



C.M.A.No.1978 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1978 of 2017

Punitha

... Appellant

Vs.

1. Kalaiyarasi

2. M/s.United India Insurance Co.Ltd.,
Branch Office, 3 Arjuna Towers,
248/164, Cherry Road,
Salem – 636 007.

3. Shyamalatha

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 14.03.2017 made in M.C.O.P.No.2540 of 2015 on the file of the Motor Accident Claims Tribunal / III Additional District, Salem.

For Appellant : Mr.R.Marudhachalamurthy

For Respondents : Mr.D.Baskaran for R2
Ms.R.Sarmita for R3[No
Appearance]

Ex parte before the Tribunal
[R1]



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JUDGEMENT

This civil miscellaneous appeal has been filed against the judgment and decree dated 14.03.2017 made in M.C.O.P.No.2540 of 2015 on the file of the Motor Accident Claims Tribunal / III Additional District, Salem.

2. It is the case of the appellants / claimants is that on 30.07.2015 at about 2:00 pm when the deceased was driving his motor cycle bearing registration No.TN 30 J 0072, the offending vehicle bearing Registration.No.TN 54 D 6071 belonging to the first respondent and insured with the second respondent driven by its driver in a rash and negligent manner dashed against the vehicle driven by the deceased resulting in the deceased suffering grievous injuries and succumbing death on the way to hospital. Aggrieved by the death of the deceased, the claimants have filed the claim petition claiming compensation in a sum of Rs.25,00,000/-.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 3 documents viz., Ex.P.1 to Ex.P.3. On



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the side of the respondents, they have examined three witnesses viz., R.W.1 to R.W.3 and no documents were marked on behalf of the respondents. After adjudication, the Tribunal had allowed the petition in part and awarded a sum of Rs.6,76,800/- as compensation by fastening the entire liability as against the first respondent / owner of the vehicle. Not satisfied with the said award, the appellant has filed the present appeal.

4. The learned counsel appearing for the appellant / claimants submits that though the son of the first respondent had driven the vehicle which was insured with the second respondent and the Tribunal had come to a conclusion that the son of the first respondent was not in possession of a valid driving licence as he was a minor on the said date. But notwithstanding the said fact that the vehicle was insured with the second respondent insurance company, the Tribunal had erred in directing the first respondent to pay the compensation rather than directing the insurance company to pay the compensation and recover the same from the owner of the vehicle. In support of the aforesaid contention learned counsel placed reliance of the decision of Hon'ble Apex Court in



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the case of *Jawahar Singh Vs.Bala Jain and Ors.* reported in **2011 (6)**

SCC 425. Accordingly, he prayed that this Court may direct the insurance company to pay the compensation to the claimants / appellant and recover the same from the first respondent owner of the vehicle.

5. Per contra learned counsel appearing for the second respondent insurance company submits that when there is categorical finding rendered by the Tribunal that the son of the first respondent / owner of the vehicle being a minor and not in possession of a valid driving licence, the second respondent cannot be made liable to pay the compensation which is in contravention of the terms and conditions of the policy conditions. Therefore, no liability can be fastened on the second respondent. Accordingly, prayed that this Court may direct the insurance company to pay the compensation to the claimants / appellants and recover the same from the first respondent owner of the vehicle.



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6. Though the third respondent was served no one appeared on his behalf. Considering the period of pendency of the appeal, the same is disposed based on the materials available on record.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The accident is not in dispute while the respondents tried to assail the award of the Tribunal with regard to the negligence which has been fastened on the son of the first respondent. However, the said contention with regard to negligence does not require interference for the simple reason that Ex.P.1 FIR lodged consequent upon the accident evidences that the son of the first respondent had driven the vehicle along with the pillion rider and in the absence of the driver having a valid driving licence as he was a minor at that point of time, the first respondent had paid the requisite fine for absolving the liability of the driver of the vehicle. When the first respondent had admitted the negligence on his son now it is not open to the second respondent to



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contend that negligence cannot be fastened on the driver of the first respondent 's vehicle. Therefore the finding to the said effect requires to be confirmed. The only issue now requires to be decided with regard to the prayer of claimants for payment by the second respondent and thereafter recover the same from the son of the vehicle. In this regard the decision in the case of ***Jawahar Singh Vs.Bala Jain and Ors.***, reported in **2011 (6) SCC 425** has been relied upon by the learned counsel for the appellant wherein in identical circumstances, the Supreme Court has held as under:

"10. Having heard learned counsel for the respective parties, we are inclined to agree with the respondents that this is not a case for interference in view of the fact that admittedly the motorcycle belonging to the petitioner was being driven by Jatin, who had no licence to drive the same and was, in fact, a minor on the date of the accident. While issuing notice on 2nd April, 2009, we had limited the same to the question regarding liability to pay compensation on account of contributory negligence by the deceased who was riding a scooter, in causing the accident to happen.



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11. We cannot shut our eyes to the fact that it was Jatin, who came from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the responsibility of the petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal quite rightly saddled the liability for poayment of compensation on the petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same."

9. The case on hand is one step further wherein the son of the first respondent had driven the vehicle and had caused the accident and therefore the first respondent cannot wriggle out of the same and the second respondent being the insurer of the vehicle is liable to indemnify



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the act of the son of the first respondent by paying the compensation.

However, the second respondent is entitled to recover the same from the first respondent as the act of the first respondent in allowing his son to drive the vehicle is against the terms and conditions of the policy. Therefore, to the said extent the award passed by the Tribunal stands modified by confirming the quantum of compensation but directing the second respondent / insurance company to pay the compensation to the appellant / claimants within a period of four (4) weeks from the date of receipt of a copy of this judgment along with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization, along with interests and costs and thereafter recover the same from the first respondent/ owner of the vehicle in accordance with law. In view of the deposit of compensation made by the second respondent, the Tribunal is directed to transfer the amount awarded by this Court along with interests and costs directly to the bank account of the appellant / claimants through RTGS as per apportionment of the Tribunal, within a period of two (2) weeks thereafter. The balance amount if any is deposited by the second respondent / insurer, the second respondent / insurer is permitted to withdraw the same by making appropriate



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application before the Tribunal

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10. Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No

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To

1.Motor Accident Claims Tribunal / III Additional District, Salem.

2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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