



C.M.A. No. 3598 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3598 of 2014

1. Mahendiran
 2. Minor M. Vignesh
 3. Minor M. Aparna
- ... Appellants / Petitioners

Vs.

The Divisional Manager,
Divisional Office,
United India Insurance Company Limited,
46/51, T.K.M. Complex,
Katpadi Raod,
Vellore

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 21.12.2010 made in M.C.O.P. No. 809 of 2005 on the file of the District Judge, Motor Accident Claims Tribunal, Tiruvannamalai.

For Appellants : Mr. B. Jawahar
For Respondent : Mr. S. Arunkumar

JUDGMENT



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This Civil Miscellaneous Appeal has been filed by the claimants against the Judgment and decree made in M.C.O.P. No. 809 of 2005, dated 21.12.2010 on the file of the District Judge, Motor Accident Claims Tribunal, Tiruvannamalai, wherein the Tribunal has dismissed the claim petition.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 21.02.2005 at about 2:00 AM, the deceased Lakshmi was travelling as a Pillion Rider along with one Siva, who driven a Hero Honda Motor Cycle bearing Registration No. TN-W-1408, which belongs to the first claimant on Vandavasi to Tiruvannamalai Road, while they reached near Elangadu Junction Road, a T.V.S. 50 motor cycle ridden by its rider in rash and negligent manner, hit on the two wheeler and caused accident. In the accident, the deceased Lakshmi was thrown out from the motor cycle and thereby sustained grievous injuries. The deceased was immediately taken to Govenment Hospital, Vandavasi where she was referred to



Government Hospital, Chennai but the claimant was rushed to Sri Ramachandira Medical College Hospital, Porur, Chennai, where she succumbed to the grievous injuries. Due to loss of deceased Lakshmi, the claimants who are the legal heirs of the deceased has come forward with a claim petition seeking compensation for a sum of Rs.10,00,000/- under section 166 of the Motor Vehicles Act, 1988 against the owner and insurer of the two wheeler in which she has travelled as pillion rider.

4. The rider of the TVS 50 motor cycle, who dashed on the two wheeler of the deceased was not identified, hence the owner or insurer of TVS 50 motor cycle is not added as parties. Similarly, the owner of the Hero Honda Motor Cycle bearing Registration No. TN-W-1408 has not been added as respondent and he has been added as one of the claimant, who is the husband of the deceased in this case. Therefore, the respondent – insurance company, who is the insurer of the Hero Honda motorcycle has filed a counter and contended that the F.I.R. was filed against the unidentified vehicle, so this respondent - insurance company is not liable to pay any compensation to the claimants and further contended that the compensation claimed under various heads are on the higher side, hence



prays to dismiss the claim petition.

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5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.5 were marked. On the side of the respondent, R.W.1 and R.W.2 were examined and Exs.R.1 and R.2 were marked.

6. Based on the evidence placed on record, the Tribunal has not agreed with the case of the claimants and dismissed the claim petition on the ground that the offending vehicle is unknown, it is the case of hit and run, hence the claimants herein are not entitled to any compensation from the respondent insurance company.

7. Aggrieved over the award of the Tribunal, the claimants, who are the legal heirs of the deceased Lakshmi, have filed this appeal challenging the award of the Tribunal.

8. The learned counsel appearing for the claimant has submitted that the deceased was travelling as a pillion rider in a Hero Honda two



wheeler and the tortfeasor in this case is the rider of the TVS 50, who could not be traced, hence they have come forward seeking compensation from the vehicle in which the deceased has travelled. The learned counsel also submitted that under section 163-A of the Motor Vehicles Act, the claimants are entitled to compensation hence prays to convert the claim petition as petition filed under section 163-A of the Motor Vehicles Act and to set aside the award of the Tribunal and to grant compensation.

