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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

C.M.A.No.284 of 2024

The Divisional Manager
National Insurance Company Ltd.,
Door No.110, JN Street, Puducherry – 605 001 ... Appellant

Vs.

1.S.Vijayaprabha
2. S.Dharmaraj
3.A.Rajini .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 20.12.2022 made in M.C.O.P.No.321 of 2019 on the file of the Motor Accidents Claims Tribunal (I Additional District and Sessions Judge (FAC), Cuddalore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Ms.V.Ramya V Rao



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JUDGEMENT

(Order of the Court was made by K.GOVINDARAJAN THILAKAVADI, J.,)

This appeal is directed against the award dated 20.12.2022 made in M.C.O.P.No.321 of 2019 on the file of the Motor Accident Claims Tribunal,(I Additional District and Sessions Judge) (FAC) Cuddalore.

2. Shortly stated, on 17.07.2018 at about 7.45 hrs the deceased was proceeding as a pillion rider in Hero Passion Pro motorcycle bearing Registration No. TN 31 BF 3794, owned by the 1st respondent in M.C.O.P.No.321 of 2019. While the rider of the motorcycle proceeded from North to South direction, opposite to VSD Thirumanamandabam, Kurinjipadi, rode the vehicle in a high speed and in a rash and negligent manner and applied sudden brake, as a result, the deceased fell down and sustained fatal injuries. In spite of treatment at Government Hospital, Kurinjipadi he died on the same day at about 8.10 a.m. FIR was registered against the rider of the motorcycle by the concerned police. At the time of the accident, the deceased was 45 years old, he was working



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as Sanitary worker in the Kurunjipadi town panchayat and was earning Rs.30,000/- per month. Accordingly, claim for compensation has been made by the legal heirs.

3.The respondents in M.C.O.P.No.321 of 2019 alleged that the accident took place due to the negligent act of the deceased, who traveled without any safety gear at the time of the accident. The rider of the offending vehicle did not possess the driving license and while so the 1st respondent in M.C.O.P.No.321 of 2019 permitted him to ride the motorcycle which was driven by the rider with three persons at the time of the alleged accident, which amounts to violation of policy condition. The quantum of compensation claimed by the petitioners in M.C.O.P.No.321 of 2019 is exorbitant. Hence, the 2nd respondent/Insurance Company is not liable to pay any compensation. Accordingly, the claims Tribunal framed four issues. It came to the conclusion that the accident took place as alleged and claimants are entitled to claim compensation. However, the Tribunal in the impugned order directed the 2nd respondent/Insurance Company to pay the said compensation to the claimants and recover the same from the 1st



respondent in M.C.O.P.No.321 of 2019, the owner of the vehicle, by stating that there is violation of policy. Compensation of Rs. 35,80,000/- has been awarded carrying interest at the rate of 7.5% per annum.

4.Through this appeal, though the impugned award was challenged on several grounds, it is focused mainly on the ground of liability.

5.The learned counsel appearing for the appellant/Insurance Company would submit that the seating capacity of the vehicle is two, however, the deceased traveled as second pillion rider, which affected the stability of the vehicle and thereby invited the accident. He would further content that there was no contract to cover the second pillion rider. His further contention is that at the time of the accident the rider of the motorcycle did not have the driving license. There is no adjudication by the learned Tribunal in this regard. While so, the Tribunal was incorrect in ordering pay and recovery, which principle is not applicable to the facts and circumstances of the case, as the owner of the vehicle is none other than the husband of the deceased, Vasuki.



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6. On the other hand, the learned counsel appearing for the respondents/claimants would submit that since, it is a social beneficial legislation, the learned Tribunal ordered for pay and recovery.

7. Heard on both sides, records perused.

8. The contention of the learned counsel appearing for the appellant that a motor vehicle meant for only two persons to ride, was carrying, besides the rider, two persons on the pillion caused the accident and therefore, the deceased has contributed to the accident. But in our view, the fact that the deceased was riding on a motorcycle along with the rider and another, may not, by itself, without anything more, make the deceased guilty of contributory negligence. At the most, it would make the deceased 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 Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. Therefore, the fact that a person was a pillion



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rider on a motorcycle along with the driver and one more person on the pillion, may be a violation of law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that the very act of travelling as a pillion rider with two others, contributed to the accident. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased contributed to the accident, the victim could not have been held guilty of contributory negligence.

9. Admittedly, three persons including the deceased were travelling in the motorcycle bearing Registration No. TN 31 BF 3794 and the rider of the motorcycle did not have the driving license at the time of the accident. Therefore, the Tribunal having found that there is violation of policy rightly held that, since it is a social beneficial legislation, the 2nd respondent/Insurer shall indemnify the contract of insurance between the 1st and 2nd respondent in M.C.O.P.No.321 of 2019, has rightly ordered for pay and recovery, which calls for no interference.



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10.In the result, the impugned order passed by the Tribunal in
M.C.O.P.No.321 of 2019 is confirmed. This civil miscellaneous appeal is
dismissed. No costs.

M.S.J.,]

[K.G.T.J.,]

13.02.2024

gpa/vsn

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No



To

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1. The I Additional District and Sessions Judge (FAC),
Motor Accidents Claims Tribunal, Cuddalore.
2. The Section Officer
V.R. Section
High Court, Madras.



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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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