



C.M.A.No.1529 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1529 of 2018

and

C.M.P.No.12182 of 2018

R.Dhandapani

... Appellant

Vs.

1. Philomina

2. D.Malarvizhi

3. Minor R.Andruse

4. Minor R.Robin Ratric

[Minor respondents 3 & 4 are represented
by their Mother/guardian Malarvizhi/
2nd respondent herein]

5. M.Kantharaj

6. The State represented by
The Superintendent of Police,
Mount Stuart Hill,
Udhagamandalam,
The Nilgiris District.



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7. The Inspector of Police,
P-1, Town Central Police Station,
Udhagamandalam,
Nilgiris District.

8. A.Subramani

9. United India Insurance Company Limited,
Christo Buildings, SBI Circle,
Udhagamandalam,
Nilgiris,
Represented by its Manager

... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 07.11.2017 passed in M.C.O.P.No.49 of 2011 on the file of the Motor Accidents Claims Tribunal (District Judge) at Udhagamandalam, Nilgiris District.

For Appellant : Mr.S.Sabarish

For R1 : Died

For R2 : Notice returned as Addressee not located

For R3 & R4 : Minors represented by R2

R5, R6, R7 & R8 : No appearance

For R9 : Mr.S.Arunkumar



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed against the Award dated 07.11.2017 passed in M.C.O.P.No.49 of 2011 on the file of the Motor Accidents Claims Tribunal (District Judge) at Udhagamandalam, Nilgiris District.

2. Appellant is the present owner of the vehicle. Claimants are the legal heirs and dependants of the deceased. The Claimants have filed the claim petition in M.C.O.P.No.49 of 2011 on the file of the Motor Accidents Claims Tribunal (District Judge) at Udhagamandalam, Nilgiris District, seeking compensation for the loss of life of the deceased in a motor accident that took place on 06.08.2010. The Tribunal finds that the appellant is the subsequent purchaser of the vehicle and the erstwhile owner/8th respondent herein insured the vehicle with the 9th respondent, Insurance Company. Neither the erstwhile owner/8th respondent, nor the the present owner, who is the appellant herein, intimated the transfer of vehicle to the 9th respondent/Insurance Company. The deceased is the



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third party at the time of accident. The Tribunal ordered both the owners and the Insurance Company to jointly and severally pay the compensation to the claimants.

3. Facts of the case are that, on 06.08.2010 at about 7.30 pm, when the deceased was returning home after his routine work, an Indian car bearing Registration No.TN 38 AAE/4918 owned by the eighth respondent herein, which is now in possession of the appellant herein was driven by the fifth respondent herein in a rash and negligent manner, and hence it had hit the deceased, who was a pedestrian walking on the platform at Lower Bazaar, Udhagamandalam proceeding from Municipal Market towards the Central Bus stand and the deceased sustained grievous injuries and later he succumbed to death.

4. Learned counsel for the appellant admitted the manner of the accident and he stated that the accident had taken place on 06.08.2010 and the injured was admitted in the hospital and he had taken treatment as an inpatient till 09.08.2010 and the deceased was discharged from the



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hospital. Later, he died only on 01.10.2010. He further submitted that F.I.R was not registered with regard to the accident. Further, the body of the deceased was not subjected to autopsy/post-mortem. The cause of the death and proximate to the death of injury, was not established by the claimants. The trial Court granted award to the claimants and also ordered the owners and the Insurance Company, jointly and severally to pay the compensation to the claimants. The claim is only a third party claim. Therefore, the intimation of transfer of vehicle has nothing to do with the liability of the appellant and the Insurance Company has to pay the compensation to third party. Therefore, impugned Award of the Tribunal is liable to be set aside.

5. Learned counsel for the 9th respondent/Insurance company submitted that, since the appellant purchased the vehicle at the time of accident, he was the owner of the vehicle and he has not intimated the transfer of vehicle, to the 9th respondent/Insurance company. Insurance coverage was only in the name of erstwhile owner/8th respondent and not in the name of the appellant, who is the present owner of the vehicle.



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After transferring the vehicle, neither the appellant has taken new policy, nor made a request to transfer the policy taken by the erstwhile owner in favour of him. Hence, the Insurance Company is not liable to pay the compensation. Since it is a third party claim, the Insurance company has already deposited the amount before the Tribunal. There is no merit in the appeal and the same is liable to be dismissed.

6. Heard the learned counsel appearing for both the parties and perused the materials available on record.

7. The accident, the manner of accident and the injuries sustained by the deceased, are all admitted. It is not proved that the death of the deceased was only due to accidental injury. The claimants have not filed any appeal, challenging the findings rendered by the Tribunal regarding the cause of death. The present owner of the vehicle alone has filed the present appeal, challenging the Award of the Tribunal.



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8. Admittedly, the offending vehicle bearing Registration No.TN 38AAE/4918 was insured with the 9th respondent/Insurance Company at the time of accident. The appellant purchased the offending vehicle from one Subramani, who has been arrayed as 8th respondent herein. The 8th respondent insured the offending vehicle with the 9th respondent/Insurance Company. However, 8th respondent sold his vehicle to the appellant herein. Hence, at the time of accident, the appellant was the owner of the offending vehicle. Though related documents have been transferred in the name of the appellant, after purchase of the vehicle, neither the appellant has taken fresh Insurance Policy, nor the 8th respondent has transferred his policy in the name of the appellant. At the time of accident, since vehicle was insured with the 9th respondent/Insurance Company, the 9th respondent is liable to pay compensation. Since the appellant has not taken effective steps either to transfer his name in the Insurance Policy, nor he took a fresh Insurance Policy, the Tribunal has rightly ordered that the 5th respondent/driver, 8th respondent/erstwhile owner and 9th respondent/Insurance Company and



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the appellant/present owner of the vehicle, jointly and severally liable to pay the compensation to the claimants.

9. In view of the above facts and circumstances of the case, this Court finds that there is no merit in the appeal and the same is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. The District Judge,
Motor Accidents Claims Tribunal at Udhagamandalam,
Nilgiris District.

2. The Superintendent of Police,
Mount Stuart Hill,
Udhagamandalam,
The Nilgiris District.

3. The Inspector of Police,
P-1, Town Central Police Station,
Udhagamandalam,
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P.VELMURUGAN, J.

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