



C.M.A(MD)No.57 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.57 of 2018

The Divisional Manager,
United India Insurance Company Limited,
7-A, West Veli Street, 2nd Floor,
Madurai.

... Appellant/2nd Respondent

Vs.

1.Minor.A.Muthusamy

... Respondent/Petitioner

(Represented by his mother and next friend, namely A.Panchavarnam)

2.P.Eswari

... Respondent/1st Respondent

3.A.Majorkhan

... Respondent/3rd Respondent

4.The Manager,
M/s.National Insurance Company Ltd.,
Door No.315, 80 Feet Road,
Anna Nagar, Madurai-20.

... Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the award and decree, dated 10.08.2017 made in M.C.O.P.No.619 of 2014 on the file of Motor Accidents Claims Tribunal (Special Sub Court), Madurai.



WEB COPY



C.M.A(MD)No.57 of 2018

For Appellant : Mr.I.Suthakaran
For R1 : Mr.C.Vakeeswaran
For R2 & R3 : No Appearance
For R4 : Mr.R.Rajamani

JUDGMENT

The present appeal has been filed by the United India insurance company challenging the award passed in M.C.O.P.No.619 of 2014 on the file of Motor Accident Claims Tribunal / Special Sub Court, Madurai primarily on the ground of liability.

2. As per the injured claimant, he had travelled as a pillion rider in a two wheeler owned by the 3rd respondent in the claim petition, namely Major Khan. The said two wheeler was driven by one Malayalam at the relevant point of time. The injured claimant and Malayalam, one another person by name, Pandi have also travelled in the said two wheeler. While they were proceeding on the road, another two wheeler owned by 1st respondent in the claim petition and driven by one Sangee came from the opposite direction in a rash and negligent manner and dashed against the two wheeler, in which the claimant was travelling. Due to the said impact, the claimant had sustained injuries. Therefore, the injured



C.M.A(MD)No.57 of 2018

claimant being a minor represented by his mother, has filed the claim petition seeking a compensation of Rs.2,00,000/-.

3. The 2nd respondent in the claim petition, namely the United India Insurance Company (appellant herein) had filed a counter contending that the injured had travelled in a two wheeler which was driven by a minor, by name Malayalam. That apart, the accident has taken place only due to the rash and negligent driving on the part of the said Malayalam and therefore, they are not liable to pay any compensation.

4. The 4th respondent insurance company has filed a counter contending that the policy taken with them had expired on the date of the accident and therefore, they are not liable to pay any compensation.

5. The tribunal after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the 1st respondent, namely Sangee and has proceeded to mulct the liability upon the appellant insurance company, namely United India Insurance



C.M.A(MD)No.57 of 2018

Company and has awarded a sum of Rs.97,000/-. This award is under challenge in the present appeal.

6. According to the learned counsel appearing for the appellant, admittedly the vehicle in which the injured claimant had travelled as a pillion rider was driven by minor. That apart, three persons have travelled in the said two wheeler. Therefore, the rider of the said two wheeler is solely responsible for the said accident. The tribunal was not right in relying upon the evidence of Exhibit P.W.4 to arrive at a finding that the driver of the 1st respondent was responsible for the accident. Hence, he prayed for exonerating the appellant insurance company.

7. Per contra, the learned counsel appearing for the claimant heavily relied upon to deposition of Exhibit P.W.4 who is the ocular witness and contended that the claimant has pleaded and established the fact that the accident has taken place only due to the negligence on the part of the driver of the 1st respondent. In such circumstances, the tribunal was right in mulcting the liability upon the appellant insurance company.

8. The learned counsel appearing for the 4th respondent in the appeal, namely the National Insurance Company had contended that the



C.M.A(MD)No.57 of 2018

policy on the date of the accident had expired and therefore, they are not liable to pay any compensation.

9. I have carefully considered the submissions made on either side and perused the material records.

10. According to the injured claimant, the accident has taken place only due to the rash and negligent driving on the part of the driver of the 1st respondent. They have examined Exhibit P.W.4, who is the ocular witness. In his chief-examination, he has categorically deposed that only the driver of the 1st respondent had driven his two wheeler in a rash and negligent manner resulting in the accident. His evidence has not been discredited in the cross-examination conducted by the appellant insurance company. However, it could be seen from the records that the injured claimant had travelled in a two wheeler that was driven by a minor, by name Malayalam. Exhibit P.1 / F.I.R also reveals that the vehicle was driven by a minor who was aged 16 years on the date of the accident. Therefore, it is clear that the owner of the said two wheeler, namely the 3rd respondent in the claim petition has negligently handed over the vehicle to a minor. In such circumstances, the 3rd respondent in



C.M.A(MD)No.57 of 2018

the claim petition should also be mulcted with certain extent of liability in order to see that the vehicles are not been handed over to the minors.

This Court is of the considered opinion that the liability to pay compensation could be fixed upon the appellant insurance company at 70% and the balance has to be paid by the 3rd respondent in the claim petition.

11. In view of the above said facts, the quantum of award passed by the tribunal is hereby confirmed and the liability of the appellant company is restricted to pay 70% and the balance 30% shall be paid by the 3rd respondent in the claim petition, namely A.Majorkhan. In other respects, the award of the tribunal stands confirmed. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs.

28.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gbg

To



C.M.A(MD)No.57 of 2018

WEB COPY

1.The Motor Accidents Claims Tribunal
(Special Sub Court),
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

gbg



WEB COPY



C.M.A(MD)No.57 of 2018

Order made in
C.M.A(MD)No.57 of 2018

28.06.2024