



C.M.A.(MD) No.797 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.10.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.797 of 2014

and

M.P.No.1 of 2014

The Divisional Manager,
The National Insurance Company Limited,
No.3, North Veli Street, Madurai-1.

... Appellant

Vs.

1.M.Shanthi
W/o.Meenakshisundaram

2.S.Peya Thevar
S/o.Santhana Thevar

... Respondents

[R2 remained *ex parte* before the Tribunal]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree passed by the Motor Accident Claims Tribunal (Additional District & Sessions Court/Fast Track Court No.3), Madurai in M.C.O.P.No.314 of 2005 dated 04.11.2008.

For Appellant : Mr.D.Sivaraman

For R1 : Mr.N.Sudhagar Nagaraj
for Mr.M.Sarangan



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J U D G M E N T

WEB COPY The Insurance Company has filed the instant appeal challenging the Tribunal's finding on negligence and liability.

2. The first respondent had filed a claim petition before the Tribunal, stating that on 21.11.2004, at about 05:30 a.m., while the deceased was travelling as a pillion rider in a two-wheeler bearing registration No.TN-58-K-1776, insured with the appellant, the rider rode the two-wheeler in a rash and negligent manner and caused the accident, as a result of which the deceased sustained fatal injuries.

3. The owner of the insured two-wheeler, namely, the second respondent herein, remained *ex parte* before the Tribunal.

4. The appellant had filed a counter, denying the averments made in the claim petition and stating that the rider of the two-wheeler did not have a valid driving licence; that the deceased was guilty of triples riding; that the rider, the deceased, and the other pillion rider were in an inebriated condition at the time of the accident, and therefore, they were not liable to pay any compensation.



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5. Before the Tribunal, the claimant examined herself as P.W.1 and marked Exs.P1 to P5, and the appellant, Insurance Company, examined R.W.1 to R.W.3 and marked Exs.R1 to R4.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the rash and negligent riding of the two-wheeler rider; that the deceased cannot be made liable for contributory negligence for triples riding; and that the appellant, the Insurance Company, had not established that the rider and two other pillion riders were in an inebriated condition at the time of the accident. The Tribunal, however, held that the rider of the two-wheeler did not have a valid driving licence, and therefore, the appellant is liable to pay compensation of Rs.3,45,000/- at the first instance and recover the same from the owner of the insured two-wheeler, namely, the second respondent herein.

7. The learned counsel for the appellant would submit that the evidence adduced on the side of the claimant would show that the claimant had not established that the accident occurred in the manner alleged in the claim petition; that the statements of the witnesses



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examined by the police during investigation filed along with the final report would indicate that the deceased, the rider and the other pillion rider, were in an inebriated condition at the time of the accident; and that, in any case, the compensation awarded by the Tribunal is excessive.

8. The learned counsel for the first respondent/claimant, per contra, would submit that no evidence was adduced before the Tribunal to show that the deceased, the rider, and the other pillion rider were in an inebriated condition at the time of the accident; that there is also no evidence to establish that the accident took place only because of triples riding; that contributory negligence cannot be fixed for statutory violation; and that the award of the Tribunal is just and reasonable, and therefore prayed for the dismissal of this appeal.

9. Since the second respondent remained *ex parte* before the Tribunal, further notice to the second respondent is dispensed with.

10. The points for consideration in the instant appeal are: (a) whether the Tribunal's finding on negligence and liability is justified; and (b) whether the quantum of compensation is just and reasonable.



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11. As regards the first point, it is seen that the fact that the accident took place due to the rash and negligent riding of the two-wheeler rider is established by the evidence of P.W.1, which is corroborated by the FIR (Ex.P1) and the final report (Ex.P2) filed by the police. It is also seen from the evidence of R.W.3 and his report (Ex.R2) that the deceased died in a road accident. Therefore, the fact that the deceased travelled in the two-wheeler insured with the appellant cannot be disputed. Therefore, this Court is of the view that no infirmity can be found in the finding of the Tribunal that the accident took place only due to the negligence of the rider of the two-wheeler insured with the appellant.

12. There is also no evidence to prove that the deceased, the rider, and the other pillion rider were in an inebriated condition at the time of the accident and that the accident took place only due to triples riding. It is settled law that merely because there is a statutory violation, contributory negligence cannot be inferred, and it would depend on the facts and circumstances of each case. In the facts of this case, this Court is of the view that, in the absence of any evidence, no contributory negligence can be fixed on the deceased. Therefore, the finding of the



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Tribunal in this regard cannot be faulted. The pillion riders are covered under the insurance policy, as the insurance policy is a package policy.

Hence, the award of the Tribunal directing the appellant to pay compensation is justified. Point No.1 is answered accordingly.

13. As regards the second point, it is seen that the first respondent/claimant had established that the deceased was a skilled labourer and was earning a sum of Rs.4,000/- per month. However, since there was no evidence to prove the exact income earned by the deceased, the Tribunal adopted a notional income and awarded a total compensation of Rs.3,45,000/-. The learned counsel for the appellant was unable to point out any infirmity in the quantum of compensation.

14. The finding of the Tribunal that the rider of the two-wheeler did not possess a valid driving licence is based on the evidence adduced on the side of the appellant, namely, the evidence of R.W.1, the Junior Assistant in the Regional Transport Office, Madurai South, who deposed that no driving licence was issued to the rider in their office. Therefore, the direction of the Tribunal to the appellant, Insurance Company, to pay and recover the compensation from the owner of the insured two-wheeler



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cannot be faulted. Therefore, the award of the Tribunal deserves to be confirmed and is confirmed.

15. The appellant, Insurance Company, is directed to deposit the compensation of Rs.3,45,000/- awarded by the Tribunal together with interest at 7.5% per annum from the date of the claim petition till the date of realization and proportionate costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

16. On such a deposit, the first respondent/claimant is permitted to withdraw the same along with interest and costs, less the amount already withdrawn, if any, by filing suitable application before the Tribunal.

17. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order
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- 1.The Additional District & Sessions Judge
[Fast Track Court No.3],
Motor Accident Claims Tribunal,
Madurai District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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