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C.M.A. No.1318 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1318 of 2018

M/s.Oriental Insurance Company Limited
Motor Third Party Claims
No.115 & 116, Prakasam Salai,
Broadway, Chennai - 108

... Appellant

Vs.

1. M.Saratha
2. Kokilan @ Tharunraj (minor),
(Rep. by mother and next friend Saratha)
3. Mallika
4. M.Duraisamy (Died)
5. Harikirshnan
6. Velayutham
7. Muthu

... Respondents

R3(already on record)

(Respondents 5 to 7 are B/r as LRs. of R4 as per order
of this Court in CMP No.6960 of 2023 dated 14.09.2023)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the decree and judgment dated 15.03.2018, made in MCOP No.3207 of 2015, on the file of the Motor Accident Claims Tribunal (Chief Court of Small Causes) at Chennai.



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For Appellant : Mr.K.Vinoth
For R4 : Died
For R5 to R8 : No Appearance
For R1 to R3 : M/s.KSuryanarayanan

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the decree and judgment dated 15.03.2018, made in MCOP No.3207 of 2015, on the file of the Motor Accident Claims Tribunal (Chief Court of Small Causes) at Chennai.

2. Before the Tribunal, the respondents 1 to 3 herein are the claimants. The 4th respondent and the appellant herein are the owner and insurer of the offending motorcycle bearing Regn. No.19-X-4734.

3. The case of the claimants is that on 23.01.2013 at about 19.20 hrs., while the deceased was travelling as a pillion rider in the motorcycle bearing Regn. No.19-X-4734, on the GST Salai, near Balaji Rice Mill, Karunkuzhi, the rider of the said motorcycle rode the motorcycle in a very rash and negligent manner and dashed against another motorcycle bearing Regn. No.TN-19-6422. Thereby, the pillion rider of the motorcycle bearing



Regn. No.19-X-4734, fell down and sustained head injuries and died in the Government Hospital, Chennai, on 27.01.2013.

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4. The claimants who are the wife, minor son and mother of the deceased, filed a claim petition in MCOP No.3207 of 2015, on the file of the Motor Accident Claims Tribunal (Chief Court of Small Causes) of Chennai, claiming compensation of Rs.10,00,000/- for the death of the deceased.

5. In order to substantiate the claim, on the side of the claimants, the 2 witnesses were examined as P.W.1 and P.W.2 and 10 documents were marked as Ex.P.1 to Ex.P.10. On the side of the respondents, no oral and documentary evidence were let in.

6. The Tribunal after hearing the arguments and considering the materials, awarded compensation of Rs.12,12,400/- with proportionate costs and interest at 7.5% per annum from the date of petition i.e.06.04.2015 to till date of realisation and directed the 2nd respondent/Insurance Company to pay the compensation.

7. Challenging the Award passed by the Tribunal, the insurer of



the offending motorcycle, has filed the present appeal.

8. The learned counsel for the appellant/Insurance Company would submit that the offending motorcycle bearing Regn. No.19-X-4734, belongs to the 4th respondent herein. Since the 4th respondent died, his legal heirs were impleaded as respondents 5 to 7 and that one of the claimants namely Mallika is also the legal heir of the 4th respondent. The 4th respondent has allowed one Jagan to ride the said motor cycle in which, the deceased has travelled as a pillion rider and sustained injuries in the accident. The rider of the said motorcycle namely Jagan did not possess a valid driving licence and without a valid driving licence, he was allowed to ride the motorcycle by the 4th respondent herein, which is a clear violation of policy condition. Since the owner of the vehicle who is the insured of the appellant/Insurance Company violated the policy condition, the Tribunal ought to have ordered pay and recovery. But the Tribunal failed to consider the same and fixed the liability on the appellant/ Insurance Company. Therefore, the present appeal is filed.

9. The learned counsel for the claimants/respondents 1 to 3



would submit that the accident had occurred due to the rash and negligent riding of the rider of the motorcycle bearing Regn. No.19-X-4734. As far as the pillion rider is concerned, he is a third party to the contract of the insurer. Therefore, the dependents of the pillion rider are entitled to get compensation. FIR was also registered only against the rider of the said motor cycle and therefore, the claimants who are the dependents of the deceased pillion rider are entitled to get compensation. The Tribunal rightly awarded compensation since the pillion rider is a third party to the Insurance. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

10. Heard and perused the materials available on record.

11. Admittedly, 2 two wheelers are involved in the accident. The accident had occurred due to the rash and negligent riding of the rider of the 4th respondent's vehicle namely Jagan. As a result, the deceased who travelled along with the said Jagan as a pillion rider, died. Therefore, the claimants filed a claim petition.

12. Before the Tribunal, the owner of the said two wheeler who was



shown as a 1st respondent, remained ex-parte. As per the appellant/Insurance Company, during pendency of the claim petition i.e. 05.03.2017 itself, the owner of the said two wheeler/4th respondent herein, died. Though the 4th respondent's legal representatives/respondents 5 to 7 were served and names also printed, non appeared. One of the claimants namely Mallika, is also the legal representative of the 4th respondent who is none other than his wife.

13. There is no dispute that at the time of accident the vehicle was insured with the appellant/Insurance Company. Therefore, the appellant/Insurance Company is liable to pay the compensation. However, at the time of accident, the rider of the offending motor cycle did not possess a valid driving licence and the claimants have also not proved contra to the same. Therefore, it is a clear violation of policy condition.

14. As an appellate Court and final Court of fact finding, this Court, while re-appreciating the entire evidence, finds that since the owner of the said motorcycle/4th respondent has violated the policy condition by allowing a person who is not possessing a valid driving licence, to ride his motor cycle, the owner of the motorcycle/4th respondent is liable to pay the compensation.



However, since the vehicle was insured at the time of accident and the insurance was also covered as far as the pillion rider/3rd party is concerned, the Insurance Company has to pay the compensation to the claimants at the first instance and they can recover the same from the owner of the said motor cycle/4th respondent at a later point of time, for the violation of policy condition.

15. Accordingly, the appellant/Insurance Company is directed to pay the compensation to the claimants as awarded by the Tribunal at the first instance and they can recover the same from the owner of the offending motor cycle/4th respondent herein at a later point of time, for the violation of policy condition in the manner known to law.

16. With the above modification, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to the costs.

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(2/2)

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



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1.The Motor Accident Claims Tribunal
(Chief Court of Small Causes), Chennai.

2.The Section Officer,
VR Section, High Court, Madras.



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P.VELMURUGAN. J.

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