



C.M.A(MD)No.239 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.09.2022

Pronounced on : 23.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.239 of 2022

M/s.United India Insurance Company Ltd.,
represented by its Divisional Manager,
Office at Door No.7-A,
West Veliveethi, Madurai - 625 001. ...Appellant / 2nd respondent

Vs

1.Ananthakumar

2.Ravi

3.Senthilkumar

4.Revathi

... Respondent Nos.1 to 4/
Petitioner Nos.1 to 4

5.Paraneetharan

... 5th respondents / 1st respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order of the Tribunal MACT cum Special District Judge, Madurai, made in M.C.O.P.No.77 of 2015, dated 15.03.2021 and allow the appeal.



C.M.A(MD)No.239 of 2022

For Appellant : Mr.C.Jawahar Ravindran
For R1 to R4 : Mr.N.Suthagar Nagarajan
For R5 : Mr.K.M.Thiruppathy

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.77 of 2015 Tribunal MACT cum Special District Judge, Madurai, dated 15.03.2021, on the file of the Special District Judge, MCOP cases, Madurai. Appellant herein is the second respondent, Respondents 1 to 4 are the claimants 1 to 4 and the fifth respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 21.10.2014, at about 22.45 pm., when the deceased Ayya ponnu was travelling in an unregistered two wheeler along the Anaiyur to Koodalpudhur main road, in a slow speed observing the road rules, the first respondent drove a Hero Honda vehicle bearing registration number TN 63 S 7588 in a rash and negligent manner, came from the opposite direction, dashed against the deceased. The deceased sustained injuries and he was taken to Vadamalaiyan Hospital. After getting first aid, he was admitted in Madurai Rajaji Hospital



C.M.A(MD)No.239 of 2022

as inpatient. On 27.10.2014, she succumbed to the injuries. The petitioners are his dependants and they claim a sum of Rs.15,00,000/- as compensation.

3.Brief substance of the counter filed by the first respondent is follows:

The manner of accident has to be proved by the petitioners. When the first respondent drove his vehicle, a cow crossed the road and dashed against the opposite vehicle. The scared cow dashed against the vehicle of the first respondent and both the rider and the pillion rider fell down from their vehicle in an unconscious stage. When they woke up, they were admitted in the Madurai, Meenakshi Mission Hospital, as inpatient. The police got their signature in blank papers. Only after getting discharged from the hospital, the first respondent came to know that the deceased was a retired Sub Inspector of police and his vehicle dashed against the cow and that a false criminal case was foisted against the first respondent utilizing the signed blank paper. The first respondent is not responsible for the occurrence.

4.Brief substance of the counter filed by the second respondent is as follows:

The manner of accident is wrongly stated in the petition. The vehicle was driven by one Kottaisamy who was not having a valid driving licence.



C.M.A(MD)No.239 of 2022

The vehicle was insured in the name of one Mari Krishnan. Then the vehicle was transferred to the name of the first respondent, but the policy was not transferred. The deceased was not having a valid driving licence. The vehicle of the deceased was not registered and the vehicle of the deceased was not insured. The deceased is responsible for the accident. The age, profession and income of the deceased are to be proved. The claim is excessive.

5.Three witnesses were examined and eight documents were marked on the side of the petitioner. Three witnesses were examined and two documents were marked on the side of the respondent. Two documents were marked as Ex.X1 and Ex.X2. The Tribunal awarded a sum of Rs.8,17,600/- as compensation to be paid by the second respondent.

6.Against the award, the second respondent filed this appeal on the following grounds:

The Tribunal erroneously fixed the liability on the appellant. The Tribunal wrongly held that the rider of the Hero Honda Splendor vehicle was having valid driving licence at the time of accident. Ex.R1 is the driving licence of the owner of the vehicle and not the rider of the vehicle. The Tribunal failed to consider the evidence of R.W.1 and Ex.X2.



