



C.M.A.No.3847 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3847 of 2019

1. R.Krishnaveni
2. Ramachandran

... Appellants/Petitioners

Vs.

1. Vivek Lijoy
2. C.Pachaimuthu
3. United India Insurance Co.Ltd.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 04.10.2018 made in M.C.O.P.No.3336 of 2010 on the file of Motor Accident Claims Tribunal, (V Small Causes Court), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.C.Pranthaman for R3

Notice Dispensed with
vide order dated
07.06.2023 for R1 and
R2



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JUDGEMENT

The appeal is preferred by the claimant not satisfied with the compensation awarded by the Motor Accident Claims Tribunal, (V Small Causes Court), Chennai.

2. On 09.06.2010 at about 17:30 hours, when the son of first and second appellants namely Danial @ Jayakumar was travelling as a pillion rider in the motorcycle owned by the first and second respondents bearing registration No.TN10-V-3328 along with the rider who has driven the vehicle in a rash and negligent manner and while proceeding towards Tiruvallur High Road, Vaananchathiram, an unknown lady crossed the road, thereby the rider of the motorcycle turned the vehicle towards right side of the road and hit the vehicle on the centre median. Thereby the pillion rider was thrown out of the vehicle and sustained grievous injuries and died in the Government Stanley Hospital inspite of the treatment given. Thereafter, the first and second appellants who are the father and mother of



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the pillion rider filed a petition claiming a sum of Rs.8,00,000/- as compensation. However, the said claim was rejected on the ground that the deceased is the pillion rider of the motor cycle and the accident had occurred due to his negligence of the driver of the vehicle. Aggrieved over the same, the claimants have preferred the present appeal.

3. The learned counsel appearing for the appellants submitted that, though the brother of the deceased was not an eye witness, however, the appellants have given the complaint before the Law Enforcing Agency after a lapse of three days from the date of accident, however, P.W.2 was examined as eye witness and deposed that the accident happened due to the rash and negligent act of the rider of the motorcycle. Though the said facts was properly established before the Tribunal, the Tribunal arrived at a conclusion that the pillion rider is the rider of the motorcycle who is responsible for the said accident and awarded no fault liability to the legal heirs of the deceased, which is *per se* unsustainable. Hence he prayed to allow this appeal.



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4. Per contra the learned counsel appearing on behalf of the third respondent / insurance company submits that though the accident happened on 09.06.2010, however, the F.I.R has been registered on 11.06.2010 based on the intimation given by the brother of the deceased after a lapse of three days from the date of accident. He further submits that in order to establish the fact that the deceased is the rider of the motor cycle, the Motor Vehicle Inspector's report which is marked as Ex.R2 was produced before the Law Enforcing Agency, based on which the charge sheet was filed and the Tribunal came to a conclusion that the deceased has driving the vehicle in a rash and negligent manner and thereby lost his life. He further submits that when the said accident happened due to the negligence of the deceased, the legal heirs of the deceased cannot claim compensation and upon appreciating the oral and documentary evidences the Tribunal arrived at a conclusion that the deceased is the rider of the motorcycle and rightly rejected the claim of the legal heirs of the deceased, which cannot be interfered with.



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5. Heard the learned counsel appearing for the appellants and the learned counsel for the third respondent and perused the materials available on record.

6. It is the claim of the appellants that, the said accident occurred due to the negligence of the driver of the motor cycle. Admittedly, the accident happened on 09.06.2010 at about 5:30 pm and the FIR has been registered based on the intimation given by the brother of the deceased, after a period of three days. Though it is the claim of the claimants that the deceased was a pillion rider, which has been countered by the insurance company that he was the rider of the vehicle, however, the claimants have not placed any materials to prove that the deceased was a pillion rider. Further, the brother of the deceased was not an eye witness to the occurrence. PW2, was examined as eye witness on behalf of the petitioners, who deposed that the accident happened due to the rash and negligent act of the rider of the motorcycle. However, it is clear from the final report that the deceased



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himself has driving the vehicle as rider and dashed the centre median and lost his life. When the final report has clearly spoken that it was the deceased, who had driven the vehicle, which report has not been challenged in a manner known to law, the Tribunal has rightly arrived at a conclusion that the deceased is the rider of the motorcycle and due to his rash and negligent driving, the accident happened and has given no fault liability to the insurance company, which is based on the materials available on record and the same cannot be interfered with. Therefore, this Court is not inclined to interfere with the order passed by the Tribunal.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 04.10.2018 made in M.C.O.P.No.3336 of 2010 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai is confirmed. No costs.

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Index : Yes / No
speaking Order : Yes / No
Neutral Citation Case : Yes / No
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To

- 1.The Motor Accident Claims Tribunal/V Court of small causes, Chennai.
- 2.The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI,J.,

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