



C.M.A.(MD) No.644 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.644 of 2018

and

C.M.P.(MD)No.7491 of 2018

United India Insurance Company Ltd.,
Through its Branch Manager,
Having office at Neel Complex, 2nd Floor,
No.37/2, Mattappa Street,
Tenkasi.

... Appellant

Vs.

1.Kalima Beegam,
2.Beer Mohammed,
3.Rajendran.

... Respondents

Prayer: Civil Miscellaneous Appeals filed Section 173 of the Motor Vehicles Act, 1988, against the award dated 10.04.2017 passed in M.C.O.P.No.342 of 2011, on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tenkasi.

For Appellant : Mr.A.S.Mathialagan

For Respondents

for R1 & R2: Mr.R.J.Karthick

for R3 : No appearance



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JUDGMENT

The Insurance Company has preferred this appeal challenging the finding on liability.

2. The respondents 1 and 2 filed a claim petition stating that on 20.06.2011, while the deceased was riding a two wheeler, belonging to the third respondent herein, an unknown vehicle dashed against the two wheeler, as a result of which the deceased sustained fatal injuries.

3. The third respondent herein/owner of the vehicle remained *ex parte* before the Tribunal.

4. The appellant filed a counter stating that they are not liable to any compensation, as even according to the claim petition, an unknown vehicle was involved in the accident and hence, the petition is not maintainable under Section 163-A and 166 of the Motor Vehicles Act, 1988.



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5. Before the Tribunal, the respondents examined P.W.1 and P.W.2 and marked Exs.P1 to P4. The appellant had examined R.W.1 to R.W.3 and marked Exs.R1. Four other documents were marked as Exs.X1 to X4.

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 act of the unknown vehicle; and since the deceased was a third party to the insured, the claim petition was maintainable and awarded the compensation at Rs.10,52,000/- and directed the appellant to pay the compensation.

7. The learned counsel for the appellant submitted that the finding of the Tribunal is erroneous inasmuch as after holding that an unknown vehicle caused the accident, had erroneously fixed the liability on the owner of the vehicle and consequently, on the appellant as an insurer. The deceased was, at best, a borrower of the vehicle and he had stepped into the shoes of the owner of the vehicle and therefore, no compensation can be claimed from the insurer.

8. The learned counsel for the respondents 1 and 2, per contra,



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submitted that since the claimants are the legal representatives of the deceased, who is not the owner of the vehicle, they were considered as third parties and the Tribunal was right in awarding the compensation and prayed for dismissal of the appeal.

9. The only point for consideration in the instant appeal is '*whether the finding on liability by the Tribunal is justified?*'

10. The admitted facts are that the unknown vehicle caused the rash and negligent act, which resulted in the death of the deceased and the deceased had borrowed the vehicle from the owner, namely, the third respondent herein and therefore, he stepped into the shoes of the owner. Hence, he could not be considered as a third party for claiming the compensation under Section 166 of the Motor Vehicles Act. In the absence of any plea or evidence to show that the owner of the vehicle was guilty of negligent act, consequently, the appellant, as an insurer of the two wheeler, in which the deceased travelled, cannot be made liable. Therefore, this Court is of the view that the award of the Tribunal deserves to be set aside and hence, set aside.



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11. The appellant/Insurance Company is permitted to withdraw the amount, if any deposited to the credit of M.C.O.P.No.342 of 2011 by filing suitable application before the Tribunal.

12. The respondents 1 and 2 are, however, at liberty to claim compensation, if any available for victims of the accidents caused by unknown vehicles commonly, called as “hit and run” cases.

13. In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is set aside. No costs.

15.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1.The Commissioner of Employees' Compensation (Deputy Commissioner of Labour), Dindigul.

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



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SUNDER MOHAN, J.

apd

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