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C.M.A.No.1895 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1895 of 2018

And

C.M.P.No.14597 of 2018

The National Insurance Company Limited,
LRN. Colony, Saradha College Main Road,
Hasthampatti, Salem – 7.

... Appellant

Vs.

1.S.Santha Kumar (Died)
2.P.Mohammed Shabe Babu
3.Ashok Kumar
4.Manivel

5.Ifko Tokya General Insurance Company Limited,
Tulasi Chambers 3rd Floor,
195 T.V.Swamy Road East,
R.S.Puram, Coimbatore 641 002.

6.Gomathi
7.Sabarinathan
8.Karthik
9.Dhanam

(R1 Died, R6 to R9 are brought on record
as LR's of deceased R1, vide order of Court
dated 04/12/2024 made in CMP. Nos.28003,
28004 and 28007/2024 in CMA No.1895/
2018 [MDIJ])

... Respondents



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Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.A.C.T.O.P.No.1674 of 2006, dated 16.11.2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Salem.

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

For Respondents : R2 – No Appearance
R3, R4 – Not Ready Notice
Mr.N.Anbumurugan for R5
Mr.T.Sezhian for R6 to R9

J U D G M E N T

The fifth respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 16.11.2016 passed by the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Salem, in M.C.O.P. No.1674 of 2006.

2.The learned counsel appearing for the appellant submitted that the first respondent filed claim petition before the Motor Accidents



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Claims Tribunal, claiming compensation of Rs.4 Lakhs alleging that on

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07.09.2006 at about 21.30 hours, when the first respondent was travelling as pillion rider in the Bajaj motorcycle bearing Registration No.TN 27 L 1473 driven by one Karthik, in Omalur to Dharmapuri Main Road in front of Omalur LIC Office, a Hero Honda motorcycle bearing Registration No.TN 30 V 4694 came behind the Bajaj motorcycle in a rash and negligent manner and the rider of the Bajaj motorcycle applied sudden brake and the Hero Honda motorcycle lost its control and hit the Bajaj motorcycle, due to which, the first respondent sustained injuries.

3.The learned counsel appearing for the appellant further submitted that after adjudication, the Tribunal awarded a sum of Rs.1,52,300/- as compensation to the claimant along with interest at 7.5% p.a. from the date of the petition till the date of realization with costs and directed the appellant to deposit the amount and to recover the same from the respondents 1 and 2 therein/ respondents 2 and 3 herein in the manner known to law and dismissed the claim petition as against the respondents 3 and 4 therein/ respondents 4 and 5 herein.



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4.The learned counsel appearing for the appellant further submitted that the Tribunal fastened the entire liability on the appellant since the claimant deposed that the accident occurred due to the rash and negligent driving of the rider of the Hero Honda motorcycle. The learned counsel further submitted that the second respondent obtained policy from the appellant on 08.09.2006 and it is valid from 08.09.2006 – 00.00 hours to 07.09.2007 and the accident occurred on 07.09.2006 at about 21.30 hours and at the time of accident, there is no valid insurance policy. Hence, fastening the entire liability on the appellant is not sustainable one.

5.Per contra, the learned counsel appearing for the fifth respondent submitted that the law enforcing agency registered case as against the rider of the Hero Honda motorcycle and further submitted that the rider of the Hero Honda motorcycle has been implicated in the letters of the Motor Vehicles Inspector marked as Ex.C2 and Ex.C3 and further submitted that the evidence let in by P.W.1 also reveal that the accident occurred due to the rash and negligent driving of the rider of the Hero Honda motorcycle. Hence, the impugned judgment warrants no interference.



