



C.M.A. No. 1478 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1478 of 2021
and C.M.P. No.7742 of 2021

The Branch manager,
Reliance General Ins. Co. Ltd.,
1st Floor, Geejay Arcade, 141/71,
Thiruvankataswamy road,
(West) R.S. puram,
Coimbatore- 18.

... Appellant / III Respondent

Vs.

- | | | |
|----|---|-----------------------------------|
| 1. | T. Velumani | ... I Respondent / I Petitioner |
| 2. | L. Thirumoorthy | ... II Respondent / II Petitioner |
| 3. | G. Muruga Thangapandian | ... III Respondent / I Respondent |
| 4. | R. Sangareshwari | ... IV Respondent / II Respondent |
| 5. | M. Nandakumar | ... V Respondent / IV Respondent |
| 6. | The Managing Director
c/o TNSCTC
37, Mettupalayam road,
Coimbatore | ... VI Respondent/ V Respondent |

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 11.03.2020 passed in M.C.O.P. No. 113 of 2018 on the file of the IV Additional District



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Judge, Motor Accident Claims Tribunal, Coimbatore.

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For Appellant : M/s. C. Bhuvanasundari
For RR 1 to 2 : M/s. C. Prabakaran
For RR 3 to 6 : No appearance

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and Decree passed in M.C.O.P. No. 113 of 2018, dated 11.03.2020 on the file of the IV Additional District Judge, Motor Accident Claims Tribunal, Coimbatore, wherein the Tribunal has awarded a compensation for a sum of Rs.18,44,400/- along with interest @ 7.5% per annum from the date of petition till the date of realization.

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

3. The case of the claimants is that on 09.07.2017, at about 21:30 hours on the Kovai to Sathy Road, Kovilpalayam Thudiyalur Junction, the deceased Sivaprakasam was riding his bike bearing



Registration No.TN-40-L-3981 from south to north direction. At the same time, the first respondent was riding his TVS Scooty bearing Registration No.TN-39-CZ-6169 from west to east direction, a Government Transport bus bearing Registration No. TN-38-N-2247 driven by the fourth respondent from north to south direction, and both the vehicles have dashed on the bike of the deceased, caused grievous head injury to him. Due to the impact, deceased died on the spot and the parents of the deceased have come forward with claim petition seeking compensation for a sum of Rs.30,00,000/- from the respondents under section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the rider, the second respondent is the owner and the third respondent is the insurer of the TVS Scooty bearing Registration No. TN-39-CZ-6169. The owner of the scooty disputed the claim and contended that the deceased was riding his bike in a rash and negligent manner without following traffic rules and dashed against the first respondent's TVS Scooty and both the riders of the vehicle fell down and sustained lacerated injuries and while they were trying to remove their vehicle from the road, a TNSTC bus bearing Registration No. TN-38-N-



2247 came from North to South direction in a rash and negligent manner dashed against the deceased, due to which the deceased sustained grievous head injury and died on the spot.

5. The first respondent also disputed the claim and denied that he was riding his bike in a rash and negligent manner.

6. The third respondent, who is the insurer of the TVS Scooty bearing Registration No. TN-39-CZ-6169 has filed a counter and contended that the rider of the TVS Scooty has no valid driving licence to drive the vehicle. Due to the rash and negligent on the part of the driver of the TNSTC bus and the deceased, the accident occurred. The compensation claimed is on the higher side, hence prays to dismiss the claim petition.

7. The fifth respondent - Transport Corporation has filed a counter and submitted that on 09.07.2017, the fourth respondent, who is the driver of the TNSTC bus, driving the bus bearing Registration No. TN-38-N-2247 in its trip from Annur to Ganthipuram with much care by observing the traffic rules and regulations and while the bus was nearing



Kovilpalayam post office. The rider of the TVS scooty rode the two wheeler in negligent manner, dashed on the bus. A criminal case was registered against the rider of the TVS Scooty bearing Registration No. TN-39-CZ-6169 and the driver of the corporation bus is only a formal party and not liable to pay any compensation to the claimants. Hence, prays to dismiss the claim petition.

