



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2022

CORAM:

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.517 of 2017

and

C.M.P(MD)No.5573 of 2017

The Oriental Insurance Company Limited,
represented by its Branch Manager,
No.16, North Veli Street,
Madurai :Appellant/Third respondent

.vs.

1.Renganayaki

2.Pradeepa

3.Kala :Respondents 1 to 3/Petitioners
1 to 3

4.Ganesh Prabhu :4th Respondent/Ist Respondents

5.Natarajan :5th Respondent/2nd Respondent

6.Nagalingam :6th Respondent/4th Respondent
(Respondent 4 to 6 are remained exparte in the lower court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award made in M.C.O.P.No.523 of 2012, dated 23.12.2016, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Pudukkottai.

For Appellant :Mr.A.Ilango

For Respondents :Mr.R.Balakrishnan
1 to 3

For Respondents :Exparte
4 to 6

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.523 of 2012, dated 23.12.2016, on the file of the

<https://hcservices.ecourts.gov.in/hcservices/>



Motor Accidents Claims Tribunal-cum-Additional District Judge,
Pudukkottai.

2.The Insurance Company is the appellant herein. The respondents 1 to 3 are the legal representatives of the deceased Thirupathisamy, who died in a road traffic accident. He travelled as a pillion rider in a two wheeler owned by the fourth respondent herein, which is insured with the appellant herein. The offending vehicle two wheeler is driven by the fifth respondent owned by the sixth respondent herein.

3.Based upon the evidence adduced before the Tribunal, the Tribunal has come to the conclusion that the driver of the offending vehicle against whom Ex.P1-FIR and Ex.P8-charge sheet has been filed and has held that both the driver of the two wheelers are at composite negligence and accordingly fixed the liability at 60% on the opposite vehicle and 40% on the driver of the two wheeler in which the deceased travelled as a pillion rider. Since the driver of the two wheeler and opposite vehicle does not have any valid driving licence and further appears that the driver of the two wheeler is in an intoxicating state, as could be seen from the charge sheet. Based upon P.W.2-Occurrence witness and Ex.P1, Ex.P8 and Ex.P9 would prove the rash and negligence on the part of the driver. Composite negligence fixed by the Tribunal at 40% and 60% and hence, I find that the finding rendered by the Tribunal does not call for any interference, as the same does not suffer from any irregularity or illegality warranting interference in the appellate stage.

4.Insofar as the quantum of compensation is concerned, it appears to be just and reasonable.

5.As per Ex.R1, it is an Act-I Policy for the two wheeler bearing Registration No.TN 67 V 9414 and hence, as per the terms of the policy contained therein, it is only an Act-I Policy and it is for third party liability and own damage and it does not cover the pillion rider. In view of the settled proposition of law that when the policy covering the vehicle is an Act-I Policy, the occupier or the co-passenger is not entitled for the insurance coverage.

6.In view of the settled proposition of law as held in **Balakrishnan's case**, the Insurance Company cannot be fastened with the liability, since the appellant herein, being the insurer of TN 67 V 9414, wherein, the deceased had travelled in the said two wheeler as a pillion rider. In view of the nature of the policy, I have no hesitation to hold that the appellant/Insurance Company is not liable to make any payment to the claimants and the Insurance Company stands exonerated from its liability to pay compensation and the owner of the two wheeler is liable for the compensation. The amount deposited by the Insurance Company is permitted to be



withdrawn by them, in view of the above order.

7.With the above modification, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsn

To

1.The Motor Accidents Claims Tribunal-cum-
Additional District Judge,
Pudukkottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.R.BALAKRISHNAN, Advocate (SR-11454[F] dated 11/03/2022)

+1 CC to M/s.A.ILANGO, Advocate (SR-11128[F] dated 10/03/2022)

C.M.A(MD)No.517 of 2017 and
C.M.P(MD)No.5573 of 2017
10.03.2022

RD(28.03.2022) 3P 6C