



C.M.A.No.4061 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.4061 of 2019

and

CMP.No.22963 of 2019

M/s. Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex, Omalur Main Road,
Swarnapuri, Salem – 636 004.

...Appellant

Vs.

1. Thilagavathi
2. Alamelu
3. Vaiyapuri
4. Syed Mohimeen
5. United India Insurance Company Ltd.,
Divisional Office,
No.2, Dr.Sankaran Road,
Namakkal – 637 001.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the decree and Judgment dated 09.01.2018 passed in M.C.O.P.No.580 of 2015 on the file of the Motor Accidents Claims Tribunal (III Addl. District Court), Salem.



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For Appellant : Ms.D.Hamrutha
for Mr.K.Moorthy

For Respondents : Mr.C.K.M.Appaji, for R1 to R3
No Appearance, for R4
Mr.D.Baskaran, for R5

JUDGEMENT

Challenging the Judgment and decree dated 09.01.2018 passed in M.C.O.P.No.580 of 2015 on the file of the Motor Accidents Claims Tribunal (III Addl. District Court), Salem, the appellant has preferred this Appeal.

2. The case of the appellant is that, the respondents 1 to 3, wife and parents of the deceased Balamurugan filed a claim petition claiming a compensation of Rs.25,00,000/- on the ground that, on 03.01.2015 at about 12.30 Hrs., when the deceased was riding his BAJAJ Pulsar Motor cycle bearing Regn.No.TN-54-J-9052, insured with the appellant, along with one Venkatesan as a pillion rider, in a slow and cautious manner, near Nalikalpatty opposite to S.V. Mill, unfortunately the above said Motor cycle hit against the centre median, due to which, the deceased fell down on the road, at that time,



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the MARUTI car bearing Regn.No.TN-55-K-5130, owned by the 4th respondent, insured with the 5th respondent/ insurance company, driven by its driver in a rash and negligent manner, which came from Salem to Mallur direction dashed against the deceased, due to which, the deceased sustained fatal injuries all over his body and died on the way to Hospital. After contest, the Tribunal, vide impugned judgment awarded a compensation of Rs.7,49,300/- in favour of the respondents 1 and 2, payable by the appellant/ insurance company. Aggrieved with the said order, the present appeal has been filed by the insurance company, questioning the liability of the insurer.

3. Learned counsel for the appellant submitted that both the injured/pillion rider and the LR's of the deceased/driver filed separate claim petitions in MCOP.No.579 & 580 of 2019 respectively on the file of the Motor Accidents Claims Tribunal (III Addl. District Court), Salem and tribunal taken both the claims together and passed a common award. Though the Tribunal held that the above said accident happened solely due to the rash and negligent driving of the deceased, instead of absolving the insurer of the vehicle owned by the deceased, fixed the entire liability as against the insurer of the



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deceased

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vehicle itself, which is not sustainable. Accordingly, he prayed for appropriate orders, absolving the appellant/insurance company of its liability.

4. Learned counsel appearing for the respondents 1 to 3 / claimants submitted that, at the time of accident, the deceased was aged about only 22 years. It is not disputed that the vehicle owned by the deceased was insured with the appellant at the time of accident and the appellant was impleaded as a formal party in the claim made by the claimants/respondents 1 to 3, however, without verifying any of the facts, the tribunal fixed the entire liability as against the appellant, which is erroneous. Further, only due to the fatal injuries sustained by the said Balamurugan/deceased when the 4th respondent vehicle dashed against him when the deceased fell down on the road, the deceased passed away. Hence, the respondents 4 and 5 have to be jointly and severally made liable to pay the compensation to the respondents 1 to 3/dependents of the deceased and further as the deceased has obtained personal accident coverage and the said part has to be paid by the appellant. Accordingly, he



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prayed for appropriate orders.

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5. Learned counsel appearing for the 5th respondent submitted that, admittedly, the deceased is a tort-feasor and he lost his life solely due to his rash and negligent act, for which, the FIR came to be filed by the pillion rider/PW2 as against the deceased, in which, the final report was filed stating that the deceased alone is responsible for the accident and closed the same as “Charge abate”. Hence, the Tribunal, after arriving at a conclusion that the accident happened due to the negligence on the part of the deceased, had rightly fixed the entire liability as against the appellant/insurer of the vehicle owned by the deceased. Further, for the negligence committed by the deceased / tort-feasor, the 5th respondent/ insurer of the offending vehicle cannot be made liable. Further, when the findings rendered by the tribunal in respect of the claim filed by the pillion rider in MCOP.No.579 of 2019 was not challenged by the appellant before this Court, they are also not entitled to challenge the findings of the Tribunal made only in respect of the claim made by the dependents of the deceased in MCOP.No.580 of 2019 and at this point of time, they cannot argue the negligence part fixed by the tribunal and that



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too in one claim alone. Accordingly, he prayed for dismissal of this Appeal.

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6. Though notice was served on the 4th respondent and his name was printed in the cause list, none appeared on his behalf. However, considering the period of pendency of this Appeal, this Court is inclined to dispose of the same based on the material documents placed on record.

7. Admittedly, the vehicle owned by the deceased, which was driven by him at the time of accident was insured with the appellant / insurance company. The offending vehicle, MARUTI car bearing Regn.No.TN-55-K-5130 is owned by the 4th respondent, insured with the 5th respondent/ insurance company.

8. A perusal of the materials available on record, more particularly the findings relating to the negligence aspect, the Tribunal had categorically held that the deceased had driven the vehicle in a rash and negligent manner, which had resulted in the accident and as the deceased fell down, the on coming offending vehicle had hit him. No where, the Tribunal had fastened any liability on the offending vehicle with regard to negligence, however,



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curiously, the Tribunal has also not discussed the part of the offending vehicle in the accident, which cannot also be totally ruled out and a conscious decision has to be taken based on proper appreciation of the materials. When it is the clear finding of the Tribunal that the accident had happened due to the rash and negligent driving by the deceased, the insurance company cannot be mulcted with any liability to pay the compensation. Such being the case, the impugned award, fixing the entire liability as against the insurer of the vehicle of the deceased is wholly erroneous, arbitrary and perverse and the same cannot be sustained and it is liable to be set aside.

9. Accordingly, the impugned Judgment and decree dated 09.01.2018 passed in M.C.O.P.No.580 of 2015 is set aside and the matter is remanded to the Motor Accidents Claims Tribunal (III Addl. District Court), Salem. The Tribunal is directed to re-examine the documents, both oral and documentary afresh and pass appropriate orders within a period of six months from the date of receipt of a copy of this order, after affording sufficient opportunity to both appellant and respondents to canvass their grievances.



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10. With the above observations and directions, this Appeal stands partly allowed. No costs. Consequently, the connected Miscellaneous petition is closed.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

- 1.The Motor Accidents Claims Tribunal (III Addl. District Court), Salem.
- 2.The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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