8. Based on the evidence placed on record, the Tribunal in point nos.1 and 2, has held that the rash and negligence on the part of the first respondent - rider of the TVS Scooty bearing Registration No. TN-39-CZ-6169 is responsible for the accident and the respondents 1 to 3 are jointly and severally liable to pay the compensation to the claimants. In point No.3, the Tribunal has quantified and granted a compensation for a sum of Rs.18,44,400/- along with interest @ 7.5% per annum from the date of petition till the date of realization to the claimants.

9. Aggrieved over the award of compensation, in favour of the claimants and challenging the liability fixed to indemnify the owner of the TVS Scooty bearing Registration No. TN-39-CZ-6169, this appeal has been



filed by the third respondent - Insurance Company/ appellant herein.

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10. The learned counsel appearing for the appellant - insurance company submitted that the insurance company has specifically taken the stand that the rider of the offending TVS Scooty bearing Registration No. TN-39-CZ-6169 has no valid driving licence at the time of accident and this was not properly considered by the Tribunal and directed the insurance company to indemnify the owner of the offending vehicle. The learned counsel also submitted that the deceased was not wearing helmet at the time of accident, hence contributory negligence has to be fixed on the part of the deceased and the quantum of compensation fixed is also on the higher side, hence prays to set aside the award of the Tribunal.

11. The learned counsel appearing for the claimants has submitted that the insurance company has not adduced any evidence to prove that there is a violation of policy condition and contented that there is no contributory negligence on the part of the deceased as alleged by the appellant insurance company. The learned counsel also submitted that the Tribunal has properly appreciated the evidence of the eye witness and held that the first respondent has ridden the vehicle in a rash and negligent manner and caused



the accident, hence the second and third respondents, who are the owner and the insurer of the offending vehicle, respectively are responsible to pay the compensation and the same has been rightly awarded by the Tribunal, hence prays to confirm the award of the Tribunal.

12. Heard the submissions made on both sides and the materials available on record:

13. The major contention raised by the insurance company is that there is a violation of policy condition since the first respondent has no valid driving licence to drive a two wheeler at the time of accident. Inorder to prove the same, they relied on the entries made on the Motor Vehicle Inspection report, marked as Ex.P.3, the Motor Vehicle Inspector has recorded that at the time of inspection, the driving licence of the person who drove the TVS Scooty bearing Registration No. TN-39-CZ-6169 was not produced. Based on this recording, the insurance company prays this Court to hold that the driver of the TVS Scooty bearing Registration No. TN-39-CZ-6169 was not having a valid driving licence at the time of accident. However, the insurance company has not examined any official from the



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Road Transport Department or Authority to prove the same.

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13. It is a settled law that to prove non possession of driving licence, a proper person to give evidence is the Official from the Regional Transport Authority, but in this case, no official from the appropriate department or authority have been examined to show that the first respondent was not having a valid driving licence at the time of accident. Based on the recording made on the Motor Vehicle Inspection report, that no driving licence was produce at the time of inspection, it is not sufficient to prove the fact that the person, who drove the TVS Scooty bearing Registration No. TN-39-CZ-6169 was not having a valid driving licence at the time of accident.

14. This Court is of the view that, since no proper evidence has been produced by the insurance company to prove that the first respondent - rider of the TVS Scooty bearing Registration No. TN-39-CZ-6169 was not having a valid driving licence at the time of accident, contention of the insurance company is liable to be rejected and the award of the Tribunal is hereby confirmed.



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15. Accordingly, this Civil Miscellaneous Appeal is dismissed.

Consequently, connected civil miscellaneous petition stands closed. No costs.

17.10.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The IV Additional District Judge,
Motor Accident Claims Tribunal,
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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