



C.M.A(MD)No.895 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.11.2022

Pronounced on : 19.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.895 of 2012

The Branch Manager

...Appellant/ 2nd Respondent

Vs

1.Vellaiammal

2.Kaniyammal

3.Mayandi

4.Murugesan

... Respondents 1 to 4/Petitioners

5.Dharmaraj

... 5th Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 31.03.2011 made in M.C.O.P.No.119 of 2001 on the file of the Additional Motor Accidents Claims Tribunal (Additional Sub Court), Tenkasi.

For Appellant : Mr.G.Prabhu Rajadurai

For R1 to R4 : Mr.T.S.Mohamed Mohideen

For R5 : Mr.P.Athimoolapandian



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.119 of 2001 on the file of the Additional Motor Accidents Claims Tribunal (Additional Sub Court), Tenkasi. The appellant is the 2nd respondent. Respondents 1 to 4 are the claimants. The 5th respondent is the 1st respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 24.12.1998, the deceased Marimuthu was travelling in a two wheeler bearing registration number TN I 1977 as a pillion rider from Kizhappavur to Melappavur, near Seevalaperiyan temple, the rider of the two wheeler drove the vehicle in a rash and negliget manner and dashed against the hundial of the temple, the deceased fell down and he sustained injuries. He was admitted in Tenkasi Government Hospital. There he died. To escape from the liabilities, the rider filed a police complaint and an FIR was registered against the deceased. After investigation, the case was registered against the 1st respondent. The deceased was doing milk vending business. He was earning Rs.2,500/- per month. The petitioners are his dependants and they claim a sum of Rs.5,00,000/- as compensation.



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3. Brief substance of the counter filed by the 1st respondent is as follows:

There is no jurisdiction for the Tribunal to try this case. The petitioners have to approach only the civil Court. The manner of accident is wrongly narrated in the petition. The deceased was a relative of the 1st respondent. The deceased borrowed the vehicle from the 1st respondent and he drove the vehicle in a rash manner and dashed against the temple hundial. He died only due to his own negligence. Thus, the 1st respondent laid a complaint against the deceased, but a police case was filed against the 1st respondent. The age, income and profession of the deceased are all denied. The claim is excessive.

4. Brief substance of the additional counter filed by the 1st respondent is as follows:

The complaint was lodged by the 1st respondent and a case was registered against the deceased and the case was closed, as the accident has occurred only due to the negligence of the deceased himself. On the basis of a false complaint filed by the petitioners, a case was registered against this respondent. Charge sheet was also filed in the case and the 1st respondent was acquitted of the charges.



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5. Brief substance of the second additional counter filed by the 1st respondent is as follows:

The 1st respondent insured the vehicle with the 2nd respondent. A receipt dated 13.04.1998 was given to the 1st respondent. The 1st respondent is not liable to pay compensation. The petition is to be dismissed.

6. Brief substance of the counter filed by the 2nd respondent is as follows:

The deceased was not having a valid driving licence. The petitioners have to prove the manner of accident and the person who drove the vehicle at the time of accident. Since the deceased was not having a valid driving licence, a false case was foisted against the 1st respondent. The earlier complaint was filed against the deceased and the case was closed by the police. Subsequently, the petitioners and the first respondent colluded together and gave the false complaint. The age, income and profession of the deceased are all denied. The vehicle was insured only for third party claim. The respondent was impleaded only in the year 2010. The respondent is not liable to pay compensation prior to 2010. This petition is to be dismissed.



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7. Two (2) witnesses were examined and six (6) documents were marked on the side of the petitioners. Three (3) witnesses were examined and eleven (11) witnesses were marked on the side of the respondents. Three (3) documents were marked as Ex.X1 to Ex.X3. The Tribunal fixed a sum of Rs.6,47,000/- as compensation. Since the petitioners restricted their claim to Rs.5,00,000/-, the Tribunal awarded Rs.5,00,000/- as compensation to be paid by respondents 1 and 2.

8. Against the award, the appellant preferred this appeal on the following grounds:

The Tribunal ought to have dismissed the claim petition as the claim is bogus. The Tribunal failed to consider that the earlier FIR was closed as the deceased himself was riding the bike, the Tribunal failed to consider that the fifth respondent was acquitted of the charges before the criminal Court. The Tribunal failed to consider that Ex.R3 policy will not cover the pillion rider. The award is excessive.

9. On the side of the appellant it is stated that no other vehicle was involved in the accident. The policy was only an act policy. The deceased



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was the tortfeasor. The earlier FIR was closed as the accused was dead. No premium was paid for the pillion rider. Pillion rider cannot be considered as a third party. No premium was paid for the owner or for the pillion rider.

