



C.M.A.No.3820 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3820 of 2011

The New India Assurance Co. Ltd.,
Parimalam Complex, 11, E.V.N. Road,
Erode – 11.

...Appellant

Vs.

1. Sivakami
2. Minor Sellakumar
3. Minor Roja
Minors rep. by their Next Friend and Mother Sivakami
4. Guruvayammal
5. Seeranga Gounder
6. Gopalakrishnan
7. C.Krishnan
8. R.Seerangan
9. T.R.Deivasigamani

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 as against the Judgment and decree made in M.C.O.P.No.995 of 2003 dated 28.11.2005 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Erode.



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For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.S.Thangavel, for R1 to R3
: R4 & R5 – Died
: R6 to R9 – Exparte
vide order dated 12.10.2022

JUDGEMENT

Challenging the Judgment and decree dated 28.11.2005 made in M.C.O.P.No.995 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Erode, the insurer is before this Court.

2. The case of the claimants is that, on 22.10.2002, when the deceased was riding as a pillion rider in the motor cycle bearing Reg.No.TN-33-C-5211 driven by the 8th respondent, the motor cycle bearing Reg.No.TN-36-E-7558 driven in a rash and negligent manner came from the opposite direction and dashed against the motorcycle driven by the 8th respondent as a result of which, the deceased was thrown out of the vehicle and dashed against the Palmyrah tree, while the 8th respondent sustained injuries and inspite of the treatment given to the deceased, the deceased succumbed to the injuries. Aggrieved by the death of the deceased, the claim petition has been filed by the claimants



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claiming compensation of Rs.11,35,869/-. After contest the Tribunal, vide impugned judgment awarded a compensation of Rs.4,49,369/-. Aggrieved by the said order, the appellant has preferred this appeal, questioning the liability of the insurer.

3. Learned counsel for the appellant/insurance company submitted that while it is the case of the claimants that the deceased was riding as a pillion rider, however, the medical records which have been marked before this Court by filing CMP.No.20443 of 2023 reveal that, the deceased was driving the vehicle and therefore the FIR which shows the deceased to be riding as a pillion rider is clearly a concocted FIR, which has been registered for the purpose of claiming compensation at the hands of the appellant/insurance company. The said fact has not been properly appreciated by the Tribunal and therefore, the compensation awarded on the basis of the said materials is wholly erroneous and the same deserves to be set aside.

4. Per contra the learned counsel appearing for the respondents 1 to 3/ claimants submitted that the case registered in Crime No.387 of 2002 against



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the 6th respondent/driver of the offending vehicle resulted in the conviction of the driver of the offending vehicle, which clearly shows that the driver of the offending vehicle had driven the vehicle in a rash and negligent manner. It is the further submission of the learned counsel that, the FIR registered clearly reveals that the deceased was travelling as the pillion rider along with the 8th respondent. It is the major contention of the learned counsel that the stand of the appellant that it was the deceased who was driving the vehicle on the basis of the documents which have been marked before this Court as Exs.B2 to B5, merely records the deceased travelling in the vehicle and does not say that it was the deceased who was driving the vehicle. Therefore, importing an interpretation to what has been given in the accident register, which has been marked as Exs.B2 & B3, in the absence of examining the doctor who has recorded the accident register cannot be a ground to negative the claim of the claimants. Therefore, on the basis of the said document, the FIR cannot be found fault with. The Tribunal has considered all the aforesaid aspects and had recorded a clear finding in favor of the claimants which does not warrant any interference. Accordingly, he prayed for dismissal of this appeal.



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5. Heard learned counsel for the appellant as well as the respondents 1 to 3 and perused the material documents placed on record.

6. While there is no dispute with regard to the accident, however, the manner of the accident is disputed. The claimants claim that the accident had happened due to the rash and negligent driving of the 6th respondent and to substantiate the said contention, reliance is placed on Ex.A6, charge sheet and Ex. A7, the judgment in C.C.No.127 of 2003 which pertains to Crime No.387 of 2002. In the said judgment, the 6th respondent has been convicted for the offence under Section 304(A) of IPC. If really the 6th respondent was not the aggressor driving the offending vehicle, definitely the 6th respondent would have resisted the case by submitting requisite evidence to get himself exonerated from the said case. The fact that the 6th respondent has been convicted of the offence clearly shows that, the accident had happened due to the rash and negligent driving by the 6th respondent.

7. Insofar as the contention relating to variance between the FIR, the evidence of PW.1 and the Accident registers, Ex.B2 and B-3 marked before this



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Court with regard to the status of the deceased whether being the driver of the two wheeler or the pillion driver is concerned, while the FIR and the evidence of PW.1 and P.W.2 details the deceased to be the pillion rider, it is sought to be canvassed otherwise by the appellant by placing reliance upon Ex.B-3, which is the accident register relating to the injured/8th respondent. The appellants lay emphasis on the recordings made in the accident register Ex.B-2 wherein it is shown as "*RTA-While riding in a two wheeler said to have hit against a tree*" and in Ex.B-3 as "While travelling in a two wheeler (pillion rider) said to have hit against a tree" and from that the appellant wants this Court to draw the inference that it was the deceased who was driving the vehicle. However, what is mentioned in the accident register is "RTA-While riding in a two wheeler said to have hit against a tree". Further, the 8th respondent/injured, who has been examined as P.W.2, had deposed before the Court that the deceased was the pillion rider and, therefore, it is to be stated that the deposition before the Court would have more persuasive and evidentiary value than a statement, alleged to have been made to a doctor. Further, the above recording, recorded by a doctor, who has not been examined cannot be the basis to infer that the deceased was driving the vehicle. If at all the said aspect has to be appreciated in favor of the



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appellant, necessarily the person who gave the statement to the doctor, viz., P.W.2, ought to have been examined by putting pointed questions, however, no contra testimony had been elicited from P.W.2 to discredit the other evidences. Therefore, in the absence of the oral testimony of P.W.2 being discredited in any manner, Ex.B-3 cannot be the basis to discredit the testimony, as no contradiction has been elicited in the testimony of P.W.2. Therefore, it can be safely concluded that the deceased was riding as a pillion rider in the two wheeler driven by the 8th respondent.

