



C.M.A.No.1230 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1230 of 2018

and

C.M.P.No.10014 of 2018

M/s.Iffco-Tokio General Insurance Co.Ltd.,
No.148, Vinayaga Complex,
2nd Floor, Opp.Ganesh TVS Showroom,
Erode – 638 011.

... Appellant

v.

1.Margret
2.Manimaran
3.Minor Manojkumar
rep.by his next friend
mother Margret.

4.Jeevanadham

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and decree dated 25.01.2018 made in M.C.O.P.No.64 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode.



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For Appellant : Ms.P.Vijayalakshmi
for Mr.S.Arun Kumar

For Respondents : Mr.S.Kaithamalai Kumaran
for R1 to R3
No appearance for R4

J U D G M E N T

Challenging the Award dated 25.01.2018 passed in M.C.O.P.No.64 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode, M/s.Iffco-Tokio General Insurance Company Limited has filed the above Civil Miscellaneous Appeal.

2. For the purpose of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The brief facts of the case are as follows:

(i) On 12.07.2015 at about 01.00 p.m., when the deceased Kumar, who was working under Aachi Masala Agent (Ravi), was riding his Company Motor Cycle TVS XL heavy duty bearing Registration No.TN 33 BB 4225 from P.S park to his home in the North to South direction, near



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Marapalam RNS Boots, a Hero Honda Splender Plus Bike bearing Registration No.TN 33 AR 4090 came in the South to North direction, driven by the first respondent in a rash and negligent manner, hit against the deceased. Due to the said impact, the deceased sustained grievous injuries including the head injury. Immediately, he was taken to Government Hospital, Erode for first-aid and then, he was shifted to Salem Kumaramangalam Government College Hospital for further treatment. Due to the head injury, he lost his consciousness and later he died on 29.07.2015.

(ii) Seeking compensation against the owner of the two wheeler bearing Registration No.TN 33 AR 4090 and its insurer M/s.Iffco-Tokio General Insurance Co.Ltd., the legal heirs of the deceased filed M.C.O.P.No.64 of 2016, claiming compensation of Rs.10,00,000/-.

4. Resisting the claim petition, the appellant/Iffco-Tokio General Insurance Co.Ltd. filed the counter statement disputing that the vehicle bearing Registration No.TN 33 AR 4090, which was not involved in the accident. At the time of accident, the deceased was in an inebriated



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mood and had fallen down from his vehicle and sustained injuries. The claimants have planted the alleged offending vehicle in order to make false claim and the Police have laid a charge sheet against the driver-cum-owner of the offending vehicle. That apart, they had disputed that the owner and insurer of the two wheeler i.e. TVS XL bearing Registration No.TN 33 BB 4225, have not been impleaded as parties to the proceedings and also they had disputed the other claims made in the claim petition.

5. To substantiate the case on the side of the claimants, the first claimant examined herself as P.W.1 and Magudeswaran, who was an eye witness, was examined as P.W.2 and Ex.P1 to Ex.P7 were marked. On the side of the Insurance Company, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R4 were marked.

6. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.5,15,600/-, along with interest at 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs and further, the



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Tribunal directed the appellant/Insurance Company to deposit the entire compensation. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S.No.	<i>Compensation awarded by the Tribunal under the heads</i>	<i>Amount in Rs.</i>
1.	Loss of earning	4,35,600
2.	Transport Expenses	5,000
3.	Funeral Expenses	15,000
4.	Damages to clothing and articles	5,000
5.	Loss of Estate	15,000
6.	Loss of Consortium	40,000
	Total	5,15,600

7. Challenging the above award of compensation, the appellant/Iffco-Tokio General Insurance Co.Ltd., has filed the present Civil Miscellaneous Appeal.

8. The learned counsel for the appellant/Insurance Company submitted that the alleged offending vehicle was planted only for the purpose of claiming compensation from its owner. However, the said



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vehicle was not at all involved in the accident. The copy of the accident register was marked as Ex.R1, wherein it was mentioned that the deceased had sustained injuries due to self-fall from his heavy duty motor cycle in an inebriated mood. Based on the statement given by P.W.1/wife of the deceased, the Accident Register/Ex.R1 was recorded by the Doctor/R.W.1. Further, the Doctor, who examined the deceased, has stated that at the time of accident, the deceased was in an inebriated mood. He further submitted that First Information Report/Ex.P1 was registered on the next day and there is every possibility of substituting another vehicle, in order to make an untenable claim. P.W.1/wife of the deceased had not accommodated the deceased at the time of accident and she has got information over phone by one Karuppan and that she went to the hospital. At the time of accident, the deceased was not possessing any valid driving licence and the deceased vehicle got several damages, but there was no damage to the offending vehicle, which was established by the evidence of R.W.2. He further submitted that P.W.2, who was stated to be an eye witness was actually not an eye witness and that the actual eye witness was not examined.



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9. Since the claimants have not proved that it is only the offending vehicle which is involved in the accident and in the absence of the same, the Tribunal had fixed the liability erroneously on the appellant, which warrants interference by this Court.