9. The learned counsel appearing for the respondent - insurance company has submitted that on plain reading of claim petition shows that, the compensation is claimed based on fault liability under section 166 of Motor Vehicle Act, since the negligence is against the unknown TVS 50 motor cycle and there is no negligence on the part of the rider of the two wheeler, which was insured with the respondent, no compensation shall be payable. The learned counsel also further argued that if the claim petition is filed under section 163-A of the Motor Vehicles Act, there is no coverage for the pillion rider in the policy, hence the claimants herein are not entitled to claim compensation by invoking section 163-A of the Motor Vehicles Act and prays to confirm the award of the Tribunal.



WEB COPY 10. I have considered the submissions made on both sides and perused the materials available on record.

11. The deceased had travelled as a pillion rider along with one Siva in a Hero Honda motor cycle, which belongs to the first claimant, who is also the husband of the deceased Lakshmi. The case of the claimants is that the two wheeler in which the deceased travelled was hit by a unknown TVS 50 motor cycle, which came in a rash and negligent manner and hit on the backside of the two wheeler in which the deceased travelled, which resulted in causing serious injuries to her and thereafter, she succumbed.

12. The claim petition has been filed by the claimant invoking Section 166 of the Motor Vehicles Act and they have also pleaded in their claim petition that the tortfeasor in this case is an unknown vehicle rider. The compensation under section 166 of the Motor Vehicles Act is based on the fault liability, which has to be paid by the owner and insurer of the offending vehicle. The claimants have alleged that the tortfeasor in this case is an unknown person and since he was not traced, the claimants have come



forward with the claim petition seeking compensation from the vehicle, in which the deceased has travelled by invoking section 163-A of the Motor Vehicles Act.

13. The Tribunal after considering the pleadings as well as the evidence placed on record has held that since the rider of the two wheeler, which was insured with the respondent - insurance company herein is not a tortfeasor, hence the insurance company is not liable to pay the compensation under the principle of fault liability. It is argued before this Court that the claimant have wrongly stated the provision for claiming compensation, and the wrong quoting of the provision itself does not prevent the claimants from claiming compensation, hence the claimants herein are entitled to get compensation under Section 163-A of the Motor Vehicles Act.

14. This Court is not able to appreciate this argument on the ground that as per the policy, which was marked as Ex.R.2, shows that the contractual agreement between the owner and the insurer of the said Hero Honda motorcycle exists only regard to the payment of compensation with regard to the third party and no other persons are covered under the policy. Since there is no coverage for the owner and pillion rider as per the policy



conditions, the claimants are not entitled to claim compensation from both Sections 166 and 163-A of the Motor Vehicles Act. The Section 147 of the Motor Vehicles act also mandates only the persons who are covered as per the policy conditions alone are entitled to claim compensation.

15. Recently, this Court has reiterated the above legal provision in *Oriental Insurance Company Limited Vs. N. Saraswathi and Others* [2023 SCC OnLine Mad 2653 : (2023) 2 TNMAC 127] by following the judgment of the Apex Court in *United India Insurance Co. Ltd., Vs. Tilak Singh* [(2006) 1 TNMAC 36]. The Ex.R.2 – Insurance policy in the schedule of payment, reveals that Rs.160/- is paid under the third party risk and for own damage and no other persons have been covered as per the insurance policy.

16. The Hon'ble Apex Court in *Khenyei vs New India Assurance Company Limited* [2015 (9) SCC 273], has considered the right of the claimants to claim compensation in the cases of composite negligence and also quantified the contributory negligence of two vehicles. In this case, it is true that two vehicles were involved in the accident but it is the case of the



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claimant that the rider of the unknown two wheeler is the tortfeasor and the rider of the two wheeler in which the deceased travelled has not contributed to the accident, hence considering the same, the claimants are not entitled to get compensation.

17. Based on the above observations, the appeal filed by the claimant has no merits and liable to be rejected. In the result, this Civil Miscellaneous Appeal filed by the claimants is dismissed and the order of the Tribunal is hereby confirmed. No cost.

22.03.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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K. RAJASEKAR, J.

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To:

1. The District Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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