10. On the side of the fifth respondent herein/ the owner of the vehicle, it is stated that - P.W.2, was examined as an eye witness. It was the deceased who borrowed the vehicle from the fifth respondent herein. P.W.1 - the wife of the deceased, has deposed that her husband was having the habit of drinking and that at the time of accident, he came in a drunken mode and he quarreled with the wife.

11. The wife has admitted that her husband did not know how to drive a two wheeler. She has admitted that initially FIR was registered against the deceased. On the next day, after the death of the deceased, the FIR was closed. Only after consulting the advocate, she filed another complaint.

12. On the side of the owner of the vehicle/ the fifth respondent herein, it is stated that P.W.2 was examined as an eye witness. He has admitted that he did not take the injured to the hospital. He did not give complaint



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regarding the accident. He did not attend the funeral of the deceased. P.W.2 is the brother in law of the deceased. His evidence cannot be given any weightage.

13. On the side of the fifth respondent it is further stated that the earlier FIR was closed as the deceased was the rider of the vehicle. In the policy it is not stated that there was no coverage for the pillion rider. The insurance company is liable to pay compensation. A judgment of this Court reported in **2021 SCC OnLine Madras 14038** in the case of **General Manager, United India Insurance Co.Ltd and another Vs Maragathamani and another**, was cited on the side of the appellant, wherein this Court has made an observation as follows:

"12. Copy of the policy was marked as ex.P6. A perusal of the policy certificate reveals that nothing was mentioned regarding the persons, who were covered under the policy and regarding the persons, who were not covered under the policy. The policy certificate is vague as to the liability. The appellant is claiming that the policy is Act only policy. The caption 'Act only policy' was not mentioned in the policy certificate. F.I.R. and charge sheet were laid against the rider of the two wheeler. Driving licence of the rider of the two wheeler was also marked



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as Ex.P7. The policy was in force at the time of accident. The only allegation is that there was no coverage for the pillion rider. It is the duty of the insurance Company to mention the particulars as to who are all covered under the policy and who all are not covered under the policy and the limitation of the policy, etc. As no such particulars are mentioned in the policy, it is decided that the appellant is liable to pay compensation."

14.On the side of the claimants it is stated that it is wrong to state that there was no coverage for the pillion rider. No specific particulars were given in the policy certificate. The respondents 1 to 4 herein are the dependants of the deceased and they pray the appeal to be dismissed.

15.The fifth respondent herein was examined as R.W.1. He has deposed that he did not ride the motorcycle at the time of accident. The first FIR was closed as abated. Subsequently, the case was reopened. After reinvestigation, charge sheet was filed against the owner of the vehicle. A perusal of the records reveals that the original complaint was given by the owner wherein it is stated that the deceased was a rider of the motorcycle. In Ex.R9, it is stated that the Head Constable received the complaint and registered the FIR. R.W.2 was the investigation officer. In Ex.X1 and Ex.X2,



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it is stated that after the death of the deceased, the FIR was closed as 'further action dropped'. Copy of the FIR was marked as Ex.R1. Copy of the charge sheet was marked as Ex.R2. The judgment of the criminal court in C.C.No. 122 of 1999 was marked as Ex.R5. The evidence of P.W.2 given in the criminal case, was marked as Ex.R2. Evidence of the inspector of police in the criminal case was marked as Ex.P7. The evidence of the Doctor was marked as Ex.R8. Evidence of the Head Constable was marked as Ex.R9. 161 statements were marked as Ex.R4, Ex.R6 and Ex.R10.

16.The question to be decided in this appeal is whether the deceased was a rider of the vehicle or a pillion rider. Ex.P4 to Ex.P6, Ex.P1, photographs of the occurrence spot, are not useful to decide the issue. From the evidence of the inspector and from Ex.P2, Ex.P7, Ex.P9 and Ex.P10, it is stated that the deceased was not the rider of the vehicle at the time of accident. R.W.1, Dharmaraj was the accused in the criminal case. He was the complainant for registering the FIR. When the Head Constable received the hospital intimation, and went to the hospital, the deceased was unconscious and it was the R.W.1 who gave the statement for registering the complaint. In the complaint, it was mentioned that R.W.1 received phone information



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regarding the accident. The name of the person, who called upon R.W.1 was not mentioned in the complaint. Why the phone message was not sent to the wife of the deceased and why the same was sent only to R.W.1 was not explained in the complaint. In the evidence of R.W.1 it is stated that on receiving the phone message, R.W.1 called for that taxi from the neighbouring village and went to the spot. Initially, he took the deceased to the Tenkasi Government Hospital then he admitted the deceased in Tirunelveli Government Hospital. Why R.W.1 did not intimate the wife of the deceased regarding the accident and why R.W.1 took the deceased for treatment without intimating the wife and family members of the deceased who were residing in the same village, was not at all explained. In the evidence of P.W.1, it was stated that the fact of accident was intimated to her only in the morning. This creates some suspicion regarding the complaint lodged by R.W.1.

