



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

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THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.1647 of 2018

The Divisional Manager
National Insurance Company Ltd.,
No.62-A, JN Street, Puducherry.

... Appellant

Vs.

1. Rajeswari (Died)

2. Rosemarie

3. Christina Marie

4. Punitha Marie

5. Arokiamma

(RR2 to 5 are recorded as LR's of the deceased
R-1 Rajeswari as per memo dated 18.07.2024 are
recorded and vide court order dated 23.07.2024 in
CMA No.1647 of 2018 and CMP. No.13059 of 2018
by this Court.)

6. Narayanaswamy

7. The Divisional Manager,
United India Insurance Company Ltd.,
Jawaharlal Nehru Street,
Puducherry.



8. Ramanugam

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in MACT OP. No.237 of 2012 dated 18.12.2014 on the file of the Motor Vehicle Accidents Claims Tribunal, III Additional District Court, Puducherry.

For Appellant : M/s.N.B.Surekha

For Respondents : Ms.R.Renukadevi R2 to R5

'Ms.R.Sreevidhya R7

RR6 and 8 – No appearance

JUDGMENT

The appellant has filed the appeal seeking to quash the award passed in MACT OP. No.237 of 2012 dated 18.12.2014 on the file of the Motor Vehicle Accidents Claims Tribunal, III Additional District Court, Puducherry.

2. The respondents 1 to 5 are the claimants and the 8th respondent is the owner of the vehicle and the same was insured with the appellant insurance company. The deceased was travelling as pillion rider in the vehicle owned by the 8th respondent. According to the claimants, on 23.03.2009 at about 18.45 hours, the deceased Irudhayaraj and his friends were going in a baja pulsor motor cycle on the Thuthipet –



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Thondamanatham Main Road from south to north, the deceased Irudhayaraj was the pillion rider and while going near electric power station, a Hero honda splendor bearing Reg. No.PY 01 AU 4727 coming from the same direction in Zig-Zag manner and dashed against the motor cycle. The deceased Irudhayaraj along with his friends had fallen down on the road. The said Irudhayaraj sustained grievous injuries and admitted in the hospital. While undergoing treatment, he died in the hospital on the same day. Therefore, The respondents 1 to 5 herein has filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming a sum of Rs.10,00,000/~ as compensation for the death of the deceased.

3. Before the Tribunal, on the side of the claimants, PW1 and PW2 have examined as witnesses and marked 9 documents. On the side of the insurance company, two witnesses were examined and marked one document. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a sum of Rs.3,39,000/- as compensation and fastened negligence at 75% against the insured vehicle and 25% as against the 6 & 7 respondents.



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4. Questioning the negligence, the appellant~insurance company has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that admittedly, FIR has been registered against the 6th respondent vehicle rider and in order to prove the case, the claimants have examined PW2 who is an eyewitness to the accident and he clearly deposed that the manner in which, an accident had happened. The tribunal has rightly appreciated the document Ex.P1 FIR and the evidence of PW2 who had lodged the FIR against the rider of the two wheeler bearing Reg. No.PY 01 AU 4727. Based on the FIR and evidence of PW2, the Tribunal has rightly held that the accident had happened only due to the negligence of the rider of the motor cycle bearing Reg. No.PY 01 AU 4727. Therefore, when entire negligence had been fixed on the rider the above said two wheeler, the Tribunal ought to have held that the insurer of the vehicle viz., United India Insurance Company is 100% liable to pay the compensation to the victim. Hence, this Court may set aside the award in respect of liability fastened on the appellant.



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6. The learned counsel for the claimants submitted that after considering the witnesses and documentary evidence, the Tribunal has passed award, which is very low and however, the same needs no interference.

7. The learned counsel for the 7th respondent/insurance company submitted that admittedly the 8th respondent was driving the motor cycle and he has not possessed valid driving license at that time of the accident. He has only LLR. The deceased was a pillion rider and the rider was riding the vehicle along with two pillion riders, which is the violation against the MV Act. Hence, the Tribunal has fastened 25% liability as against the appellant insurance company, which does not warrant any interference.

8. Heard the learned counsel appearing for the appellant and the learned counsel for the respondents and perused the entire materials on record.

9. The main ground that was urged by the learned counsel for the appellant was that due to rash and negligent driving of the rider of the



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two wheeler bearing Reg. No.PY 01 AU 4727 the accident had happened.

To substantiate his submission, the learned counsel relied upon the evidence of PW2. In order to prove the case, the respondents 7 and 8 have not examined any eyewitness before the Tribunal.

10. In the considered view of this Court, the issue regarding the contributory negligence is liable to be quashed.

11. According to the 7th respondent, the rider of two wheeler bearing Reg. No.PY 01 AR 3649 has not possessed any valid driving license at that time of the accident. The mere non possession of a driving license by itself cannot lead to the assumption that there was contributory negligence. The Tribunal had taken into consideration the eye witness account of PW2, who clearly spoke about the manner in which the accident took place. That apart, the Tribunal also took into consideration the FIR that was registered against the driver of the offending vehicle and also the final report that was filed by the police after the completion of the investigation.



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12. In the light of the above discussion, the finding of the Tribunal fixing 25% negligence on the appellant is liable to be set aside and the same is set aside.

13. The quantum of compensation fixed by the Tribunal is also very reasonable and there is no scope for interfering with the same.

14. With the above discussion, this Civil Miscellaneous Appeal is allowed. No costs. The liability that was fastened against the appellant company is alone set-aside. Any amount that was deposited by the appellant shall be permitted to be withdrawn. The 7th respondent is directed to deposit the entire compensation of Rs.3,39,000/- along with interest at the rate of 7.5% within a period of four weeks from the date of receipt of a copy of this order. Upon receipt of such payment, the Tribunal shall deposit the same to the bank account of the claimant along with interest and costs. No costs.

06.11.2024

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M.DHANDAPANI.,J

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Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Judge, Motor Vehicle Accidents Claims Tribunal,

III Additional District Court, Puducherry.

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