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6.The learned counsel appearing for the respondents R6 to R9 submitted that the first respondent/ injured claimant filed claim petition stating that when the first respondent was travelling as pillion rider in the Bajaj motorcycle driven by one Karthik, a Hero Honda motorcycle came behind the Bajaj motorcycle in a rash and negligent manner and the rider of the Bajaj motorcycle applied sudden brake and the Hero Honda motorcycle lost its control and hit the Bajaj motorcycle. Hence, the accident occurred due to the negligent driving of the riders of both the vehicles and therefore, both the insurance companies are liable to pay compensation to the first respondent. The learned counsel further submitted that during the pendency of this appeal, the first respondent died and hence his legal heirs are brought on record as the respondents R6 to R9 in this appeal.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.The accident and the manner in which the accident happened are not disputed. The appeal has been filed only questioning the negligence aspect. Hence, there is no need for any discussion with regard to the quantum of compensation awarded, which in the opinion



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of this Court is just and reasonable and the same is confirmed.

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9.The first respondent is the injured claimant, the second respondent is the owner of the Hero Honda motorcycle, the third respondent is the rider of the Hero Honda motorcycle, the fourth respondent is the owner of the Bajaj motorcycle, the fifth respondent is the insurer of the Bajaj motorcycle.

10.Before the Tribunal the first respondent/ claimant examined himself as P.W.1 and also examined P.W.2 and P.W.3 and marked Ex.P.1 to Ex.P.9, the fifth respondent has examined R.W.1 and R.W.2, the appellant has examined R.W.3 and R.W.4, the fifth respondent has marked Ex.R1, the appellant has marked Ex.R1 to Ex.R5 and the witnesses have marked Ex.W1 to Ex.W3.

11.Perusal of records show that F.I.R. has been registered against the third respondent/ rider of the Hero Honda motorcycle. However, mere registration of F.I.R. is not conclusive proof to hold that the entire negligence is on the third respondent. P.W.1 and P.W.2 have clearly deposed as to how the accident took place. It is undisputed fact that the rider of the motorcycle in which the first



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respondent travelled applied sudden brake and at that time the Hero

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Honda motorcycle lost its control and hit the Bajaj motorcycle. Hence, this Court is of the opinion that some negligence has to be fixed on the rider of the Bajaj motorcycle.

12.Though the rider of the Bajaj motorcycle has not been impleaded as the party in the claim petition and in this petition, this Court fix 20% on the rider of the Bajaj motorcycle and 80% negligence on the rider of the Hero Honda motorcycle.

13.The policy obtained by the fourth respondent/ owner of the Bajaj motorcycle is a comprehensive policy in which the pillion rider is entitled for compensation. Hence, the fifth respondent, being the insurer of the Bajaj motorcycle is liable to pay 20% of the compensation amount i.e., Rs.30,460/- [20% of Rs.1,52,300/-] to the legal heirs of the deceased first respondent/ respondents 6 to 9.

14.Accordingly, the fifth respondent shall deposit a sum of Rs.30,460/- along with interest at 7.5% p.a. from the date of the petition till the date of realization, before the Tribunal within a period



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of six weeks from the date of receipt of a copy of this judgment. On

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such deposit being made, the sixth respondent being the wife of the deceased first respondent is permitted to withdraw the said amount, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

15.Perusal of records disclose that the second respondent/ owner of Hero Honda motorcycle obtained policy from the appellant on 08.09.2006 and it is valid from 08.09.2006 – 00.00 hours to 07.09.2007 and the accident occurred on 07.09.2006 at about 21.30 hours and at the time of accident, there is no valid insurance policy. Hence, fastening the liability on the appellant is not sustainable one.

16.The appellant Insurance Company is permitted to withdraw the entire amount already deposited by them, if any. Liberty is granted to the legal heirs of the deceased first respondent/ respondents R6 to R9 to recover 80% of the compensation amount from the respondents 2 and 3/ owner of the Hero Honda motorcycle and rider of the Hero Honda motorcycle, in the manner known to law.



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17.The civil miscellaneous appeal is allowed on the above terms.
The judgment and decree dated 16.11.2016 passed by the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Salem, in M.C.O.P.No.1674 of 2006, is set aside as against the appellant and modified to the above extent. No costs. Consequently, the connected miscellaneous petition is closed.

16.12.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Court No.2, Salem.



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