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C.M.A. No.2500 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2500 of 2018 and
CMP No.19092 of 2018

Oriental Insurance Company Ltd.
Rep. by its Branch Manager,
12, Kadpadi Road, Gudiyatham

... Appellant

Vs.

1.Anandan
2.Mrs.Kumari
3.Sadhasivan
4.Manoharan
5.V.Loganathan

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P. No.81 of 2009 on 25.10.2017 on the file of the Subordinate Judge (Motor Accident Claims Tribunal) at Vaniyambadi, Vellore District and be pleased to dismissed the above claim and allow the CMA.

For Appellant : Mr.J.Chandran
For R1 and R2 : Mr.T.S.Baskaran
For R3 to R5 : Notice Served, No Appearance



J U D G M E N T

This Civil Miscellaneous Appeal is filed to set aside the decree and judgment passed in M.C.O.P. No.81 of 2009 on 25.10.2017 on the file of the Subordinate Judge (Motor Accident Claims Tribunal) at Vaniyambadi, Vellore District and be pleased to dismissed the above claim and allow the CMA.

2. The respondents 1 and 2 are the claimants. The 3rd respondent is the owner of the two wheeler bearing Regn. No.TN-23-AY-0243 which was driver by the deceased and the appellant is the insurer of the 3rd respondent's vehicle. The 4th respondent is the driver and the 5th respondent is the owner of the opposite two wheeler bearing Regn. No.TN-23-P-9513.

3. The case of the claimants is that at the time of accident, the deceased was aged 20 years and working as a driver under one V.Gopi, the owner of Sri Balaji Blue Metal Company and getting a monthly income of Rs.4,000/-. On 20.04.2009, the deceased was the duty driver of the Lorry. The deceased had parked the lorry near the black stone chips at Kamala Guttai of Kondampatti Village for loading the same and for want of diesel for



the Lorry, the deceased took the company motor cycle bearing Regn. No.TN-23-AY-0243 belonging to the 3rd respondent herein who is the manager of his company and insured with the appellant herein. After getting diesel from the petrol bunk, the deceased was returning with the diesel can from Vaniyambadi to Kamala Guttai in a moderate speed by following the traffic rules. At about 10.15 hours, near Vellaikuttai Pirivu Road in Vaniyambadi Alangayam Road, a motor cycle bearing Regn. No.TN-23-P-9513, belongs to the 5th respondent herein and rode by the 4th respondent herein, was coming in the opposite direction. At that time, the deceased who was riding the motor cycle with the diesel can, some how lost his balance and dashed against the motor cycle of the 5th respondent herein and due to that impact the deceased sustained fatal injuries. Immediately, he was given first aid at the Government Hospital, Vaniyambadi. Then he was referred to Government Vellore Medical College Hospital for better treatment and thereafter, he was admitted at the Government Hospital, Chennai, on 21.04.2009 where, he took treatment for about 2 months and discharged on 15.06.2009 with a direction to take periodical treatment. Thereafter, the deceased continued his treatment in a private hospital at Vaniyambadi and also at Chennai. In spite of the best treatment, the deceased died on 08.09.2009.



4. The dependants of the deceased, filed a claim petition in M.C.O.P. No.81 of 2009 on the file of the Subordinate Judge (Motor Accident Claims Tribunal) at Vaniyambadi, Vellore District, claiming restricted compensation of Rs.5,00,000/- for the death of the deceased.

5. Before the Tribunal, the respondents 4 and 5 herein remained ex-parte.

6. In order to substantiate the claim, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 12 documents were marked as Ex.P.1 to Ex.P.12. On the side of the respondents, one witness was examined as R.W.1 and 2 documents were marked as Ex.R.1 and Ex.R2.

7. The Tribunal, after hearing the submissions of the learned counsel on either side and considering the available materials, awarded compensation of Rs.7,25,200/- (Rs.3,62,600/- to each claimant) with interest at the rate of 6% per annum from the date of filing (21.12.2009) till the deposit (Amended as per order on memo dated 06.04.2018 Sd.xxxS.J.VNB).



8. Challenging the Award passed by the Tribunal, the Insurance

Company has filed the present appeal.

