



C.M.A.No.850 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.850 of 2021

and C.M.P.No.4904 of 2021

M/s.Iffco-Tokio General,
Insurance Company Limited,
Branch Office,
'KBS Arcade' No.2, II Floor,
No.4/1044, Kovai Main Road,
Karur District – 639 002.

...Appellant

Vs.

1.Shanthi
2.Kulanthaivel
3.Gopinath

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 11.03.2020 passed in M.C.O.P.No.811 of 2018, by the Motor Accidents Claims Tribunal, (Fast Track Mahila Court), Namakkal.

For Appellant : Mr.J.Michael Visuvasam



C.M.A.No.850 of 2021

For Respondents : R1 to R3 – No appearance

J U D G M E N T

This appeal is filed by the appellant Insurance Company challenging the judgment and decree passed by the Motor Accidents Claims Tribunal, (Fast Track Mahila Court), Namakkal in M.C.O.P.No.811 of 2018 dated 11.03.2020.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioners are the claimants, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company before the Tribunal.

4.The brief facts of the case are as follows:

On 29.09.2016 at about 10.00 p.m. on Mohanur to Aariyur Main Road at Panaimarathupatty Panakattuthottam Ramalingam Thottam, while the deceased was riding in a Yamaha Crux Two wheeler bearing



C.M.A.No.850 of 2021

Registration No.TN-28/AQ-9914 towards East to West direction, had hit against opposite millar and the caused the accident. The said vehicle is owned by the first respondent. Due to the accident, the deceased sustained severe head injury and injuries all over the body and died on the spot. A criminal case was registered in Crime No.343/2016 under Sections 279, 304 (A) of IPC by Mohanur Police. The claimants filed a claim petition before the Tribunal in M.C.O.P.No.811 of 2018, the Tribunal has awarded a sum of Rs.6,11,200/- as compensation. Challenging the same, the present appeal has been filed.

5.Learned counsel appearing for the appellant submitted that the owner or the driver of the motorcycle is not entitled to claim benefit as third party for the negligent act caused by him. The deceased has put himself into the shoes of the owner by driving the motorcycle belonging to the first respondent and the deceased is considered to be the owner of the motorcycle and the negligent act is caused by him, hence the petition is not maintainable.



C.M.A.No.850 of 2021

WEB COPY

6.Learned counsel appearing for the appellant further submitted that as a general principle in tort no one can claim compensation for his own negligence, while so the petitioner's filing this petition under Section 163A of MVI Act is to get an unlawful claim from the appellant Insurance Company. Hence, he prayed to allow the appeal.

7.Heard learned counsel for the appellant and perused the materials available on record.

8.Though the notice has been served and the name of the respondents having been printed in the cause list, there is no representation either in person or through counsel. Considering the pendency of the appeal, this court is inclined to dispose of the appeal based on the materials available on record.

9.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only with regard to negligence.



C.M.A.No.850 of 2021

WEB COPY

10. Before the Tribunal, the petitioners were examined as PW1 & PW2 and on the side of the petitioners, 9 documents were marked as Exs.P1 to P9. On the side of the respondents, Mr.Gandhi was examined as RW1 and 2 documents were marked as Exs.R1 and R2.

11. Learned counsel appearing for the appellant has relied upon a judgment of the Hon'ble Apex Court in the case of ***Ramkhiladi vs. United India Insurance Company*** reported in ***2020 (2) SCC 550*** and accordingly, he prayed for appropriate orders.

12. Admittedly, the deceased is a borrower, who borrowed the vehicle from the third respondent and drove the vehicle in a rash and negligent manner, dashed the centre median and fell down, thereby, he died on the spot. The said vehicle was insured with the appellant Insurance Company. The Tribunal fastened the liability on the appellant Insurance Company. However, the issue arising in this appeal is no longer *res integra* as per the decision reported in ***2020 (2) SCC 550***.



C.M.A.No.850 of 2021

WEB COPY

13.On perusal of the above decision would make it clear the Hon'ble Apex Court arrived a conclusion, the borrower of the vehicle is not entitled to claim compensation. Hence, the award passed by the Tribunal is liable to be set aside. Accordingly, the award passed by the Tribunal in M.C.O.P.No.811 of 2018 dated 11.03.2020 is set aside. The appellant is permitted to withdraw the deposited amount.

14.In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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C.M.A.No.850 of 2021

To

- 1.The Motor Accidents Claims Tribunal,
(Fast Track Mahila Court), Namakkal.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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C.M.A.No.850 of 2021

M.DHANDAPANI, J.

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C.M.A.No.850 of 2021

27.11.2024