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C.M.A. No.2320 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2320 of 2018 and
CMP No.17738 of 2018

M/s. United India Insurance Company Ltd.
Having Branch Office at
Oriental Theatre Complex
No.77, Arunachala Asari Street, Salem- 1
Having Division Office at
Divisional Office at 104-A, Perumanur Road
Perumanur, Salem-7

... Appellant

Vs.

1. Shanthi
2. Robert Leo Charles
3. Susan Benina Tracy
4. R.Venkatesan
5. M.Lokeshkannan
6. K.R.Balaprakash

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Order 44 Rule 1 of Civil Procedure Code, against the award and decree dated 22.06.2016 made in M.C.O.P.No.1270 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court) Salem.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.S.P.Yuvaraj for R1 to R3
R4 and R6 - Notice Served,
No Appearance
Mr.S.Parthasarathy for R5



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JUDGMENT

This Civil Miscellaneous Appeal is filed against the award and decree dated 22.06.2016 made in M.C.O.P.No.1270 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court) Salem.

2. The respondents 1 to 3 are the claimants. The 4th respondent is the owner and the 5th respondent is the driver of the vehicle bearing Regn. No.TN-30-AL-9084 (TATA Ace). The 6th respondent is the owner and the appellant is the insurer of the two wheeler bearing Regn. No.TN-30-D-3251 (Yamaha) in which, the deceased travelled as a pillion rider.

3. The case of the claimants/respondents 1 to 3 is that on 14.04.2013 at about 10 p.m., the deceased Sam Tilson Benyamin was travelling as a pillion rider in the Yamaha motor-cycle bearing Regn. No.TN-30-D-3251, owned by the 6th respondent and insured with the appellant herein. At that time, the rider of the said motor-cycle, drove it with rash and negligent manner and at very high speed, on Kannankurichi to Hasthampatty main road, near Chola Apartment. During which, a TATA Ace vehicle bearing Regn. No.TN-30-AL-9084, owned by the 4th respondent driven by



the 5th respondent, came in the opposite direction in a rash and negligent manner at a very high speed and collided with the said motor-cycle due to which, the deceased Sam Tilson Benyamin sustained grievous injuries and succumbed to the injuries on spot.

4. The claimants/respondents 1 to 3 who are the mother, father and younger sister of the deceased, filed a claim petition in M.C.O.P.No.1270 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court) Salem, claiming compensation of Rs.30,00,000/- for the death of the deceased against the respondents 4 to 6 and the appellant herein.

5. The Tribunal, after hearing the arguments on either side, and considering the materials, awarded compensation of Rs.7,57,000/- with cost and interest at the rate of 7.5% per annum. The Tribunal, found that the accident had occurred due to the rash and negligent driving of the riders of both the vehicles. However, since the said TATA Ace vehicle was not having any insurance, directed the respondents 4 and 5 who are the owner and driver of the TATA Ace vehicle, to jointly and severally pay 50% of the compensation and also directed the appellant/Insurance Company to pay the



balance 50% of the compensation on behalf of the 6th respondent/owner of the said motor-cycle, since the motor-cycle was insured with the appellant/Insurance Company.

6. Challenging the said Award, the insurer of the motor-cycle has filed the present appeal questioning the liability.

7. The learned counsel for the appellant/Insurance Company submitted that though two vehicles are involved in the accident, the TATA Ace vehicle bearing Regn. No.TN-30-AL-9084 alone is the offending vehicle. The FIR was registered only against the driver of the said TATA Ace vehicle and the charge sheet was also registered against the driver of the said TATA Ace vehicle. Even the observation report also shows that the accident was only due to the rash and negligent driving of the driver of the TATA Ace vehicle. However, since the said TATA Ace vehicle was not insured with any Insurance Companies, in order to get insurance claim, the claimants have implicated the rider of the motor-cycle bearing Regn. No.TN-30-D-3251 in which the deceased was travelling as a billion rider. But, there is no material to show that the accident had occurred only due to rash and negligent riding



of the rider of the motor-cycle. The rider of the motor-cycle neither involved in the accident nor he has contributed his negligence to the accident. Since because the offending vehicle viz., TATA Ace was not insured with any of the Insurance companies, they subsequently implicated the motor-cycle which is against materials. Though, P.W.2 is stated to be an eyewitness to the occurrence, he neither gave any complaint before the Police nor he was shown as an eyewitness in the criminal case. Only in order to get compensation, he was introduced as an eyewitness before the Tribunal and the Tribunal also, based on the evidence of P.W.2, fixed the liability on the owner of motor-cycle holding that the rider of the motor-cycle has also contributed his negligence and therefore, the appellant/Insurance Company was directed to pay 50% of the compensation since the said motor-cycle was insured with the appellant/insurance Company, which warrants interference.

8. The learned counsel for the respondents 1 to 3/claimants would submit that the either of the drivers who involved in the accident, was examined. The respondents 1 to 3/claimants are only 3rd party who are the parents and sister of the deceased. P.W.2 in his evidence, has clearly spoken about the manner of the accident and he has clearly stated that the drivers of



both the vehicles, have contributed their negligence. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

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9. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 and 5 and perused the materials available on record.

10. The accident is not in dispute. The manner of the accident and the liability are also not in dispute. Admittedly in this case, though the rider of the motor-cycle survived, he has not given any company against the driver of the TATA Ace vehicle. The pillion rider of the motor-cycle died on the spot and the same was intimated to the police through hospital authority and thereafter, the Investigating Officer went to the hospital and obtained the statement from the mother of the deceased. Though FIR was registered against the driver of the TATA Ace vehicle and after the investigation charge sheet was also laid against the driver of the TATA Ace vehicle, it is settled proposition of law that FIR is not an Encyclopedia. Therefore, they examined independent witnesses including the eyewitness/P.W.2 and based on which, the Tribunal has fixed the liability.



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11. A perusal of the records shows that even though the FIR was registered only against driver of the TATA Ace vehicle, as already stated that neither the rider nor the owner of the motor-cycle or any other eyewitnesses to the accident, gave the information to the Police. The learned counsel for the appellant/Insurance Company stated since the TATA Ace vehicle was not having any Insurance Coverage with any of the Insurance Companies, the rider of the motor-cycle was implicated as if, he has also contributed his negligence. As already stated, the FIR is not an encyclopedia. The materials before the criminal Court or Police may not be taken as it is for considering the claim petition. The Tribunal has to decide independently with available materials before it. In this case, the information was not given to the Police by any of the riders of the vehicles or by any eyewitnesses. Only the 1st respondent/claimant/mother of the deceased, while she was in the hospital, the Police have obtained her statement. Further, P.W.2 has stated that he had seen the accident and the drivers of both the vehicles have contributed their negligence. But there is no contra evidence before the Tribunal except the FIR and Charge sheet and no independent witnesses have spoken that the accident had occurred due to rash and negligent driving of the driver of the TATA Ace vehicle alone. Further, the materials show that it is head on



collision. Even assuming that the TATA Ace vehicle only came with rash and negligence manner, if at all, the rider of the motor-cycle was cautious, he could have avoided the accident to some extent. Since it is head on collision, the Tribunal has held that the drivers of both the motor-cycle and the TATA Ace vehicle have equally contributed their negligence for the accident and there is no contra evidence to the evidence of P.W.2 except the FIR. Therefore, this Court does not find any perversity in the appreciation of evidence by the Tribunal. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

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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) Salem.

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

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P.VELMURUGAN. J.

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