



C.M.A.(MD)No.1408 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 15.11.2022

Delivered On : 02.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1408 of 2010

The Oriental Insurance Company Ltd.,
Tirunelveli,
by its Branch Manager

... Appellant / 2nd Respondent

Vs.

1. Andichi ammal

2. Marimuthu Thevar

3. Murugan

... Respondents 1&2 /Petitioners

... 3rd Respondent /1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award, dated 24.06.2009, made in M.C.O.P.No.1357 of 2006, on the file of the Motor Accident Claims Tribunal – II Additional District Court, Tirunelveli.

For Appellant

: Mr.C.Jawahar Ravindran

For Respondents

: No appearance for R1 & R2

: R3- dismissed vide order dated 22.03.2013



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 24.06.2009, made in M.C.O.P.No.1357 of 2006, on the file of the Motor Accident Claims Tribunal – II Additional District Court, Tirunelveli. The appellant herein is the second respondent, the respondents 1 & 2 herein is the claimants and the third respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.1357 of 2006, is as follows:

On 08.07.2006, at about 5.00 pm., when the deceased - Kannan was travelling in a motorcycle bearing Registration No.TN-72-M-1037, as a pillion rider, along the Tirunelveli-Madurai main road, near Gangaikondan Deer park, the rider of the two wheeler drove the vehicle in a rash and negligent manner and the deceased, who travelled as a pillion rider was thrown out of the motorcycle and he sustained injuries, he was taken to TVMC Hospital, Palayamkottai, but, he succumbed to the injuries and died on the same day. The deceased was a cloth merchant and he was doing agricultural work and was earning Rs.6,000/- per month. The petitioners are his dependents and they claimed a sum of Rs.7,00,000/- as compensation.



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3.A brief substance of the counter filed by the second respondent, in M.C.O.P.No.1357 of 2006, is as follows:

The age, profession and income are to be proved. The respondent is not liable to pay compensation, for a pillion rider. The injuries are not mentioned in the claim petition. The rider of the two wheeler was not having valid driving licence. The owner has permitted the rider, to drive the vehicle, without driving licence. Policy conditions are violated. The petition to be dismissed.

4. A brief substance of the additional counter filed by the respondent in M.C.O.P.No.1357 of 2006, is as follows:

The father of the deceased has given a complaint before the police as if one Udaiyar was the rider of the two wheeler, at the time of accident. But, the said Udaiyar has given a statement that he was not riding the two wheeler, at the time of accident. Subsequently, the second claimant has given a statement that it was the deceased, who rode the vehicle at the time of accident. F.I.R was registered in the name of the deceased and the same was closed, after the death of the deceased. The deceased was not having valid driving licence at the time of accident. The first respondent permitted the deceased, to ride the two wheeler. Since the policy conditions are violated, the second respondent is not liable to pay compensation.



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5. 1 witness was examined and 4 documents were marked, on the side of the claimants. 2 witnesses were examined and 3 documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.2,92,500/- as compensation.

6. Against the award, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal failed to note that the deceased drove the vehicle in a rash and negligent manner and he invited the accident. The Tribunal failed to consider that the charge sheet was filed against the deceased. No eye witness was examined to prove the accident. In the F.I.R., it is stated that the motorcycle was driven by one – Udayar, but, after investigation, the police referred the matter, since it was the deceased, who drove the vehicle. R.W.1-Sub Inspector of Police was examined to prove the same. The Tribunal is wrong in deciding that one Udaiyar, drove the motorcycle, which is against the evidence on record. The Tribunal failed to consider Ex.R2, wherein, the appellant issued notice to the owner to produce licence particulars of the rider. The Tribunal failed to take adverse inference against the owner, who failed to produce licence, even after the receipt of Ex.R2. The Tribunal is wrong in fixing the monthly income as Rs.2,000/- and applying multiplier '18' and the award is excessive.



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7. On the side of the appellant, it is stated that no eye witness was examined on the side of the claimants. P.W.1 was not an eye witness. The second claimant gave the complaint against one Udaiyar, but, after investigation, the police found out that it was the deceased, who rode the motorcycle at the time of accident.

8. R.W.1 was examined. Copy of the F.I.R was marked as Ex.P1. Copy of the observation mahazer was marked as Ex.P2. Post mortem report was marked as Ex.P3. M.V.I. report was marked as Ex.P4. The appellant sent a notice to the owner of the vehicle and copy of the same was marked as Ex.R2. The acknowledgement card was marked as Ex.R3. It is seen that in the observation mahazer-Ex.P2, it is stated that the place of occurrence is not a residential area or a commercial area. R.W.1 has deposed that the father of the deceased gave a complaint against one Udaiyar and on enquiry by the police that the said Udaiyar has given a statement that he did not drive the vehicle. Again, the police enquired the father of the deceased and he gave another statement stating that the vehicle was driven by the deceased himself. Both the alleged statements are given to the police and they were criminal case records and it is not necessary for this Court to consider the criminal Court records. The statement of the said Udaiyar, who was mentioned as an accused in the F.I.R cannot be given weightage. The alleged statement of the father of the deceased is in contradiction to his complaint. R.W.1 has admitted that he was not the



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investigation officer at the time of accident. In the above circumstances, the evidence of R.W.1 cannot be considered.

9. R.W.1 has deposed that the deceased was not having valid driving licence. Ex.R2 and Ex.R3 are insufficient to prove that the deceased was not having valid driving licence. When identity of the rider of the two wheeler itself is questionable, there is no use in the evidence of R.W.1 and Ex.R2 and Ex.R3, which are regarding the non-availability of the licence of the deceased.

10. The records relating to the closure of the F.I.R as 'mistake of fact' was not marked on the side of the appellant. R.T.O officials were not examined to prove that the deceased or the said Udaiyar were not having valid driving licence.

11. It is true that the claimant failed to examine any eye witness, at the same time, the Insurance Company also has not chosen to examine any eye witness and the said Udaiyar was not examined on the side of the Insurance company. Even in the observation mahazer, it is stated that the place of occurrence was neither a residential place nor commercial place. There may not be a possibility for an independent eye witness. In the above circumstances, it is decided that the non-examination of eye witness is not fatal to the case of the claimant. For the above said



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reasons, it is decided that the accident has happened due to the rash and negligent driving of the rider of the two wheeler.

12. On the side of the appellant, it is stated that the monthly income fixed by the Tribunal is excessive. The Tribunal fixed the monthly income as Rs.2,000/-, which is reasonable. The Tribunal deducted 1/3rd of the income for the own expenses of the deceased and the Tribunal has awarded Rs.2,500/- towards love and affection and Rs.2,000/- towards funeral expenses, which are all reasonable.

13. Considering the date of accident, it is decided that the compensation fixed by the Tribunal is reasonable. Hence, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal.

14. Hence, this Appeal is dismissed. No costs.

(i)The quantum of compensation awarded by the Tribunal is hereby confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.2,92,500/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the appellant / Insurance Company, the respondents 1 & 2 herein / claimants are permitted to withdraw their share amount with proportionate interest and costs as apportioned by the Tribunal, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any.

02.12.2022

Index : Yes/No
Internet : Yes/No
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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.



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- To
- 1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
 - 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.1408 of 2010

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