10. The learned counsel for the respondents 1 to 3/claimants submitted that the Doctor/R.W.1, who examined the deceased had not taken any blood sample to prove, as to whether the deceased actually consumed alcohol at the time of accident and also as to what is the percentage of alcohol mixed in the blood. Without any clinical proof, R.W.1 has stated that the deceased consumed alcohol at the time of accident. He further submitted that though one Karuppan, who was stated to be an eye witness to the accident as per F.I.R., was not examined. Further, the appellant has not disputed the presence of P.W.2 and therefore, mere non-examination of one Karuppan, is not fatal to the claim petition. Further, the claimants have proved that, at the time of accident, the deceased was possessing valid driving licence and due to rash and negligent driving of the offending vehicle, the accident had happened and Ex.P1/F.I.R and Ex.P2/charge sheet



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were registered against the owner of the alleged vehicle/fourth respondent herein. The Tribunal has rightly appreciated the entire oral and documentary evidence and fixed liability on the fourth respondent. As the insurer of the said alleged vehicle, the appellant/Insurance Company is liable to indemnify the owner of the vehicle to pay compensation to the claimants. Ultimately, the learned counsel for respondents 1 to 3/claimants stated that there is no merit in the appeal and the same is liable to be dismissed.

11. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 and also perused the entire materials available on record.

12. As against the fourth respondent herein, though substituted service by way of newspaper publication was also effected, none appeared for him.

13. This Court, as an appellate Court, and also being a fact-finding Court, had analysed the issue independently and re-appreciates the evidence to render an independent finding.



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14. The accident is admitted and due to the accidental injuries, the deceased died, which was also admitted. The offending vehicle was insured with the appellant/Insurance Company, which is also not in dispute. The only question that has to be considered now by this Court is regarding the liability of the appellant/Insurance Company fixed by the Tribunal.

15. Admittedly, the deceased died due to accidental injuries. According to the appellant/Insurance Company, the deceased had sustained injuries, due to self-fall from his motorcycle. The alleged vehicle bearing Registration No. TN 33 AR 4090 was planted, only in order to make false claim. As per the evidence of R.W.2, the alleged vehicle was not damaged at the time of accident, which clearly shows that the alleged offending vehicle was not involved in the accident. The Doctor, who made entries in the public document Ex.R1/A.I.R copy, has no necessity to make entries against the claimants. Further, one Karuppan, who was stated to be the eye-witness to the accident, as per Ex.P1/F.I.R, was not examined and the information given by him over phone to P.W.1, was also not proved. During the cross examination, P.W.1/wife of the deceased has stated that she had



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not seen the occurrence and she was informed about the said incident by one

Karuppan and therefore, she is not an eye witness to the occurrence.

Further, P.W.2, who was stated to be the eye witness, has not placed any material particulars regarding his presence at the time of accident. Though P.W.2 has deposed that he is aged about 72 years, while he was riding his auto near Marappalam, he had seen a person riding TVS XL bearing Registration No.TN 33 BB 4225 ahead of him and a Hero Honda Splendor Plus bike bearing Registration No.TN 33 AR 4090 coming in the opposite direction, had hit against the TVS motorcycle. However, P.W.2, while driving the said auto did not possess any identity card and driving licence and R.C. book of the Auto and the persons, who have travelled in the auto, were also not examined. Further, P.W.2 is the planned witness and without any iota of documents to prove the presence of P.W.2, the claimants have produced P.W.2 as the eye witness. The claimants have not proved that, at the time of accident, the deceased was cautious while riding the vehicle and the accident happened only due to rash and negligent driving of the driver-cum-owner of the offending vehicle, the fourth respondent herein. In the case on hand, all the documentary evidence filed by the claimants, are



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contrary. Further, Ex.P1/F.I.R and Ex.R1/A.I.R copy shows that P.W.1 is not an eye witness and P.W.2 has not directly or indirectly participated in the accident.

16. It is settled preposition of law that in criminal cases, the prosecution has to prove its case beyond reasonable doubt, but in civil cases the person, who filed the case, has to prove the case based on preponderance of probabilities.

17. This Court, as an appellate Court has rightly re-appreciated the entire oral and documentary evidence and found that the claimants have not proved that the accident had occurred only due to rash and negligent riding of the driver-cum-owner of the fourth respondent's vehicle bearing Registration No.TN 33 AR 4090, which was insured with the appellant/Insurance Company. Hence, the fourth respondent herein and appellant/Insurance Company are not liable to pay compensation. Hence,



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the findings given by the Tribunal are perverse and the same are liable to be set aside and appeal has to be allowed.

18. In view of the above discussion, this Civil Miscellaneous Petition is allowed and the Award and decree dated 25.01.2018 made in M.C.O.P.No.64 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode are liable to be set aside. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

19. The appellant/Insurance Company is permitted to withdraw the amount, if any, already deposited before the Tribunal.

21.08.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accidents Claims Tribunal,
Special District Judge,
Erode.

2. The Section Officer,
V.R. Section,
High Court, Madras.



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P.VELMURUGAN, J.

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