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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA (MD)No.924 of 2021

and

CMP.(MD)No.8706 of 2021

M/s.United India Insurance Co.Ltd,
No.312, Rajapalayam Road,
Sankarankovil Branch,
Sankarankovil,
Tirunelveli District.

... Appellant/2nd Respondent

Vs.

1. P.Meena

2. Minor.Pandi Selvi

3.Minor.Hari Prasath ...Respondents 1 to 3/Petitioners(Claimants)
(Minors 2nd and 3rd Respondents
represented by their Mother and Natural guardian,
1st Respondent herein)

4. M.Senthilkumar

5. P.Muthurak ...Respondent 4 & 5/Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow this Memorandum of Civil Miscellaneous Petition against Fair and Decretal Order dated 08.10.2020 made in M.C.O.P No.1025 of 2017 on the file of the Motor Accident Claims Tribunal (1st Additional District Court, Tirunelveli).

For Appellant : Mr.B.Rajesh Saravanan

For R1 to R3 : Mr.R.Krishnan

For R4 & R5 : No appearance

J U D G M E N T

The respondents 1 to 3 herein are the claim petitioners, first and third respondents before the Tribunal, who filed M.C.O.P.No.1025 of 2016, claiming compensation for the death of the husband of the first petitioner herein who is the son of the fourth respondent herein.

2.The claim petition proceeded on the basis that while P.W.2 was riding the vehicle, the deceased travelled as a pillion rider

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and it is a case that the omni car which is insured with the appellant/ Insurance company came from the behind and dashed against the vehicle, thereby P.W.2 had lost his balance and fell down on the road and the pillion rider sustained injury. Subsequently, he succumbed to the injuries and hence the claim petition.

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3.Before the Tribunal, they examined the driver as P.W.2 and marked Ex.P.1 to Ex.P.5. The insurance company has filed a counter statement denying the involvement of the car and also the negligence on the part of the rider of the two wheeler namely, P.W.2. To substantiate the said plea, they examined R.W.1 Dr.Baskaran who had given initial treatment to the injured when he brought to the Government Hospital and issued Ex.R1 the Accident Register and also certain points were elicited from the P.W.2, during cross examination.

4.The Tribunal has held that the involvement of the car insured with the appellant is proved and consequently held that they are liable and to pay compensation and hence this appeal has been filed by the insurance company, disputing the involvement of the omni car insured with them and also the quantum.

5.This appeal is filed challenging the award on the ground of liability as well as the quantum. After hearing the rival submissions and after going through the submissions of RW1, Dr.Baskaran, connected with the Accident Register- Ex.R1 which came into existence in the earlier point of time. It is specifically mentioned that an unknown two wheeler came from the opposite direction and dashed against the vehicle in which the injured had travelled, as deposed by PW.2 and the same was recorded. During the cross examination, the doctor, who had written Ex.R1, the Accident Register, has categorically stated that the involvement of an unknown vehicle, that too, a two wheeler from the opposite direction, it is found to be demolishing the case of the claim petitioner. During the cross examination of R.W.1, he has categorically stated that the injured is in a conscious state of mind to give statement.

6.The rider of the two wheeler, in which, the deceased has travelled as a pillion rider, P.W.2, Ananthan has categorically stated that an unidentified two wheeler came from the behind and caused the accident. However in the re-examination, he would state that since he sustained minor injury, he was not in a state of conscious mind.

7.I find that the re-examination is only to fill up the lacuna. In view of the clear evidence of R.W.1, who uphold that Ex.R1, the Accident Register, elicited during the cross examination of PW.2 Anandan, at first instance, both would show that an omni car which is insured with the appellant insurance company, is not involved in the accident. Hence, the insurance company is



exonerated from its liabilities.

8.The learned counsel for the respondents/ claimants would depose that P.W.3 is an yet another eye witness, has deposed about the involvement of the vehicle.

9.The rider of the vehicle is in a better position to depose rather than a third party. Hence I find that the evidence of P.W.3 is unreliable.

10.Accordingly, this Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Motor Accident Claims Tribunal (1st Additional District Judge, Tirunelveli).

2.The Record clerk, VR Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.R.KRISHNAN, Advocate (SR-9679[F] dated 03/03/2022)

+1 CC to M/s.B.RAJESH SARAIVANAN, Advocate (SR-9950[F] dated 04/03/2022)

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RD(28.03.2022) 3P 6C