



C.M.A.(MD).No.56 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.56 of 2013

The New India Assurance Company Limited,
Represented by its Branch Manager,
North Paravoor, Ernakulam District,
Kerala State.

... Appellant/3rd Respondent

-VS-

1. Thankapushpam

2. Minor. Rahuvaran

3. Minor Ananthi

... Respondents 1 to 3/Petitioners

(Minor respondents 2 and 3 are represented by
their mother the 1st respondent as guardian)

3. Dr.L.Balakrishnan

4. Jodhar Ramesh Sudam ... Respondents 4 and 5/Respondents 1 and 2

6. The National Insurance Company Limited,
First Floor, Anguvilas Building,
112, North Car Street, Nager Village,
Agastheeswaram Taluk,
Kanyakumari District.

... 6th Respondent/4th Respondent



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.14 of 2006, dated 15.06.2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram.

For Appellant : Mr.J.S.Murali
For R1 to R3 : Mr.V.Sudhagar Nagaraj
For R6 : Mr.N.Murugesan
For R4 & R5 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.14 of 2006, dated 15.06.2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram, wherein the respondents 1 to 3 herein have filed petition seeking compensation due to the death of Murugesan, in a road accident

2. The Tribunal has awarded a sum of Rs.5,94,000/- (Rupees Five Lakhs and Ninety Four Thousand only) towards compensation along with interest at the rate of 7.5% p.a., from the date of petition till the date of



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realization. As against the award passed by the Tribunal, the present appeal has been preferred by the Insurance Company/appellant/third respondent.

3. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 28.07.2005, at about 03.45 p.m when the deceased Murugesan was proceeding in a two wheeler bearing Registration No.TN-74-X-4475 near Arulandh Granites at Muthulakurichy, a motor cycle bearing Registration No.KL-08-2306 came in a rash and negligent manner and dashed against the deceased Murugesan, due to which, the said Murugesan sustained grievous injuries and thereafter he died. The accident took place due to the negligence on the part of the rider of the two wheeler No.KL-08-2306. The respondents 1 and 2 are the owners of the vehicles and the respondents 3 and 4 are the insurers of the vehicles which involved in the accident. All the respondents are liable to pay compensation to the petitioners for a sum of Rs.7,00,000/- (Rupees Seven Lakhs only).



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4. The brief averments made in the counter filed by the third respondent are as follows:

The petition is not maintainable either in law or on facts. The petitioners have to prove the manner of accident, age, income and occupation of the deceased. The accident took place due to the negligence on the part of the deceased. The rider of the two wheeler bearing Registration No.KL-08-2306, had no valid driving license on the date of accident. Moreover, the said vehicle No.KL-08-2306 was sold to one Ravi and the registration had expired on 26.10.2004 and it was not renewed on the date on which the accident has occurred on 28.07.2005. The said Motor Cycle was duly insured with the first respondent in the name of D.L.Balakrishnan. Therefore, there is violation of policy condition and thereby the third respondent is not liable to pay any compensation to the petitioners.

5. Before the Tribunal, in order to prove the case of the petitioners, P.W.1 was examined and Ex.P.1 to P.6 were marked. On the side of the respondents, R.W1 to R.W.3 were examined and R.1 to R5 were marked.



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6. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.5,94,000/- (Rupees Five Lakhs and Ninety Four Thousand only) towards compensation along with interest at the rate of 7.5% p.a., from the date of petition till the date of realization. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant/third respondent on various grounds including the liability.

7. The learned counsel appearing for the appellant would contend that the owner of the vehicle bearing Registration No.KL-08-2306 has violated the condition of the policy by allowing the vehicle to ply on the road without Registration Certificate, which expired prior to the date of accident. On the side of the appellant/3rd respondent, R.W.1 to R.W.3 were examined and documents Ex.R.1 to Ex.R5 were marked. The Tribunal has failed to consider the said aspects in a proper and perspective manner. The Tribunal ought to have exonerated the appellant/Insurance Company. Further the Tribunal failed to consider that the rider of the vehicle bearing Registration No.TN-74-X-4475 only responsible for the accident due to his rash and negligent driving. Therefore, the award passed by the Tribunal is liable to be set aside.



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8. The learned counsel appearing for the respondents 1 to 3 would contend that the accident had happened due to the negligence on the part of the driver of the first respondent and the said vehicle was insured with the appellant/third respondent on the date of accident and the insurance policy was in force. Therefore, the third respondent being insurer of the vehicle is liable to pay compensation. As far as the petitioners are concerned, they are third parties and thereby, the Tribunal after elaborate discussion fairly came to a conclusion and awarded compensation, thereby the present appeal is liable to be dismissed.

