



C.M.A No.1295 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.1295 of 2022
and C.M.P.Nos.9408 and 20637 of 2022

The Branch Manager,
M/s.National Insurance
Company Limited,
Door No.88-F, Bye-Pass Road,
Dharmapuri Town
Dharmapuri Taluk and District.

... Appellant

Vs.

1.Kodakkaran
2.Veerammal
3.Veerappan
4.Dhanalakshmi
5.Sathiya
6.K.Nagaraj

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Acct, 1988, seeking to set aside the decree and judgment dated 07.01.2022 passed in MCOP.No.538 of 2019, by the Motor Accidents Claims Tribunal, (Special District Court), Dharmapuri.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.D.Rameshkumar for R1 to R5
No Appearance - R6



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JUDGMENT

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On 11.02.2019 at around 04.00 p.m, a pillion rider of a motorcycle bearing Registration No.TN 29 BJ 4534 died allegedly when a stray dog jumped on the line of motion of the vehicle. The vehicle belonged to and was driven at the relevant time by the first respondent in the claim petition, now the sixth respondent in this appeal. When the rider of the motorcycle suddenly applied the breaks, the pillion rider fell onto the road and died.

2.Seeking compensation, the other heirs of the victim preferred M.C.O.P.No.538 of 2019 before the MACT (Special District Court), Dharmapuri for compensation. The Tribunal has determined the compensation at Rs.8,09,150/- and fastened the liability on the owner and the insurer jointly and severally.

3.Contending that the insurance company is not liable to meet the liability created under the award, it has now preferred the present appeal.



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4.Mr.Michael Visuvasam, the learned counsel for the appellant argued as below:

(a) Soon after the accident, the rider of the motorcycle, who is the son of the victim himself took his mother to the hospital. In the accident register, the doctors have recorded a statement that the victim had fallen on her own and there is no mention about any stray dogs forcing an accident;

(b) the accident was described by the owner cum rider of the two wheeler involved, and it is his self-serving version that alone is not on record and corroborated by any independent witness. Inasmuch as the claim petition is made under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), negligence have to be proven by the claimants, and this cannot be decided on the self-serving version of P.W.2.

5.Mr.D.Rameshkumar, the learned counsel for the respondents 1 to 5, submitted that even if negligence is not proved, the Court can still try this application under Section 163 A of the Act.



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6. Inasmuch as 163 A of the Act is now replaced by Section 164 of the Act, the claimants would be entitled to Rs.5,00,000/- (Rupees Five Lakhs only) for this fatal accident. This amount has to be allowed.

7. Accordingly, this appeal is partly allowed and the compensation amount is fixed at Rs.5,00,000/-. The appellant herein is stated to have deposited 50% of the award sum, and it is now directed to deposit the differential sum, if any required to be deposited, with interest at 7.5% interest within a period of six weeks from the date of receipt of a copy of this Judgment. As and when the amount is deposited, the amount standing to the credit of the case can be withdrawn by the claimants. No Costs. Consequently, the connected miscellaneous petitions are closed.

8. Since the rider of the motorcycle, the sixth respondent herein did not shown to be possessing a valid driving license, the appellant is entitled to pay and recover the same.

21.11.2023

Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To
The Motor Accidents Claims Tribunal,
(Special District Court), Dharmapuri.

N.SESHASAYEE, J.



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