IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.Nos.2532, 2534 and 2535 of 2022

United India Insurance Company Limited
Coimbatore 641018 Appellant-All CMAs

Vs

1. Gurusamy
2. Vasu
3. Rajammal
4. Minor Priyasakthi
5. Minor Vignesh
6. Minor Renuga
7. Chinnadurai Respondents-CMA.2532 of 2022

1. Rajammal
2. Chinnadurai Respondents-CMA.2532 of 2022

1. Rajammal
2. Minor Priyasakthi
3. Minor Vignesh
4. Minor Renuga
5. gurusamy
6. Chinnadurai Respondents-CMA.2532 of 2022

Prayer:- These Civil Miscellaneous Appeal have been filed, against the judgement and decree, dated, 15.12.2020, made in MCOPs.No.680, 916 and 679 of 2018, by the Special District Court (MACT) Dharmapuri, respectively.

For Appellant : Mr.P.Sankaranarayanan-All CMAs

For Respondents : Mr.K.Naveen Kumar for Mr.L.Munisamy
RR1 to 6-CMA.2532 of 2022
RR1 to 5-CMA.No.2535 of 2022
1st Respondent-CMA.No.2534 of 2022

JUDGEMENT

1. These Civil Miscellaneous Appeal have been filed, by the Appellant Insurance Company, against the judgement and decree, dated, 15.12.2020, made in MCOPs.No.680, 916 and 679 of 2018, by the Special District Court (MACT) Dharmapuri, respectively.
2. The above claim petitions have been filed before the Tribunal, seeking a compensation of Rs.30,00,000/-, Rs.10,00,000/- and Rs.30,00,000/- respectively, on various heads, for the death of the two deceased persons, namely, Selvam and Panjali and for the injuries sustained by Rajammal, in a motor road accident, which had happened on 07.07.2018, when the deceased Selvam, as a rider of the two wheeler and the deceased Panjalai and the injured Rajammal were travelling in the said two wheeler, a Maruti Omni Car, bearing Reg.No.TN 33 AC 9682 came in the opposite direction in a rash and negligent manner and dashed against the two wheeler. The 1st Respondent herein/owner cum driver of the offending Maruti Car remained exparte. The claim petitions were resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a counter. On the side of the claimants, PW.1 and PW.2 were examined and Ex.P1 to Ex.P27 were marked. On the side of the Appellant Insurance Company, Ex.R1 was marked and RW.1 was examined. Ex.X1 was marked.
3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending Maruti Van and insured with the 2nd Respondent, the Tribunal has awarded compensation amounts of

Rs.9,95,000/, Rs.1,03,500 /- and Rs.18,36,500/-, on various heads, in the respective claim petitions, with interest at 7.5% p.a. from the date of the claim petitions till the date of realization, to be payable by the Appellant Insurance Company. Aggrieved by the quantum of compensation, these appeals have been filed by the Appellant Insurance Company.

4. This Court heard the learned counsel for the Appellant and the contesting Respondents, considered their submissions and also perused the entire materials placed on record.

5. After hearing the learned counsel on either side elaborately, in these appeals, there is no dispute about the factum of the accident. However, the main issue raised by the learned counsel for the Appellant is only with regard to the findings of the Tribunal in respect of negligence aspect and fixation of liability on the Appellant Insurance Company, by the Tribunal.

6. In the present case, there were three persons travelling in the two wheeler, i.e. one rider and two pillion riders. The rider of the two wheeler and a pillion rider died on the spot and another pillion rider, who is the wife of the rider of the vehicle sustained injuries.

7. According to the claimants, the accident had occurred, when the deceased Selvam as a rider of the two wheeler and the deceased Panjalai and the injured Rajammal were travelling in the said two wheeler, a Maruti Omni Car, bearing Reg.No.TN 33 AC 9682 came in the opposite direction in a rash and negligent manner and dashed against the two wheeler.

8. According to the learned counsel for the Appellant, there were three persons

travelled in the two wheeler, namely, one rider and two pillion riders, which is in violation of the relevant provisions of the Motor Vehicles Act and Rules and that due to travelling of three persons in the two wheeler, due to overload, the driver lost balance and control, as a result of which, he dashed against the Maruti Van and hence, he was responsible for the accident. Further, at the time of the accident, the driver of the offending Maruti Van did not possess a valid driving licence and there was also no valid insurance policy for the said vehicle and hence, the findings of the Tribunal in respect of negligence aspect and liability are not sustainable.

9. The learned counsel for the Respondents would submit that to establish the case of the Appellant Insurance Company, no one was examined and even the driver of the Maruti Van also was not examined and under these circumstances only, the Tribunal has come to the conclusion that sitting by two women as pillion riders along with the rider and travelling three persons in a two wheeler were not cause for the accident and accordingly, fastened negligence and liability on the part of the Appellant Insurance Company, as stated above.

10. Though a general stand was taken in the counter of the Appellant Insurance Company that riding the two wheeler by three persons is not permissible in law, but he fairly admitted as to how they have travelled that a male member was the rider and two female members as pillion riders were sitting behind the rider. Therefore, in general, a women will sit on the two wheeler one side only and therefore, due to imbalance and loss of control, the accident had

occurred.

11.While fastening negligence aspect on the part of the driver of the Maruti Van and fixing liability on the part of the Appellant Insurance Company, the Tribunal has taken into consideration the law laid down by the Honourable Supreme Court rendered in the case **Mohammed Siddique and another Vs. National Insurance** Company **(Civil Appeal No.79 of 2020,** judgement **dated 08.01.2020)** in **Mohamed** wherein it was held as follows:-

> "But the above reason, in our view, is flawed. The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding with two others, contributed either to the accident or to the impact of the accident upon the victim."

12.A rider, riding with three persons in a two wheeler and not having a valid Insurance Policy may be a violation of provisions of the relevant Act, for which fine will be imposed. Unless and otherwise, specifically it is established and proved in a manner known to law that the facts narrated by them have contributed directly to the accident, the negligence cannot be fasted against the rider of the vehicle for the violation of the provisions of the Act.

KRISHNAN RAMASAMY, J.

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13.Admittedly, in the present case, not taking insurance for the two wheeler and travelling with three persons were not the cause for the accident and the Respondent has not proved the same in the manner known to law. Before the Tribunal, it has been proved by adducing oral and documentary evidence that the accident had occurred only due to the rash and negligent driving on the part of the driver of the Maruti Omni Car which was insured with the appellant Insurance Company. Thus, taking note of the same, the Tribunal has rightly fastened the entire liability on the appellant Insurance Company. Therefore, this Court does not find any error or infirmity in the impugned judgement and decree of the Tribunal, fastening negligence and liability on the part of the Appellant Insurance Company. There is no merit in these appeals and hence, the impugned judgement and decree is liable to be confirmed.

14.In fine, these Civil Miscellaneous Appeals are dismissed. No costs.

15.02.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The Special District Court (MACT) Dharmapuri.
2. The Record Keeper, VR Section, High Court, Madras

CMA.Nos.2532, 2534 and 2535 of 2022