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9. The learned counsel for the appellant/Insurance Company submitted that the accident had occurred only due to the rash and negligent driving of the deceased Sekar @ Murugan who is the son of the claimants. Even the FIR was registered only against the deceased and since he died, the case was closed as charge abated. On the date of accident, while the deceased Murugan was riding the motor cycle with a diesel can, he lost his control and dashed against the opposite motor cycle bearing Regn. No.TN-23-P-9513 and due to that impact, the deceased sustained fatal injuries and subsequently, succumbed to the injuries on 18.09.2009 in spite of better treatment. Since the deceased himself is the tort-feasor, the appellant/Insurance Company is not liable to pay compensation, whereas the Tribunal failed to consider the same and fixed the liability on the appellant/Insurance Company, which warrants interference and the appellant/Insurance Company may be exonerated from the liability.



10. The learned counsel for the respondents 1 and 2/claimants submitted that the evidence of the claimants/P.W.1 and P.W.2 would clearly show that while the deceased was on employment under the 3rd respondent, he took the motor cycle of the 3rd respondent herein bearing Regn. No.TN-23-AY-0243 which is insured with the appellant herein, to fetch diesel for the Lorry in a moderate speed, by observing the traffic rules and since the deceased was riding the motor cycle with the diesel can, he lost his control and dashed against the opposite motor cycle bearing Regn. No.TN-23-P-9513 and fell down and thereby, he sustained grievous injuries. Subsequently, despite better treatment, he succumbed to the injuries on 08.09.2010. Since the accident had occurred during the course of employment and the 3rd respondent herein who is the employer of the deceased himself has clearly stated that the employment of the deceased was insured with the appellant/Insurance Company and at the time of accident, insurance policy was in force, the appellant/Insurance Company is liable to pay compensation. The Tribunal rightly fixed the liability on the appellant/Insurance Company. Therefore, there is no merit in the appeal and the same is liable to be dismissed.



11. Heard both sides and perused the materials available on record.

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12. Admittedly, at the time of accident, the deceased Murugan was working under the 3rd respondent who is the Manager of M/s.Balaji Blue Metal Company owned by one V.Gopi and there was a relationship of employer and employee between the deceased Murugan and the 3rd respondent's Company which is not in dispute. The evidence clearly shows that on the date of accident, the deceased Murugan was proceeding in a two wheeler belongs to the 3rd respondent to fetch diesel and after fetching diesel, while he was on the way to his work place, he lost his control and dashed against a two wheeler bearing Regn. No.TN-23-P-9513 due to which, he sustained injuries and despite providing better treatment, he succumbed to the injuries. Therefore, the accident had occurred during the course of his employment. Further, the said employment was insured with the appellant/Insurance Company and the appellant/Insurance Company has not proved that it is a willful disobedience or insubordinations. The Insurance policy was covered the employment and employer and employee also proved and during the time of accident, insurance was in force. The 3rd respondent herein, in his counter before the Tribunal has stated that the said vehicle was



insured with the appellant/Insurance Company and therefore, if at all any claim, the Insurance Company has to pay the compensation.

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13.The contention of the learned counsel for the appellant/Insurance Company is that the accident had occurred only due to the rash and negligent riding of the deceased. Therefore, a tort-feasor cannot claim compensation for his own conduct or negligence against the insurer. Since another vehicle is involved in this case, there must be contributory negligence on the part of the rider of the opposite vehicle and therefore, the rider and insurer of the opposite vehicle are also liable to pay compensation. Though the rider and owner of the opposite vehicle were subsequently added as parties to the claim petition as respondents 3 and 4 therein, there is no evidence to show that due to the negligence of the rider of the opposite vehicle, the accident had occurred and therefore, there is no contributory negligence on the part of the rider of the opposite motor cycle.

14.Though the learned counsel for the appellant/Insurance Company contended that the the opposite vehicle which is involved in this accident was not insured with any Insurance Companies and the rider of the opposite



vehicle was not having valid licence and therefore, in order to get compensation, a false case has been foisted as if, when the deceased was proceeding in a two wheeler with a diesel can, he lost his control and met with an accident, there is no material to prove otherwise.

15. This Court, as an appellate Court and final Court of fact finding, while re-appreciating the entire evidence, does not find any perversity in the appreciation of evidence by the Tribunal and there is no contra evidence to prove otherwise. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

16. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to the costs in the present appeal.

08.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To

1.The Subordinate Judge (Motor Accident Claims Tribunal)
Vaniyambadi, Vellore District

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



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P.VELMURUGAN, J

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