IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2023

PRONOUNCED ON : 29.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

C.M.A.No.12 of 2018 and
C.M.P.No.171 of 2018

Oriental Insurance Co.Ltd.,
rep.by its Manager,
Divisional Office,
No.1 Katpadi Road,
Vellore. ...Appellant

Vs.

1. Varalakshmi
2. Minor Sudhakaran
3. Minor Tamilselvan

(Minors represented by their mother and
natural guardian varalakshmi, the first respondent)

4. Eswari
5. S.Nabi ...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 24.07.2017 passed in M.C.O.P.No.18 of 2014, by the learned Motor Accident Claims Tribunal and III Additional District Judge, Vellore at Tirupattur.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.V.Kumaravelan for RR1 to 4
R5 – Ex-parte

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company questioning the liability and challenging the compensation awarded in M.C.O.P.No.18 of 2014 dated 24.07.2017, by the learned Motor Accident Claims Tribunal and III Additional District Judge, Vellore at Tirupattur.

2 The appellant is Insurance Company, respondents 1 to 4 are claimants and 5th respondent is owner of the offending vehicle. The claimants filed claim petition in M.C.O.P.No.18 of 2014 claiming Rs.20,00,000/- as compensation. The first respondent is wife, 2nd and 3rd respondents are minor children and fourth respondent is mother of the deceased one Anbzhagan. It is the case of the claimants before the Tribunal that the fifth respondent and the deceased were well known persons and at request of the fifth respondent to get some articles from Elagiri, the deceased took fifth respondent's vehicle Hero Honda Passion bearing Reg.No.TN 10 J 7634 to Elagiri on 17.01.2012 and when he returned back along with one pillion rider namely Harikrishnan, the deceased drove the vehicle observing all the rules of the road. On that day at about 18.45 hours when the deceased was proceeding Elagiri hill at 14th bend, all of sudden a snake passed in the middle of the road and on seeing the same the deceased applied sudden break, but since the conditions of the tire of the vehicle become worst, it skidded, due to which, the deceased and the pillion rider fell down and sustained injuries. The deceased sustained multiple grievous and immediately he was taken to Government Hospital, Tirupattur and after first aid, he was taken to CMC, Vellore and then taken to Rajiv Gandhi Medical College Hospital, Chennai as inpatient, but, on 19.01.2012, the deceased succumbed to the injuries.

3 The claim petition was not contested by the fifth respondent owner of the offending vehicle and he remained ex-parte before the Tribunal. The claim petition was contested by the appellant/Insurance company and they filed detailed counter denying all the allegations apart from disputing the liability.

4 Before the claims Tribunal, On the side of the claimant P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked. On the side of the appellant/Insurance Company, R.W.1 was examined and Ex.R1 to R4 were marked.

5 The Tribunal, on an assessment of the entire evidence on record, fixed the liability on the appellant/Insurance Company and awarded a sum of Rs.1,00,000/- as compensation along with 7.5% interest. Aggrieved by the order of the Tribunal in fixing the liability, the Insurance Company has filed the present appeal.

6 Learned counsel appearing for the appellant/Insurance Company would submit that the accident had occurred only due to rash and negligent driving of the deceased, who drove the vehicle at the time of accident and hence the question of vicarious liability does not arise. The deceased, while driving the vehicle in the Hill station has lost his control and fell down, which is cause for the accident and he is a tort-feasor. Therefore the claimants, who are the legal heirs of the deceased are not entitled to get compensation from the appellant/Insurance Company.

6.1 Further the learned counsel would submit that the insurance policy covers the risk only for owner-cum-rider of the vehicle. There is no proof for the income of the deceased and FIR itself registered against the deceased only based on the complaint given by the pillion rider of the offending vehicle. At the time of accident the deceased was under the influence of Alcohol and thereby violated the policy conditions. The Tribunal failed to consider all the above aspects and hence the claimants are not entitled to get compensation and the appellant is not liable to pay the award amount granted by the Tribunal.

7 Learned counsel appearing for the respondents 1 to 4, who are the claimants would submit that the deceased was driving the vehicle slowly and observing all the traffic rules and when it reaches the Elagiri hill at 14th bend, all of sudden a snake passed in the middle of the road and on seeing the same, in order to avoid the crush of the snake, applied sudden break, due to which he and the pillion rider fell down and the deceased suffered grievous injuries. Even though in the FIR it is stated that the deceased lost his control while riding the vehicle and caused accident, but there is no materials to show that the deceased himself is a tort-feasor. However, the Tribunal made a finding that even though as contended by the learned counsel for the appellant/Insurance Company that the insurance policy covers only the owner–cum–rider of the vehicle, the deceased borrowed the vehicle of the owner and he stepped into the shoes of the owner of the vehicle and hence he is entitled to get compensation. Further the Tribunal considering all the aspects and the policy is only limited to the extent of Rs.1.00 lakh to the owner-cum-rider, awarded Rs.1.00 Lakh only as compensation to the claimants, even though the claimants claimed Rs.20,00,000/- as compensation in the claim petition. Therefore the award of the Tribunal needs no interference and the appeal is liable to be dismissed.

8 The fifth respondent, who is the owner of the offending vehicle remained exparte before the Tribunal and also before this Court.

9 Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondents 1 to 4 and perused the materials available on record.

10 The accident is not in dispute and the claimants are the legal heirs of the deceased is also not in dispute. According to the appellant/Insurance Company the deceased himself drove the vehicle in a rash and negligent manner and lost his control, which caused the accident and he was also under the influence of alcohol and hence he is a tort-feasor and therefore the claimants are not entitled to get compensation and further the policy covers only owner-cum-rider of the vehicle and the deceased is not a owner of the vehicle and hence the appellant is not liable to pay the compensation.

11 The Tribunal, has rightly appreciated the fact that even though the policy covers only the owner-cum-driver and that too it is a package policy and can only grant Rs.1.00 lakh, made a finding that the deceased stepped into the shoes of the owner of the vehicle and he is entitled to compensation and hence the Tribunal awarded Rs.1.00 lakh.

12 Further Even though the appellant contended that the deceased was under the influence of alcohol at the time accident, but to prove the same, the Insurance company neither produced any document nor examined any witnesses. Hence the above contention cannot be accepted.

13 This Court, as an appellate Court a final Court of fact finding, while re-appreciating the entire records, finds that the appellant/Insurance Company has not proved that the deceased is a tort-feasor and at the time of accident, the deceased was under the influence of alcohol. There is no merit in the appeal and the appeal is liable to be dismissed.

14 The appellant/Insurance Company is directed to deposit the award amount along with interest @ 7.5 within a period of six weeks from the date of receipt of a copy of this order and on receipt of the same, the Tribunal is directed to pay the same directly to the accounts of the all the claimant as per the decision of the Division Bench of this Court reported in *2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others),* after verifying that the minor claimants are attained majority.

15 With the above observations and directions, this civil miscellaneous appeal is dismissed. Connected miscellaneous petitions is also closed. No costs.

29.02.2023

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Speaking Order: Yes/No
Neutral citation: Yes/No

To

1. The Motor Accident Claims Tribunal
   and III Additional District Judge, Vellore at Tirupattur.
2. The Section Officer, V.R.Section, High Court, Madras.

P.VELMURUGAN. J.,

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Pre-Delivery Judgment in

C.M.A.No.12 of 2018

29.02.2024