9. The learned counsel appearing for the 6th respondent would contend that the accident took place due to the negligence on the part of the driver of the first respondent and the FIR also registered as against the driver of the first respondent and the police also investigated the case and filed a final report as against the driver of the first respondent. Therefore, the accident had occurred due to the negligence on the part of the first respondent driver. The Tribunal after taking into consideration all these aspects correctly fixed the liability and thereby, the petition is liable to be dismissed as against the 6th respondent.



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10. This Court, after hearing learned counsel appearing on either side and perusing the documents, including the order of the Tribunal, frames the following points for determination in this appeal:

(i) Whether the accident took place due to the negligence on the part of the driver of the first respondent?

(ii) Whether there is violation of policy condition by the 4th respondent/first respondent?

(iii) Whether the appeal is liable to be allowed or not?

Point No.1:

11. According to the appellant, the accident took place due to the negligence on the part of the driver of the opposite vehicle i.e., TN-74-X-4475, which was insured with the sixth respondent.

12. According to the respondents 1 to 3/petitioners, the accident took place due to the negligence on the part of the driver of the first respondent. In order to prove the case of the respondents 1 to 3/petitioners they have examined P.W.1 and marked Ex.P.1 to P.6.



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13. On careful perusal of the petitioners' side evidence, they reveal that the FIR was registered as against the driver of the first respondent and the evidence of P.W.1 also clearly stated about the negligence on the part of the driver of the first respondent. On the side of the respondents they examined R.W.1 to R.W.3 but they are not competent witnesses to speak about the negligence and they are not eye witnesses to the occurrence. Therefore, the petitioners side evidence shows the negligence of the driver of the first respondent. The Tribunal also after elaborate discussion correctly held that the driver of the first respondent is responsible for the accident. The petitioners' side evidence clearly shows the involvement of the accident by both the vehicles and the negligence on the part of the driver of the 4th respondent/first respondent. Therefore, this Court is of the opinion that the accident had happened due to the negligence on the part of the driver of the 4th respondent/first respondent. Thus, the Point No.1 is answered.

Point No.2:

14. As far as the violation of policy condition is concerned, according to the appellant, the 4th respondent/first respondent vehicle had no valid Registration Certificate on the date of accident. But the appellant/third respondent admitted that the vehicle was insured with the third respondent on



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the date of accident. Once the appellant/third respondent issued policy in the name of the first respondent later they cannot deny that the 4th respondent had no valid Registration Certificate and escape from their liability.

15. In order to prove the case of the appellant/3rd respondent they examined R.W.1 to R.W.3 and marked Ex.R1 to R5. As per the Ex.R5 Certificate given by the Transport Authorities, the registration valid up to 26.10.2004 and the accident had happened on 28.07.2005. But, there is no particulars given in respect of the renewal. However, the Insurance Company admitted the policy issued by them on the date of accident policy was in force. Therefore, the Insurance Company is liable to pay the amount. However, the Insurance Company is at liberty to recover the amount from the owner of the vehicle since the Registration Certificate was not renewed on the date of accident. The owner of the vehicle also not contested the case and thereby it would be appropriate to award pay and recovery. The trial Court has not discussed about the validity of Registration Certificate. Thus, the Point No.2 is answered.



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Point No.3

16. The Insurance Company has preferred this appeal as against the liability and this Court has already in the previous points decided that though there is no Registration Certificate on the date of accident, the Insurance Company issued policy for the vehicle and thereby they have to pay compensation and the same can be recovered from the owner of the vehicle. However, the Tribunal has not discussed about the validity of the Certificate and thereby, the order passed by the Tribunal is liable to be modified by allowing this appeal in part. There is no dispute in respect of the quantum of the amount, the respondents 1 to 3/ petitioners have not filed any separate appeal or Cross Objection as against the order passed by the Tribunal and thereby there is no dispute regarding the quantum of the amount. Therefore, the order passed by the Tribunal is liable to be modified to the effect that the petitioners are entitled to award amount as awarded by the Tribunal and the appellant/3rd respondent is directed to pay the said amount along with interest and the same can be recovered from the 4th respondent/1st Respondent. Thus, the point No.3 is answered.



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17. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.14 of 2006, dated 15.06.2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram is modified to the effect that the petitioners are entitled to award amount Rs.5,94,000/- (Rupees Five Lakhs and Ninety Four Thousand only) towards compensation along with interest as ordered by the Tribunal and the appellant/third respondent is directed to deposit the award amount with interest as ordered by the Tribunal within a period of two months from the date of this order and the appellant/third respondent is at liberty to recover the same from the 4th respondent/first respondent after satisfying the amount to the petitioners. There shall be no order as to costs.

22.02.2024

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
Subordinate Court,
Padmanabhapuram.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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P.DHANABAL,J.

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