



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.Nos.2511 & 2512 of 2014

and

M.P.No.1 of 2014

National Insurance Co.Ltd.,
No.10, Flat No.101-106, BMC House,
Connaught Place, New Delhi.

.. Appellant in
both the CMAs

Vs.

1. S. Rajeswari

...1st respondent in
both the CMAs

2. P. Saroja

...2nd respondent in
CMA.No.2511/2014

2.P. Thiyagu

.. 3rd respondent in CMA.No.2511/2014
& 2nd Respondent in CMA.No.2512/2014

Common Prayer: This Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgments and Decrees dated 23.11.2012 made in M.C.O.P.Nos.315 & 321 of 2010 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.



For Appellant : Mrs.N.B.Surekha
in both the CMAs

For Respondents : Mr.Ma.P. Thangavel for R1
in both the CMAs No appearance for R2

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the award dated 23.11.2012 made in M.C.O.P.Nos.315 & 321 of 2010 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

2. The appellant is the second respondent in both the M.C.O.P.Nos.315 & 321 of 2010 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Namakkal. The claimants have filed the above said claim petitions claiming a sum of Rs.10,00,000/- and Rs.1,00,000/- in M.C.O.P.Nos.315 of 2010 & 321 of 2010 respectively as compensation for the death caused to one Sakthivel and injuries sustained by his wife in the accident that took place on 26.05.2010.

3. The Tribunal considering the pleadings, oral and documentary evidences held that the accident occurred only due to the rash and negligent



driving by the driver of the car, who insured the said car with the appellant / Insurance Company and directed the appellant as well as the owner of the vehicle jointly and severall in M.C.O.P.Nos.315 of 2010 & 321 of 2010 to pay a sum of Rs.7,30,000/- and Rs.10,000/- respectively as compensation to the claimants.

4. Challenging the said award dated 26.05.2010 made in M.C.O.P.Nos.315 of 2010 & 321 of 2010, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant has contended that the judgment and decree passed by the Tribunal are contrary to law, facts, weight of evidence and all probabilities of the case. It had misdirected itself in law in fixing the negligence upon the driver of the insured vehicle only by relying that the FIR and criminal court findings, whereas the Tribunal had not given any independent finding regarding the aspect of negligence. It failed to see that the accident had occurred due to the rash and negligent driving of the deceased rider of the moped vehicle. It failed to see that the owner of the vehicle had violated the policy condition by driving the vehicle with



registering the same with competent authority. It failed to see that the offending vehicle had violated Section 39 of the M.V Act in driving the same on public place without being registered. It failed to see that the policy of insurance issued by the appellant would be valid only when the vehicle is driven on the public place with proper permit / registration from the registering authority. It failed to see that the entire liability ought to have been fixed upon the owner of the vehicle. It had concluded that the owner of the vehicle is liable to pay the compensation, but had directed the appellant to pay the compensation to the claimants at the first instance and then recover, the tribunal having come to the conclusion that the appellant is not liable to pay the compensation, ought to have decree the case directing the appellant to recover the amount paid to the claimants from the insured in the same proceedings by filing Execution Petition. He further submitted that the appellant has deposited the entire award amount before the Tribunal. Hence, he prayed for setting aside the award passed by the Tribunal.

6. Heard the learned counsel appearing for the appellant-Insurance Company and learned counsel appearing for the first respondent and perused the entire materials on record.



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7. From the materials available on record, it is seen that the PW1 who was also a pillion rider in the vehicle has sustained injuries all over the body. The same is corroborated with the deposition of PW2 who is an eye witness. It is also seen that following the accident, the police registered criminal case in Cr.No.1028 of 2010 against the driver of the car. The police has also charge sheeted the driver of the car which was marked as Ex.P4. Since PW2 has deposed that the accident happened due to the rash and negligent driving of the car, this court found no materials to disbelieve the evidence of PW2 who is an eye witness. PW1 further deposed that the wife of the deceased sustained injuries all over the body and physically disabled and unfit to do any work. A Perusal of Ex.P16/Wound certificate shows that the PW1 sustained injuries 3 x 2 cm cut-wound over scalp and abrasion over right wrist and elbow. The Tribunal has held that the appellant along with the owner of the vehicle are jointly and severally liable to pay compensation to the claimants. There is no error in the above finding of the Tribunal warranting interference by this Court.



8. As far as quantum of compensation is concerned, the contention of the learned counsel for the appellant is that Rs.7,30,000/- and Rs.10,000/- in M.C.O.P.Nos.315 of 2010 & 321 of 2010, respectively are exorbitant. It is further contended that the temporary registration is valid upto 19.05.2010 but the date of accident is 26.05.2010. Within 30 days from the date of delivery, the vehicle should be registered as per the M.V Act, So it is the violation of the policy condition as per the motor vehicles acts and rules.

9. On perusal of records, it is seen that the wife of the deceased has become physically unfit to do any work and disabled. The Tribunal by emphasizing the principle cited in 2011 (1) TN MAC 249 Kerala Joby Thomas & Another Vs. Annamma Augustine & Another, has arrived at a total compensation of Rs.7,30,000/- and Rs.10,000/- in M.C.O.P.Nos.315 of 2010 & 321 of 2010 respectively. In view of the same, considering all the materials on record in its entirety, the total compensation awarded by the Tribunal is not excessive, warranting interference by this Court.

10. In the result, this Civil Miscellaneous Appeals are dismissed and the award passed by the Tribunal is hereby confirmed. Consequently,



connected Miscellaneous Petition is closed. No costs.

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11. Since the appellant / Insurance Company has already deposited the entire award amount before the Tribunal, this Court now directs the Tribunal to transfer the award amount along with accrued interest to the bank account of the claimants through RTGS within a period of two weeks thereafter.

16.06.2023

Index : Yes

Internet : Yes

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To

1.The Special Subordinate Judge No.I,
Motor Accidents Claims Tribunal,
Villupuram.

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



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A.A.NAKKIRAN.,J.

gv

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