



C.M.A. (MD) No. 433 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.08.2023

Pronounced on : 19.10.2023

CORAM:

THE HON'BLE MR. JUSTICE **K. MURALI SHANKAR**

C.M.A. (MD) No. 433 of 2018

and

C.M.P. (MD) Nos. 5348 of 2018 and 2741 of 2020

M/s. National Insurance Company Limited
through its Divisional Manager
D.No.3, North Veli Street
Madurai District

... Appellant/
2nd Respondent

Vs.

1. Mookkammal

2. Irul Raj

3. Minor Irul Jothi

4. Minor Arjun Priya

*(Minor Respondents 3 & 4 are represented through
their mother/natural guardian, the 1st respondent/
Mookkammal)*

5. Pandi

6. Subbammal

... Respondents 1 to 6/
Petitioners



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7. P.Muthusamy

... 7th Respondent/
1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.374 of 2013, dated 20.09.2017 on the file of the Motor Accident Claims Tribunal, VI Additional District Court, Madurai, allow the appeal with costs.

For Appellant	: Mr.J.S.Murali
For R1 to R6	: Mr.A.Theethar
For R7	: No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.374 of 2013 dated 20.09.2017 on the file of the Motor Accident Claims Tribunal/VI Additional District Court, Madurai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.5,99,200/- (Rupees Five Lakhs Ninety Nine Thousand and Two Hundred only) with interest at 7.5% per annum for the respondents 1 to 6/claimants for the death of Udaiyar, consequent to an accident occurred on



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13.09.2012, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.

3. The case of the claimants is that on 13.09.2012 at about 20.30 hours, when the deceased Udaiyar was travelling as a pillion rider in a two wheeler bearing Registration No.TN-59-T-8753 on Madurai Ring Road from North to South and at the place near Echanodai, Madurai District, an unidentified vehicle had hit the two wheeler from behind and as a result of which, the said Udaiyar had sustained serious injuries all over his body and he was immediately taken to Madurai Government Rajaji Hospital and that despite treatment, he succumbed to the injuries on 16.09.2012.

4. It is the further case of the claimants that the accident was occurred out of and use of the Hero Honda two wheeler bearing Registration No.TN-59-T-8753, which was owned by the first respondent and that since the same was insured with the second respondent, both the respondents are jointly and severely liable for the claim.



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5. The defence of the second respondent is that the very involvement of the two wheeler bearing Registration No.TN-59-T-8753 in the alleged accident is not accepted, that after three days of the alleged accident, the claimants invented the cause of action, as if, the deceased was travelling as a pillion rider in the alleged accident and another vehicle had hit against the two wheeler, that even according to the claimants, the accident was occurred only due to the negligence act of a third party vehicle, unknown to the driver of the two wheeler and that since there was no negligence and involvement of the first respondent's vehicle, the second respondent is not liable for the claim.

6. During trial, the claimants have examined the first claimant Mookkammal as P.W.1 and the first respondent Muthusamy as P.W.2 and exhibited 5 documents as Ex.P.1 to Ex.P.5. The first respondent had remained *ex parte*. The second respondent has examined 4 witnesses as R.W.1 to R.W.4 and exhibited 4 documents as Ex.R.1 to Ex.R4 and two witness documents as Ex.X.1 and Ex.X.2.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, by



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holding that the first respondent (P.W.2) was responsible for the accident, mulcted liability on the second respondent and directed them to pay compensation of Rs.5,99,200/- with interest and costs. Aggrieved by the impugned award, the insurer has come forward with the present appeal.

8. The learned counsel appearing for the second respondent would submit that it is a clear case of 'hit and run' accident and in the FIR itself, it has been stated that the deceased was travelling as a pillion rider in the first respondent's vehicle and one unidentified vehicle has dashed against the insured vehicle, that subsequently, FIR itself was closed as the offending vehicle could not be traced out by the police, that the claimants have examined P.W.2 alleged to be occurrence witness, who is none other than the first respondent/owner of the vehicle and that though he had remained *ex parte* before the Tribunal, he was examined as P.W.2 on the side of the claimants. He would further submit that the Tribunal has failed to consider the evidence of R.W.1 to R.W.4 and the documents under Ex.R.1 to Ex.R.6 and committed a grave error in directing the second respondent to pay the entire award amount, despite fact that the offending vehicle, which has caused the accident, could not be traced by the police.