8. Once this Court comes to the conclusion that the deceased was traveling as a pillion driver in the vehicle driven by the 8th respondent, who was examined as PW.2, who has clearly spoken that he was driving the vehicle and the deceased was accompanying along as the pillion rider and due to the accident the deceased was thrown out from the vehicle and dashed against the Palmyrah tree and succumbed to the injuries and the rough sketch, marked as Ex.A13 also clearly establishes the existence of a Palmyrah tree in the accident spot, necessarily this Court has to accept the version of PW.1 & 2 with regard to



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the manner of the accident and the manner in which the deceased sustained the injuries.

9. The evidence of RW.1 would not in any manner advance the case of the appellant and in such a backdrop, the Court below has properly construed all the evidence both oral and documentary placed before it and has come to the conclusion and awarded a compensation to the claimants which cannot be said to be illegal or perverse.

10. Further, the quantum of compensation awarded by the Tribunal under the various heads including the head under “Loss of income” is also based on the ratio laid down by the Apex Court in regard to compensation to be awarded under the specific head. The compensation being not excessive, the same does not warrants interference of this Court.

11. For the reasons aforesaid, the appeal stands dismissed, confirming the impugned award dated 28.11.2005 passed by the Tribunal in M.C.O.P.No.995 of 2003. The appellant/insurance company is directed to deposit the



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compensation awarded by the Tribunal to the credit of M.C.O.P.No.995 of 2003 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents 1 to 3/claimants through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

12.10.2023
(3/3)

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

1. The Motor Accidents Claims Tribunal (Principal District Judge) at Erode.
2. The Section Officer, V.R.Section, High Court, Madras.

9/15



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12.10.2023

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C.M.A.No.3820 of 2011

C.M.P.No.20443 of 2023

in

C.M.A.No.3820 of 2011

M.DHANDAPANI, J.

This petition has been filed seeking to receive the certified copies of

- 1)Medico-Legal Case-Intimation to Police issued by Lotus Apollo Hospitals, Erode dated 22.10.2022 of the deceased Mohan, the rider of the motorcycle,
- 2)Medico-Legal Case-Intimation to Police issued by Lotus Apollo Hospitals, Erode dated 22.10.2022 of Mr.Sreerangan, the pillion rider of the motorcycle,
- 3)The Accident/Injury Report of Mr.Sreerangan issued by the above mentioned Lotus Apollo Hospitals, Erode and 4)The copy of the Charge sheet as additional documents in the above appeal filed against the order passed in M.C.O.P.No.995 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Erode.

2. Heard the learned counsel for the petitioner.

3. Mr.S.Thangavel, learned counsel for the respondents 1 to 3 has no objection for this petition being ordered.

4. Being satisfied with the reasons stated in the affidavit filed in support



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of the petition, this petition is **ordered** and the additional documents are marked as follows :-

<i>S.No.</i>	<i>Documents</i>	<i>Marked as</i>
1	Medico-Legal Case-Intimation to Police issued by Lotus Apollo Hospitals, Erode dated 22.10.2022 of the deceased Mohan, the rider of the motorcycle	Ex.B.2
2	Medico-Legal Case-Intimation to Police issued by Lotus Apollo Hospitals, Erode dated 22.10.2022 of Mr.Sreerangan, the pillion rider of the motorcycle	Ex.B.3
3	The Accident/Injury Report of Mr.Sreerangan issued by Lotus Apollo Hospitals, Erode	Ex.B.4
4	The copy of the Charge sheet	Ex.B.5

12.10.2023
(1/3)

skt

Copy to:

The Section Officer,
VR Section, Madras High Court.

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C.M.P.No.20443 of 2023
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C.M.P.No.23627 of 2023



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in
C.M.A.No.3820 of 2011

M.DHANDAPANI, J.

This petition has been filed seeking to receive the certified copy of the judgment dated 08.05.2012 made in C.C.No.500 of 2010 on the file of the Court of the Judicial Magistrate No.3, Erode as additional evidence in the above appeal filed against the order passed in M.C.O.P.No.995 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Erode.

2. Heard the learned counsel for the petitioner.

3. Mr.M.Krishnamoorthy, learned counsel for the 1st respondent has no objection for this petition being ordered.

4. Being satisfied with the reasons stated in the affidavit filed in support of the petition, this petition is **ordered** and the additional document namely the certified copy of the judgment dated 08.05.2012 made in C.C.No.500 of 2010

M.DHANDAPANI, J.



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on the file of the Court of the Judicial Magistrate No.3, Erode is marked as
Ex.A.13.

12.10.2023
(2/3)

skt

Copy to:

The Section Officer,
VR Section, Madras High Court.

C.M.P.No.23627 of 2023
in
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