IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.479 of 2020
And
C.M.P.No.2705 of 2020

M/s.Bajaj Allianz General Insurance Company Limited,
'TBR Tower', Ground Floor,
No.31, 1st Cross, New Mission Road,
Near Bangalore Stock Exchange,
Banglore – 560 027. ... Appellant

Vs.

1.C.Kani
2.C.Raja
3.C.Vino
4.C.Shobana

5.M/s.Balaji Warehousing Company
Private Limited ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 17.07.2017 passed in M.C.O.P.No.36 of 2012 by the Hon'ble Motor Accidents Claims Tribunal, (In the Court of Subordinate Judge), at Madurantakam.

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.Richard Suresh for R1 to R4
R5 – No Appearance

J U D G M E N T

The second respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 17.07.2017 passed by the Motor Accidents Claims Tribunal (In the Court of Subordinate Judge), at Madurantakam, in M.C.O.P.No.36 of 2012.

2.The brief facts of the case is that on 23.12.2011, at about 4.30p.m., the deceased Charlie was travelling as a pillion rider in Hero Honda bearing Registration No.TN-18-C-2803 on the G.S.T.Road, near Mamandoor Vadapathy, Opposite to Lakshmi Water Service Station. At that time, the rider of the motorcycle drove the motorcycle in a rash and negligent manner and applied sudden brake, due to which, the motorcycle skidded and the deceased was taken to C.M.C.H. At Chengalpattu, where he was given first aid and thereafter he was taken to G.G.H., Chennai, however, he died on 24.12.2011.

3.Thereafter, the dependants of the deceased Charlie/ respondents 1 to 4 filed claim petition before the Motor Accidents

Claims Tribunal, claiming compensation of Rs.25 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.5,85,514/- as compensation with interest at the rate of 9% p.a. from the date of petition till the date of payment and costs and directed the appellant Insurance Company to deposit the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the appellant has filed this appeal on the ground of liability and the main allegation of the appellant is that the pillion rider became rider and rider became pillion rider inorder to avail the benefits of the Insurance Policy.

5.The learned counsel appearing for the appellant further submitted that though the accident happened on 23.12.2011, P.W.1 who is the son of the deceased made complaint before the law enforcing agency on 24.12.2011, in which, he has specifically stated that one Johnson drove the vehicle, however, subsequently, the law enforcing agency filed charge sheet as against the deceased. The said fact was established before the Tribunal through R.W.2 – Police

Officer. R.W.2 in his deposition has clearly deposed that the deceased himself drove the vehicle. Thereby, the charge was abated due to the death of the deceased.

6.The learned counsel appearing for the appellant further submitted that the deceased not possessed valid licence and inorder to avail the benefits of the Insurance Policy, the pillion rider was changed as rider and rider was changed as pillion rider. Further P.W.4 is the brother in law of the deceased and P.W.2 alleged eye witness is also neighbour of the deceased and they deposed in favour of the deceased family. Further in the motor vehicle inspection report, the rider of the motorcycle is mentioned as Charlie and xerox copy of M.V.Report has been marked as Ex.R2. All the documents and evidence cumulatively prove that the deceased does not possess valid driving licence. He is a tort feasor skidded and fell down and lost his life. Hence, fastening liability as against the Insurance Company is not sustainable one.

7.Per contra, the learned counsel appearing for the respondents 1 to 4/ claimants submitted that admittedly accident happened due to the rash and negligent driving of P.W.4 – Johnson and immediately after the accident, the son of the deceased made complaint before the law enforcing agency, however, R.W.2 – Police Officer made a statement that the vehicle was driven by the deceased, thereby, the charge was abated. However, no RCS notice was served on P.W.1. The learned counsel further submitted that without serving RCS notice, charge sheet cannot be filed and charge sheet has not been marked as exhibit. Except the evidence of R.W.2, no exhibit is marked to show that the motorcycle was driven by the deceased and oral evidence is not conclusive proof. Even if charge sheet is filed, the evidence recorded before the Tribunal can be given weightage. In the present case, P.W.2 eye witness clearly deposed that the motorcycle was driven by P.W.4 and the driving licence has been marked as Ex.P10. Further motor vehicle report was prepared based on Police report and hence, it is not permissible one. Hence, the impugned judgment warrants no interference.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and perused the materials available on record.

9.The claimants claim that the deceased travelled as a pillion rider in the motorcycle. The Insurance Company claim that the deceased was the rider of the motorcycle and he did not possess valid licence.

10.Perusal of records reveal that after the accident, the son of the deceased/ P.W.1 made complaint before the law enforcing agency. R.W.2 – Police Officer made a statement before the Tribunal that the vehicle was driven by the deceased, thereby, the charge was abated. However, no RCS notice was served on P.W.1. Without serving RCS notice, charge sheet cannot be filed and charge sheet has not been marked as exhibit. Except the evidence of R.W.2, no exhibit has been marked to show that the motorcycle was driven by the deceased and oral evidence is not conclusive proof. Even if charge sheet is filed, the evidence recorded before the Tribunal can be given weightage. In the present case, P.W.2 eye witness clearly deposed that the motorcycle was driven by P.W.4 and the driving licence has been marked as Ex.P10. Further, motor vehicle report was prepared based on Police report and hence, it is not permissible one. after the accident, the son of the deceased made complaint before the law enforcing agency, however, R.W.2 – Police Officer made a statement that the vehicle was driven by the deceased, thereby, the charge was abated. However, no RCS notice was served on P.W.1. The learned counsel further submitted that without serving RCS notice, charge sheet cannot be filed and charge sheet has not been marked as exhibit. Except the evidence of R.W.2, no exhibit is marked to show that the motorcycle was driven by the deceased and oral evidence is not conclusive proof. Even if charge sheet is filed, the evidence recorded before the Tribunal can be given weightage. In the present case, P.W.2 eye witness clearly deposed that the motorcycle was driven by P.W.4 and his driving licence has been marked as Ex.P10. Further motor vehicle report was prepared based on Police report and hence, it is not permissible one. Hence, the negligence aspect and liability fixed by the Tribunal warrants no interference.

11.Insofar as the quantum of compensation is concerned, the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable, which warrants no interference.

12.In view of all the above, the civil miscellaneous appeal is dismissed. The judgment and decree dated 17.07.2017 passed by the Motor Accidents Claims Tribunal, (In the Court of Subordinate Judge), at Madurantakam, in M.C.O.P.No.36 of 2012, is confirmed.

13.The appellant Insurance Company is directed to deposit the entire award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the respondents 1 to 4/ claimants are permitted to withdraw their respective share as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

14.The civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

18.12.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,

(In the Court of Subordinate Judge), at Madurantakam.

M.DHANDAPANI,J.
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