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9. The points that arise for consideration are :

- 1) *Whether the Tribunal erred in mulcting liability on the second respondent, despite showing the facts that it was a case of 'hit and run' accident and the FIR was closed as the offending vehicle could not be traced and that therefore, the insurer of the two wheeler is not liable for the claim?*
- 2) *Whether the impugned award dated 20.09.2017 is liable to be interfered with?*

10. Admittedly, the Hero Honda two wheeler bearing Registration No.TN-59-T-8753 was owned by the first respondent, who is none other than the brother of the deceased. As already pointed out, though the first respondent/owner of the vehicle had remained *ex parte*, he was examined as P.W.2 by the claimants. Even according to the claimants and the first respondent (P.W.2), when P.W.2 was riding the two wheeler bearing Registration No.TN-59-T-8753 with deceased as a pillion rider, an unidentified vehicle had hit the same from behind and caused the accident. It is not the case of the claimants or the first respondent that the accident was occurred only due to the rash and negligent driving of the first respondent (P.W.2).



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11. The learned counsel appearing for the claimants would mainly contend that since the claim petition was filed under Section 163A of the Motor Vehicles Act, there is absolutely no need or necessity to plead or prove the negligence and relied on some decisions of the Hon'ble Apex Court as well as this Court which were referred by the Tribunal.

12. Admittedly, Section 163A of the Act finds place in Chapter XI of the Motor Vehicles Act, 1988 and Chapter XI deals with the insurance of motor vehicles against third party risks. Section 163A of the Act contemplates that the vehicle owner or the authorised insurer shall be liable to pay compensation to the victim or the legal heirs of the victim as the case may be and the said provision has been intended to ensure speedy disbursement of the compensation amount without going into the question of whether the owner was at fault or not. As rightly contended by the learned counsel appearing for the second respondent, the said provision has no application where the vehicle owner himself is the victim.

13. Even assuming the claim petition is filed under Section 166 of the Motor Vehicles Act, only in the event of fixing the tortfeasor, the



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vicarious liability can be fixed on the owner of the vehicle and thereafter, only the insurer can be made liable to reimburse the insured. In the case on hand, admittedly, the accident is a 'hit and run' case. The pillion rider of the two wheeler driven by the owner of the vehicle was the deceased. As already pointed out, though the FIR was registered against the first respondent, after investigation, the same was closed as the offending vehicle could not be traced. Considering the above, the very finding of the Tribunal fixing the responsibility on P.W.2 and on that basis, mulcting liability on the second respondent is not in accordance with law and the same is liable to be set aside.

14. The Tribunal has awarded compensation of Rs.5,99,200/- to the claimants. No doubt, the claimants have also filed their application under Section 140 of the Motor Vehicles Act, which provides for liability for compensation in certain cases on the principle of no fault. Section 140 of the Motor Vehicles Act contemplates that in the event of death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle or the owners of the vehicles shall jointly and severally liable to



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pay compensation in respect of death or disablement in accordance with the provisions of the said Section. In case of death, the owners are bound to pay Rs.50,000/- or in case of permanent disablement, the owners are bound to pay to the injured person a sum of Rs.25,000/-.

15. Liability under Section 140 of the Motor Vehicles Act is fastened on the owner of the vehicle without fault. Since the claim petition filed under Section 163A of the Motor Vehicles Act is misconceived, the claimants are entitled to get compensation under Section 140 of the Motor Vehicles Act. Hence, this Court concludes that the claimants are entitled for a sum of Rs.50,000/- as compensation in terms of Section 140 of the Motor Vehicles Act.

16. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

17. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded at Rs.5,99,200/- (Rupees Five Lakhs Ninety Nine Thousand and Two Hundred only) is reduced to **Rs.50,000/-**



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(Rupees Fifty Thousand only). The appellant/insurer is directed to deposit the modified award amount with interest at 7.5% per annum from the date of petition till the date of payment to the credit of M.C.O.P.No. 374 of 2013 on the file of the Motor Accident Claims Tribunal/VI Additional District Court, Madurai, if not deposited earlier, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent is entitled to get **Rs.25,000/- (Rupees Twenty Five Thousand only)** and the respondents 2 to 6 are entitled to get **Rs.5,000/- (Rupees Five Thousand only)** each. Accordingly, the respondents 1, 2, 5 and 6 and the respondents 3 and 4, who have attained majority are permitted to withdraw their shares along with interest and costs, on due application before the Tribunal. If the amount was already deposited, the balance amount shall be withdrawn by the appellant/insurer. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

19.10.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal/
VI Additional District Court, Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
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and
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Dated : 19.10.2023