



C.M.A.No.1889 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1889 of 2014

and

M.P.No.1 of 2014

The Divisional Manager,
The Oriental Insurance Co. Ltd.,
Arcot Road, Vellore.

... Appellant

vs.

1.S.Valli
2.Bhuvaneswari
3.M.Govindan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 19.11.2013 made in M.C.O.P.No.162 of 2012 on the file of Motor Accident Claims Tribunal / II Additional District & Sessions Court, Vellore at Ranipet.

For Appellant : Mr.P.Kandasamy

For Respondents 1 and 2 : Mr.C.Prabakaran

For 3rd Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the judgment and decree passed in M.C.O.P.No.162 of



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2012 dated 19.11.2013, on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Court, Ranipet on the question of liability.

2. The claim petition was filed under Section 166 of Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the death of one Balasaravanan during the road traffic accident that occurred on 20.09.2010.

3. The learned Tribunal upon consideration passed an award for a sum of Rs.6,83,000/-. As the petitioners have claimed Rs.5,00,000/- as compensation, the Tribunal restricted the total compensation to Rs.5,00,000/- with interest at the rate of 7.5% per annum from the date of filing of this petition till the date of deposit.

4. The case of the claimants in brief is as follows:

On 20.09.2010 at about 3.30 p.m., the 1st claimant Valli's son Balasaravanan was riding the two wheeler bearing Reg.No.TN-73-A-6975 along the Bangalore-Chennai National Highways with the pillion one Shankar. At the point of Nanthiyalam Village, opposite to V.A.O., Office, he lost his balance and dashed on the floor bridge. Due to the said impact, both the rider as well as the pillion died on the spot. The case in Crime



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No.916 of 2010 under Sections 279,337 and 304(A) IPC was registered by the Arcot Town Police. The deceased was said to be 25 years old who was a two wheeler mechanic and earning a sum of Rs.9,000/- p.m.

5. The said claim was resisted by the Insurance Company by filing counter, which reads as follows:

The claimants are not entitled to claim compensation for the death of Balasaravanan as the accident occurred due to the negligence of the deceased. Further, three persons travelled in a motor cycle which is not permitted in law and also it is a violation of policy condition. Besides the said details, the deceased was under the influence of alcohol at the time of accident.

6. In order to prove the claim on the claimants' side two witnesses were examined and 7 documents were marked. Ex.P7 is the copy of the Insurance Policy. On the 2nd respondent side, the Development Officer of the Insurance Company Mr.A.R.Chandrasekaran is RW1. Investigation Report is Ex.R1.

7. It is the evidence of PW2 ocular witness that on 20.09.2010, while



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he was proceeding along the Chennai-Bangalore National Highway from Vellore to Arcot, at about 3.30 p.m., a two wheeler, Hero Honda Splendor bearing Reg.No.TN-73-A-6975 which was proceeding ahead of his vehicle with high speed hit on the wall of the floor bridge and the persons travelled on the two wheeler fell down and both of them died on the accident spot itself.

8. Therefore, it is pellucid that due to the negligence of the rider of the two wheeler, the accident occurred.

9. As per Ex.P6 copy of the Registration Certificate (R.C.) pertaining to the two wheeler bearing Reg.No.TN-73-A-6975, name of the owner is Govindan, S/o.Murugesan, who is arrayed as 1st respondent herein. Therefore, on the date of accident, the 1st Respondent Govindan is the owner of the two wheeler, in which, the deceased rode the vehicle and met with an accident. Therefore, the deceased Balasaravanan has to be construed as borrower of the vehicle from the 1st respondent.

10. It is the evidence of Mr.A.R.Chandrasekaran, the Development Officer of Insurance Company that the accident held on 20.09.2010



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happened due to the negligent driving of the deceased Balasaravanan.

Therefore, his legal heirs cannot claim compensation as the accident occurred due to the negligent driving of the deceased Balasaravanan. The First Information Report is also registered against the deceased Balasaravanan. It is his further evidence that totally three persons had travelled in the said motor cycle which is against Motor Vehicles Rules and it is a violation of policy conditions. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation.

11. It appears that the deceased Balasaravanan rode the two wheeler with two pillion, of which, one Shankar died on the accident spot itself and another person by name Srinivasan suffered injuries. The seating capacity of the two wheeler is two. But, in this case, the deceased Balasaravnan did ride with two pillion. It is a common understanding that it will be difficult for the rider to ride with two pillion riders. Eventually, the rider of the two wheeler is put to difficulties even to properly sit and riding the vehicle will be definitely difficult. Apart from this, if there are two pillion while riding the vehicle, this will cause inconvenience to the rider besides, he may lose control of the vehicle at times. Therefore, at the time of accident, three persons travelled in the two wheeler, necessarily, they are guilty of



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negligence by riding and by travelling.

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12. This claim petition was filed under Section 166 of Motor Vehicles Act. In general, claimants are duty bound to prove negligence on the part of the rider. In the given case, the 1st claimant's son Balasaravanan was riding the two wheeler along with two pillions while driving so; he hit on the wall of the floor bridge and lost control of the vehicle and the rider and one Shankar, pillion rider died on the spot.

13. On perusal of Ex.P6-Registration Certificate (R.C.), it appears that the 1st respondent M.Govindan father of the rider Balasaravanan is the owner of the vehicle. Therefore, the rider of the motor cycle namely the deceased Balasaravanan is construed to be a borrower. If that be the case, the borrower steps into the shoes of the owner. The deceased Balasaravanan is the tortfeasor. Tortfeasor cannot be a claimant. Therefore, the rider Balasaravanan being a borrower of the vehicle, rode the vehicle with two pillion riders due to which he lost his control of the vehicle and hit on the wall of the floor bridge. Hence, the claim on his death by his legal heirs is not maintainable. Ultimately, the claimants are not entitled to claim any compensation.



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14. Based on the aforesaid discussion, this Civil Miscellaneous Appeal stands allowed and the Judgment and Decree passed by the Motor Accident Claims Tribunal / II Additional District & Sessions Court, Vellore at Ranipet in M.C.O.P.No.162 of 2012 dated 19.11.2013 stands set aside. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,

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II Additional District & Sessions Court,
Vellore at Ranipet.

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2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

ssn



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