17. On the side of the fifth respondent /owner of the vehicle, it is stated that the deceased was under the influence of alcohol at the time of accident. P.W.1 has admitted that her husband have a quarrel with her on the date of accident and that he has consumed alcohol at that time. But in the post mortem report, there is no symptoms of any liquor in the body of the



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deceased. Hence, the evidence of P.W.1 cannot be taken into consideration and the contention of the respondent is not valid. P.W.1 and P.W.2 have deposed that the deceased did not know riding a motorcycle.

18.R.W.1 has deposed that he was not having the habit of lending his motorcycle and only on the date of accident, since the deceased was his relative he gave his vehicle to the deceased. The eye witness mentioned in the charge sheet, was examined as P.W.2. Admittedly, there was some contradiction in the evidence of P.W.1 and P.W.2. The proceedings under the M.V.Act is a summary trial proceedings and hence the contradictions cannot be given more weightage. Ex.P4, Ex.P6 and Ex.P10 are statements recorded by the police under Section 161(3) and those statements cannot be taken into account. Acquittal in a criminal proceedings will not bind the decision of the Tribunal. Hence, it is decided that the respondent failed to prove that the deceased was the rider of the two wheeler. Hence, it is decided that it was the owner of the vehicle who drove the vehicle at the time of accident and that the deceased travelled as a pillion rider.



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19.A suggestion was put before the Doctor that the rider of the vehicle ought to have sustained injuries in the accident. It is further stated that R.W.1 was not having any injuries and hence he was not the rider of the two wheeler. There is a possibility of the pillion rider to fell down from the vehicle and sustained injuries due to the impact of hitting against a three feet height hundial.

20.On the side of the appellant it is stated that the policy is only an act policy and there is no coverage for the rider or a pillion rider in the vehicle. Ex.R3 is the copy of the policy. On the side of the appellant it is stated that pillion rider cannot be considered as a third party.

21.On the side of the fifth respondent it is stated that the seating capacity of the two wheeler is two and the policy covers two persons. It was the duty of the insurance company which ought to have collected premium for the pillion rider.

22.On the side of the respondents 1 to 4 it is stated that the policy certificate contains no particulars regarding the liability or the coverage of



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policy. The insurance company failed to mention the persons who are covered under the policy and failed to mention who are all not covered under the policy in the policy certificate and that the insurance company cannot denied this liability.

23.On the side of the appellant it is stated that only when premium was collected for the pillion rider, the insurance company will be held liable. No such premium was paid for the pillion rider. Only the capacity of the vehicle was mentioned as two. There is no coverage for two passengers. No premium was paid either for the rider or for the pillion rider. Only third party coverage is available. Ex.R3 is the policy copy. In the policy copy nothing was stated about the coverage of the policy. Only single page of the policy was marked. Copy of the payment particulars were not annexed with the policy certificate. Whether premium for the pillion rider was paid or not cannot be found out from Ex.R3. Just because the words 'act only' was printed on the top of the policy, this Court cannot come to the conclusion that no premium was paid for the driver or the pillion rider. It is only a portion of an insurance contract.



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24.In the above circumstances, it is decided that the insurance company failed to prove that no premium was paid for the pillion rider and no allegation was made out in the appeal regarding the quantum of compensation fixed by the Tribunal. Hence it is decided that the quantum of compensation fixed by the Tribunal is reasonable. The appellant is directed to deposit the amount.

25.Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.5,00,000/- (Rupees Five Lakhs only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant / Insurance Company is directed to deposit the entire compensation of Rs.5,00,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.119 of 2001 on the file of the Additional Motor Accidents Claims Tribunal (Additional Sub Court), Tenkasi, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the appellant / Insurance company, the first respondent herein / first claimant is permitted to withdraw her share of Rs.2,75,000/- (Rupees Two Lakhs Seventy Five Thousand only) with proportionate interest and cost. The respondents 2 to 4 herein / claimants 2 to 4 are permitted to withdraw their share of Rs.75,000/- (Rupees Seventy Five Thousand only) with proportionate interest and cost, as proportioned by the Tribunal.

19.01.2023

Index: Yes / No

Internet : Yes / No

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To

- 1.The Additional Motor Accidents Claims Tribunal (Additional Sub Court), Tenkasi.
- 2.The Record Keeper, Vernacular Records, Madurai Bench of Madras High Court, Madurai.



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R. THARANI, J

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Pre-delivery Judgment made in
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