Anna Salai, IV Floor,
Chennai - 600 002.

..Respondents / Respondents in both CMAs

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 05.10.2017 in MCOP Nos.272 of 2012 and 111 of 2012 on the file of the Motor Accident Claims Tribunal, (District Court - II) Kanchipuram.

For Appellants : Mr.C.Prabakaran, in both CMAs
For R2 :Mr.J.Michael Visuvasam,
in both CMAs.



COMMON JUDGMENT

In view of the fact that common arguments advanced in both appeals, a common judgment is passed. They both relate to one accident. But two separate claim petition were preferred. CMA.No.3404 of 2017 arises out of MCOP No.272 of 2012 and CMA.No.3511 of 2017 arises out of MCOP No.111 of 2012. Both the claim petitions had been preferred before the Motor Accident Claims Tribunal / District Court - II, Kancheepuram. Both the petitioners were dismissed by separate judgments dated 05.10.2017. The claimants have filed these two appeals.

2.The brief fact necessitating the filing of the claim petitions was that, a Hero Honda Splendor Plus motor cycle bearing registration No.TN-21-AJ-2875, was driven by the 1st respondent, K.Settu who was proceeding from Walajabad to his native place. When he reached Uthukaedu Village Junction Road on the Kancheepuram to Tambaram High Road, it was alleged that he lost control and as a consequence of which hit a pedestrian and further the pillion rider also fell down and both of them sustained fatal injuries all over the body and died on the way to the hospital. The pedestrian was said to be one Muniammal and her legal representatives, had filed MCOP No.272 of 2017. The pillion rider was one Manokaran and his legal representatives filed MCOP No.111 of 2017.

3.Both the claim petitions were filed taken advantage of Section 166 of the Motor Vehicles Act, 1988, which naturally meant that a burden was cast to prove the negligence on the offending vehicle and to establish that the injury suffered in the manner in which they claimed the accident occurred.

4.To prove the accident, two eye witnesses were examined as PW-2 and PW-3. On hind sight, the appellants now probably must be of the opinion they should have not examined the aforesaid witness. But they have examined them as witness and their evidence were also recorded. It is to be kept in mind that under Section 169 of the Motor Vehicles Act, 1988, while recording evidence, the Tribunal is vested with the power of a Civil Court and such evidence is also to be recorded on oath as solemn statements made before the Court. It need not stated that the evidence includes both examination in chief and cross examination.

5.While determining the aforementioned two petitions, two separate orders was passed, but the reasons are primarily the same.



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6.The Tribunal examined the evidence of PW-2, Sathishkumar and in this connection, it must also be pointed out that he was also the informant relating to registration of FIR in Crime No.128 of 2012 under Sections 279, 337 and 304A IPC by the Walajabad Police Station. RW-1, Sub-Inspector of Police had been examined to speak about the FIR and he affirmed that information was given by PW-2, Sathishkumar.

7.During trial, the actual facts came out and it transpired that in the motor vehicle driven by K.Settu, the 1st respondent, both Muniyammal and Manokaran were pillion riders. The motor cycle was hit by an unknown car, which could not be traced and owing to such accident, both the pillion riders, Muniyammal and Manokaran fell down and died owing to injuries suffered. The negligence was on that aforementioned unknown car. This was the gist of information given to the police and which was reduced in the FIR in Crime No.128 of 2012.

8.However, the petitions were filed before the Tribunal with a different version that Muniyammal was a pedestrian and Manokaran was the only pillion rider and that the driver of the motor cycle lost control owing to the motor cycle being driven in rash and negligent manner, and dashed against the pedestrian Muniyammal and consequent to which she died and consequent to the accident, the pillion rider Manokaran also fell down, suffered injuries and died.

9.The statements made in the claim petition are evidently false. The deceased were both pillion riders and the accident was occurred owing to the fact that the motor cycle hit by an untraced car. This fact came out during the cross-examination PW-2, Sathishkumar. He stated that one Dineshkumar knew about the actual facts. That Dineshkumar was examined as PW-3 and the Tribunal has extracted the relevant portion of the cross-examination of PW-3, where he stated that both the deceased were travelling as pillion riders and that the accident occurred since an unknown car dashed against the motor cycle.

10.Naturally, if the negligence was on the part of the unknown car, the insurer of the motor cycle cannot be called upon to pay compensation since there was no negligence attributed by the driver of the motor cycle. The policy of the insurance has to be interpreted in a stricto sensu manner and the insurance is covered for accidents occurring owing to negligence of the insured. If the accident occurs owing to negligence of another third party vehicle, then the insurer of the motor cycle in this case, cannot be called upon to pay compensation for the injuries suffered or to compensate the family members of the deceased.



11.It would have been prudent had the claimants come forward before the Tribunal with actual facts and had filed petition under Section 163 A of the Motor Vehicles Act, 1988. But they took a conscious decision to prove the accident in the manner in which they stated it happened which was directly contra to the facts as stated to the police, when they registered the FIR. It they stand by falsehood, they have to fall by their own folly.

12.With the above observations, I do not find any reason to interfere with the orders dated 05.10.2017 in MCOP No.272 & 111 of 2012 passed by the Motor Accident Claims Tribunal / District Judge, District Court - II, Kanchipuram and therefore, the Civil Miscellaneous Appeals are dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

smv
To:-

1.The II Judge,
Motor Accident Claims Tribunal / District Court - II,
Kancheepuram.

Copy to:
The Section Officer,
VR Section,
High Court, Madras .

+1 cc to Mr.C.Prakasam, Advocate Sr.NO.14423
+2 ccs to Mr.J.Michael Visuvasam, Advocate Sr.NO. 14437,14438

CMA.Nos.3404 & 3511 of 2017

SVI(CO)
A.SK(29/03/2022)