



C.M.A.No.714 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.11.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.714 of 2018

and

C.M.P.No.6163 of 2018

M/s.Reliance General Insurance Company Limited,
Nungambakkam,
Chennai-600 034.

.. Appellant

Vs.

1. Jegatha
2. Ninesh (minor)
(second respondent minor, rep. by
mother and next friend - 1st respondent)
3. Mallika
4. Rajagopal
5. N.Anbarasu

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 01.12.2016 in M.C.O.P.No.272 of 2014 on the file of the Motor Accidents Claims Tribunal (II Additional District Court), Poonamallee.

For appellant : Mrs.C.Harini for M/s.M.B.Gopalan Associates

For respondents: Mr.C.Prabakaran for RR-1 to 4

R-5 - notice sent - tapal returned with the

Page No.1/7



WEB COPY



C.M.A.No.714 of 2018

endorsement "not known"

JUDGMENT

The Insurance Company is the appellant herein. The legal representatives of the deceased Purushothaman are the claimants. They have filed claim petition claiming compensation for the death of the deceased, who met with the accident, due to which, he succumbed to the injuries. The offending vehicle which was ridden by the deceased, was insured with the appellant/Insurance Company, and therefore the Tribunal awarded the compensation and hence, challenging the same, the Insurance Company has filed the present appeal.

2. On 11.10.2009 at about 11.45 p.m., the deceased was riding the motor cycle bearing Reg.No.TN-10-W-6485 belonging to the first respondent (before the Tribunal), who travelled as a pillion rider from Cuddalore-Chennai on the GST Road and while coming near Athimanam Lorry Parking, the deceased who was riding the motor cycle, met with the accident, due to which, the deceased sustained multiple grievous injuries all over the body and he died on the way to the hospital. The first respondent before the Tribunal, who is the owner and the second respondent who is the insurer of the vehicle, are vicariously and statutorily liable to pay the compensation to the claimants and the claimants

Page No.2/7



C.M.A.No.714 of 2018

claimed Rs.7 lakhs as compensation.

WEB COPY

3. Learned counsel for the appellant/Insurance Company submitted that the deceased himself has caused the accident and since he was a tort-feasor of his own negligence, the accident had occurred, and therefore, the claimants are not entitled to any compensation and the appellant is not liable to pay any compensation.

4. Further, according to the learned counsel for the appellant, the death of the deceased was due to fault of the deceased himself and the Tribunal failed to appreciate the legal position as well as the factual aspects of the matter. The quantum of compensation awarded by the Tribunal is excessive and the claimants have filed the claim petition under Section 163-A of the Motor Vehicles Act, which is not maintainable, and therefore, the appeal may be allowed and the impugned Award passed by the Tribunal is liable to be set aside.

5. Learned counsel for the respondents 1 to 4 herein/claimants submitted that the motor cycle (two wheeler) belongs to the fifth respondent herein, who was travelling as pillion rider and the deceased was proceeding on the road and the offending vehicle which belongs to the fifth respondent, had hit behind a stationed lorry. Due to that, he sustained injuries and the vehicle was insured

Page No.3/7



C.M.A.No.714 of 2018

with the appellant/Insurance Company. The Insurance Policy is a comprehensive Policy and the owner of the two-wheeler being the fifth respondent, allowed the deceased to ride the two-wheeler in which the owner of the vehicle has travelled as a pillion rider and therefore, the 'Act' policy of the two-wheeler covers and since the deceased rode the vehicle/2-wheeler with permission of the fifth respondent, who permitted the deceased to ride the vehicle and the fifth respondent being the owner of the vehicle, was travelling with the deceased in the said vehicle as a pillion rider at the time of accident, and therefore, since the vehicle was insured with the appellant, they are liable to pay the compensation.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the deceased who rode the two-wheeler, hit behind the lorry, which was stationed on the road. The FIR itself was registered against the deceased and the charge sheet was also filed against the deceased and since he died, the charge stood abated. However, it is clear that the deceased rode the motor cycle and at that time, he was in drunken mood and he had hit the barricade and due to that, he sustained injuries. Since the deceased himself is a tort-feasor and even the post-mortem also shows that he has consumed alcohol, and though the Tribunal finds that the accident was only due to rash and negligent riding of the two-wheeler by the deceased himself, who was in a

Page No.4/7



C.M.A.No.714 of 2018

drunken and inebriated mood due to consumption of alcohol by him, he lost control, due to which, the accident had occurred. He himself had hit on the road side and no other vehicle or any other person is involved in the accident. The Tribunal held that since it is a comprehensive policy, 50% of the contributory negligence was fixed on the deceased and at the time even in the FIR, they have not stated any contra evidence and it is clear that the deceased rode the vehicle of the fifth respondent by consuming alcohol and he drove the vehicle in an inebriated mood and dashed on the centre median/barricade and fell and due to that, he sustained injuries and died. No other vehicle is involved in the accident.

8. From the materials available on record, it is clear that the accident is only due to rash and negligent riding of the two-wheeler by the deceased himself. Therefore, the deceased himself being a tort-feasor, is not entitled to any compensation. Hence, the impugned Award passed by the Tribunal is liable to be set aside. However, the claimants are entitled to compensation under the head "no fault liability", and therefore, the appeal is allowed. The impugned Award is set aside. The appellant/Insurance Company is directed to deposit Rs.50,000/- under the head "no fault liability". There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

Page No.5/7



C.M.A.No.714 of 2018

06.11.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

CS

To

1. The Motor Accidents Claims Tribunal
(II Additional District Court), Poonamallee.
2. The Section Officer, V.R.Section, High Court, Madras .

P.VELMURUGAN, J

Page No.6/7



WEB COPY



C.M.A.No.714 of 2018

CS

Pre-delivery Judgment in

C.M.A.No.714 of 2018

Judgment delivered on 06.11.2023

Page No.7/7