



C.M.A.(MD).No.434 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.434 of 2018

and

C.M.P.(MD) No.5350 of 2018

Iffco-Tokio General Insurance Company Limited,
Tulsi Chambers, III Floor,
195, TV.Samy Road,
West R.S.Puram,
Coimbatore -2.

... Appellant/2nd Respondent

-VS-

1. Rani

2. Priya

3. Kumar

Periyakkal (died)

4. Muthusamy

... Respondents 1 to 4/
Petitioners 1 to 4

5. Jayaraman

... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 05.12.2017 passed in M.C.O.P.No.1255 of 2013, on the file of the Motor Accident Claims Tribunal, Special district Judge, Thiruchirappalli.



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For Appellant : Mr.V.Sakthivel

For R1 to R4 : Mr.Govindarajan

For R5 : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company, challenging the award passed in M.C.O.P.No. 1255 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Court, Trichirappalli, primarily, on the ground of liability.

2. One Subramani, had driven a two wheeler owned by the first respondent and insured with the second respondent. One Rajamanickam, was a pillion rider in the said two wheeler. According to the claimants, when the two wheeler was moving from Erode to Thottiam, on 17.11.2005, an unknown lorry came in a rash and negligent manner in the opposite direction. The rider of the two wheeler namely, Subramani lost his control and the vehicle got derailed from the main road. The rider of the two wheeler had passed away. The legal heirs of the rider, namely, Subramani have filed M.C.O.P.No.1255 of 2013 claiming compensation.



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3. The Insurance Company has filed a counter contending that no other vehicle is involved in the accident and the deceased Subramani alone is the tortfeasor and therefore, they are not liable to pay any compensation.

4. The Tribunal, after considering the evidence on either side, has arrived at a finding that the accident had happened due to the high light emitted from the unknown lorry. Therefore, the negligence on the part of the deceased has not been proved. The Tribunal has proceeded to award compensation to an extent of Rs.8,85,000/-. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned counsel appearing for the appellant, when the deceased Subramani himself is the tortfeasor and an FIR has been registered as against him, he is not entitled to receive any compensation from his own Insurance Company. That apart, one Jayaraman, who has been arrayed as first respondent in the claim petition, is the owner of the vehicle. The deceased Subramani had borrowed the vehicle from the owner. Therefore, the deceased Subramani entered into the shoes of the owner of the vehicle. Hence, he is not entitled to receive any compensation other than the



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amount eligible to be received under the Personal Accident Coverage and hence, he prayed for allowing the appeal.

6. The learned counsel appearing for the respondents 1 to 4/claimants had contended that the rider of the two wheeler was not the owner of the vehicle. On the other hand, the first respondent in the claim petition, namely, Jayaraman, is the owner of the vehicle and therefore, the deceased should be considered to be a third party to the contract and therefore, the Tribunal was right in directing the Insurance Company to satisfy the award. The learned counsel appearing for the respondents further contended that the quantum of compensation is reasonable and there are no ground to interfere in the said quantum.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. As it could be seen from the claim petition that the victim had borrowed the two wheeler from one Jayaraman and while he was riding the two wheeler, it is alleged that a lorry came from the opposite direction with a highlight and therefore, he lost the control of the vehicle and fallen down,



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sustained injuries and passed away. Therefore, it is clear that the victim is a borrower of the vehicle, and he had entered into shoes of the owner of the vehicle. In such circumstances, he cannot make a claim. That apart, the claimants were not able to establish the fact that the victim had lost his balance only due to the highlight on the part of the opposite coming vehicle. If that is the case, the opposite coming lorry should have been impleaded as a parties for proving contributory negligence. In such circumstances, this Court is of the considered opinion that the accident has taken place only due to the negligence on the part of the deceased/ rider of the two wheeler. Therefore, the rider of the two wheeler will not be entitled to receive any compensation from his own Insurance Company, except under the personal accident coverage.

9. A perusal of the Policy indicates that there is a personal accident coverage for owner/driver to an extent of Rs.1,00,000/-. Therefore, the appeal filed by the Insurance Company is partly allowed with a direction to the Insurance Company to pay the compensation of Rs.1,00,000/- under the personal accident coverage. The award of the Tribunal is reduced from Rs. 8.85,000/- to Rs.1,00,000/- The said amount shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of



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realization. Excess amount, if any, deposited by the Insurance Company, shall be refunded to them along with accrued interest and costs.

10. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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

1. The Motor Accident Claims Tribunal,
Special District Court,
Thiruchirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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