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C.M.A. No.2375 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2375 of 2019

National Insurance Company Ltd.,
No.10, Hero Honda Vertical,
No.101 to 106, BMC House,
Connaught Place, New Delhi-1,
Local Branch Office: Anuradha Complex,
3rd Floor, Bangalore Road,
Krishnagiri - 635 001.

... Appellant

Vs.

1. N.Kumaresan

2. Ponniyammal

3. D.Muniyappan

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1989, against the Award and decree dated 25.02.2016 made in M.C.O.P. No.327 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For Respondents : No Appearance



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ORDER

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This Civil Miscellaneous Appeal is filed against the Award and decree dated 25.02.2016 made in M.C.O.P. No.327 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

2. The respondents 1 and 2 herein are the claimants and they are the parents of the deceased. The appellant is the insurer and the 3rd respondent is the owner of the offending vehicle.

3. The case of the claimants is that on 12.06.2014 at about 11 p.m., the deceased was riding a Hero Honda Splender motorcycle bearing Regn. No.TN-24-R-9178 belongs to the 3rd respondent herein, from Sakkilinatham to Kandhili Village, on the left side of the Bargur-Thirupathur main road with low speed and cautious manner. At that time, he saw a coconut husk on the road near Sigarapalli bridge and when he tried to avoid the coconut husk, his motorcycle ran over the coconut pattai, due to which, he fell down and hit against a mile stone and died on the spot.



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4. The parents of the deceased filed a claim petition in M.C.O.P. No.327 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri, claiming compensation of Rs.15,00,000/- from the owner and insurer of the offending vehicle.

5. In order to substantiate the claim before the Tribunal, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 5 documents were marked as Ex.P.1 to Ex.P.5. On the side of the respondents, 3 witnesses were examined as R.W.1 to R.W.3 and 6 documents were marked as Ex.R1 to Ex.R6.

6. The Tribunal, after hearing the arguments on either side and considering the materials, awarded compensation of Rs.9,97,000/- and directed the Insurance Company/appellant herein, to pay the compensation to the claimants at the first instance and then to recover the amount from the owner of the offending vehicle/3rd respondent herein.

7. Aggrieved by the said Award passed by the Tribunal, the Insurance Company has filed the present appeal.



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8. The learned counsel for the appellant/Insurance Company submitted that the deceased himself took the vehicle of the 3rd respondent herein and while he was riding the vehicle, he himself hit against a mile stone due to his rash and negligent riding and no other vehicle is involved in the accident. Further, at the time of accident the deceased did not holding driving licence and therefore, the deceased himself is a tort-feasor. The Tribunal failed to consider the same and given findings that the accident had not happened due to the rash and negligent riding of the deceased and it had happened due to the factors beyond his control and the act of God and therefore, the Award passed by the Tribunal fixing liability on the appellant/Insurance Company, warrants interference.

9. None appeared for the respondents.

10. Heard the learned counsel for the appellant and perused the materials available on record.



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11. Admittedly the said two wheeler belongs to the 3rd respondent herein and it was insured with the appellant herein. At the time of accident, the deceased took the said two wheeler from the 3rd respondent and due to the rash and negligent riding, he dashed against a mile stone and died on the spot and no other vehicle is involved in the accident. Even the FIR was registered only against the deceased and subsequently, the same was closed. Though it was stated that there was a coconut husk on the road due to which, the deceased slipped and hit against the mile stone, if at all the deceased had ridden the two wheeler cautiously, he could have avoided the accident. Further, the deceased was only aged 22 years and he did not even possess driving licence. Therefore, the deceased was the tort-feasor to the accident and the accident occurred only due to the rash and negligent riding of the deceased himself.

12. Though the appellant is the insurer of the said vehicle belongs to the 1st respondent, the 1st respondent has allowed the deceased to ride the vehicle despite knowing the fact that he had no driving licence. Since there is no relationship between the deceased and the appellant/Insurance Company, there is no contractual liability on the Insurance Company.



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13. This Court finds that the Tribunal has failed to consider the oral and documentary evidence that no other vehicle is involved in the accident and the deceased himself while riding the two wheeler belongs to the 3rd respondent, hit against a mile stone and succumbed to the injuries. Therefore, the deceased is the tort-feasor to the accident and the policy does not cover other than person mentioned in the terms of the Insurance Policy.

14. Therefore, this Court finds that the appellant/Insurance Company is not liable to pay any compensation to the claimants and the 3rd respondent/owner of the offending vehicle alone is liable to pay the compensation to the claimant.

15. Accordingly, the appellant/Insurance Company is exonerated from the liability and the 3rd respondent herein/owner of the offending vehicle alone is directed to pay the compensation to the claimants.



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16. With the above modification, this Civil Miscellaneous Appeal

is allowed. There shall be no order as to the costs in the present appeal.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1. The Motor Accidents Claims Tribunal
(Special District Court), Krishnagiri.

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



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P.VELMURUGAN. J.

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