C.M.A(MD)No.239 of 2022

7. Brief substance of the counter filed by the fifth respondent is as follows:

The deceased father lost his control due to the uncertainty of the crossing of a cow. He dashed over the cow and due to the force, the cow fell over the fifth respondent's that the fifth respondent fell unconscious and he woke up only at the hospital. The rider of the two wheeler was having valid driving licence bearing No. II DFL 058 001610/04. Notice was sent to Kottaisamy and the documents were submitted as Ex.R1 and R2. The deceased was a retired police man and the claimants pressurized the police to register a case against the fifth respondent and the signed blank papers was misused by the police officers.

8. On the side of the appellant it is stated that the rider of the two wheeler namely Kottaisamy was not having valid driving licence. The appellant has taken sufficient steps to prove the non-availability of the driving licence. The owner of the vehicle was given notice for producing the driving licence. RTO has filed a report that fine was imposed for permitting a person to ride the two wheeler without driving licence and the document was marked as Ex.X2. R.W.1, has deposed that the rider of the vehicle did not turn up and



C.M.A(MD)No.239 of 2022

only the driving licence of the owner was marked as Ex.R1. R.W.2 has admitted that the rider of the vehicle was not having valid driving licence. R.W.3, an officer of the insurance company has deposed that the driver was not having valid driving licence. Even then, the Tribunal has wrongly held that the rider was having valid driving licence.

9. On the side of the respondent it is stated that the driving licence of the rider Kottaisamy was not produced before the tribunal, since Kottaisamy travelled only as a pillion rider. Since the scary cow dashed against the motorcycle, both the rider and the pillion rider fell down and they sustained injuries.

10. R.W.3 is an official of the appellant. In the First Information Report, the name of Kottaisamy was not mentioned as the rider of the two wheeler. Copy of the charge sheet was not filed. R.W.1 has deposed that he is having valid driving licence. A perusal of Ex.R1 reveals that a copy of the driving licence of Kottaisamy was also annexed with Ex.R1. This Court called for a report from the RTO wherein it is clear that Kottaisamy was having driving licence valid from 03.03.2004 till 02.03.2024.



C.M.A(MD)No.239 of 2022

11.From the evidence of R.W.1 and from Ex.P1, it is clear that the Kottaisamy was the rider of the two wheeler at that time. From Ex.R1 and from the report received from the RTO office, it is clear that the driving license issued to the Kottaisamy at the time of accident is valid.

12.The appellant has not raised any grounds regarding the quantum. The only ground raised in the appeal is regarding the driving licence of the rider of the first respondent's vehicle. From the records, it is clear that both the first respondent and the said Kottaisamy were having valid driving licence. The law is well settled that the insurance policy goes along with the vehicle. Hence, if the vehicle was transferred from the name of the first respondent, the insurance policy is presumed to be transferred to the subsequent owner.

13.Hence, for the reasons stated above, it is decided that there is no grounds sufficient enough to interfere with the order of the Tribunal. Hence it is decided that the quantum fixed by the Tribunal is hereby confirmed and this Civil Miscellaneous Appeal is dismissed.



C.M.A(MD)No.239 of 2022

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14. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed at Rs.8,17,600/- (Rupees Eight Lakh Seventeen Thousand and Six hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant /Insurance company, is directed to deposit the entire compensation of Rs.8,17,600/- (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 proportionate costs to the credit of M.C.O.P.No.77 of 2015 Tribunal MACT cum Special District Judge, Madurai, within a period of eight weeks from the date of receipt of a copy of this order

(iii) On such deposit being made by the appellant/insurance company, the respondents 1 to 4 herein / claimants are permitted to withdraw their share of Rs.2,04,400/- (Rupees Two Lakhs Four Thousand and Four Hundred only) **each**, along with proportionate interest as apportioned by the Tribunal.

23.12.2022

Index: Yes / No

Internet : Yes / No



C.M.A(MD)No.239 of 2022

pnn

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To

- 1.The MACT cum Special District Judge, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.239 of 2022

R. THARANI, J

pnn

C.M.A(MD)No.239 of 2022

23.12.2022