



C.M.A(MD)No.565 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.565 of 2021

and

C.M.P.(MD) No.5365 of 2021

1.Muthuselvi

2.Minor Shenbaga Ilavarasi

3.Minor Abirami

4.Minor Durgadevi

5.Minor Isai Narmadha

6.Minor Asmitha

... Appellants

.VS.

1.Jeyaraman

2.The Branch Manager,
National Insurance Company Ltd.,
Door No.175A, Great Garden Road,
Tuticorin-628 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173(1) of Motor Vehicles Act, to set aside the Judgment and Decree dated 25.01.2021 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate (FAC), Tirunelveli, in M.C.O.P.No.127 of 2016 and award compensation as prayed for in the claim application.



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For Appellant : Mr.T.Lenin Kumar
For R2 : Mr.V.J.Kumaravel Ganesh
For R1 : No appearance

JUDGMENT

This appeal is filed challenging the dismissal of M.C.O.P.No.127 of 2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate (FAC), Tirunelveli.

2. The claimants filed M.C.O.P.No.127 of 2016 for the death of one Ayyadurai in a road accident on 14.03.2015. It is stated in the claim petition that the deceased Ayyadurai was travelling in a two wheeler bearing Registration No.TN-69-AR-3529 in Tiruchendur to Kulasekarapattinam Main Road near Thopur Junction. His motorcycle hit against the cement pipe fixed above the underground drainage channel. It resulted in accident and he suffered multiple injuries and consequently died. The deceased was a painter and was earning Rs. 40,000/- per year. The claimants are the wife and children of the deceased. Because of his sudden demise, the claimants find it difficult to make money for survival and thus, claimed a compensation of Rs.25,00,000/-.



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3. In the counter filed by the respondent, it is stated that the accident had happened only an account of the fault of the deceased motorcycle rider. Therefore, the respondent is not liable to pay compensation. He is not having a valid driving licence at the time of the accident. He borrowed the vehicle from the first respondent. The compensation claimed, is excessive.

4. During the enquiry before the Tribunal, on the side of the appellants, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P5 were marked and on the side of the respondent R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R5 were marked.

5. On going through the oral and documentary evidence, the learned Tribunal found that the deceased was not a registered owner of the vehicle. The accident had been caused because of his rash and negligent riding. He had no valid driving licence at the time of accident. For all these reasons, the learned Tribunal had dismissed the petition. Challenging the dismissal order, this petition is filed.

6. It is the submission of the learned counsel for the appellants that



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the deceased can be treated as third party and the Tribunal should have awarded the compensation for the legal heirs of the deceased.

7. This is opposed by the learned counsel for the respondent stating that a tort-feasor cannot be a beneficiary. That apart, he had no driving licence.

8. Considered the rival submissions and perused the records.

9. It is not in dispute that the accident had happened on 14.03.2015. The deceased suffered fatal injuries and succumbed. The accident had happened while hitting against the cement pipe, when he was riding a two wheeler. No other vehicle had involved in the accident. It is apparent that the accident had happened because of the rash and negligent driving of the two wheeler rider. The learned Tribunal on the basis of the oral and documentary evidence found that the rider of two wheeler had no valid licence at the time of accident. It is clearly established that the deceased, without having a valid driving licence, had ridden the two wheeler bearing Registration No.TN-69-AR-3529 and invited the accident by his rash and negligent driving and his consequent



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death. It is a settled proposition of law that a tort-feasor cannot be the beneficiary. In this case, the deceased is not the owner of the vehicle, but he borrowed the vehicle from the first respondent. Though he stepped into shoes of the owner, the owner who was responsible for the accident cannot make a claim against his own insurer. That principle applies to the borrower of the vehicle as well. In the said circumstances, this Court finds that the dismissal of the claim petition by the learned Tribunal needs no interference and the same is confirmed.

10. In fine, this Civil Miscellaneous Appeal is dismissed.
No costs. Consequently, connected miscellaneous petition is dismissed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
cp

18.12.2023

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate (FAC),
Tirunelveli.



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G.CHANDRASEKHARAN,J.

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