



C.M.A.(MD).No.1099 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD)No.1099 of 2018

1.P.Sheik Abtakir @ Abuthakir

2.P.Hakkim

... Appellants

-vs-

1.S.Pitchai

2.United India Insurance Company Ltd.,

Represented through its
Divisional Manager, Madurai,
No.91, Kamarajar Salai,
Madurai – 625 009.

... Respondents

PRAYER: Appeal filed under Section 173 (1) of the Motor Vehicles Act, to enhance the award amount and set aside the judgment and decree passed in MCOP No. 1179 of 2006 dated 20.06.2016 on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai.

For Appellants : Mr.T.Selvakumaran

For Respondents : Mr.J.S.Murali (R2)

No appearance (R1)



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ORDER

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The claimants in MCOP No.1179 of 2006 have filed the present appeal challenging the dismissal of the claim petition.

2. As per the claimants, who are the minor children, their mother was a pillion rider and their father was riding a two wheeler on 25.09.2005. The claimants have further contended that their father had driven the vehicle in a rash and negligent manner and therefore, the mother, who was the pillion rider had fallen down from the vehicle, sustained grievous injuries and passed away on 25.11.2005, after having admitted in the hospital as an in-patient for nearly two months. The claimants have claimed a sum of Rs.7,00,000/- as compensation.

3. The Insurance Company has filed counter contending that the vehicle has not been insured in the name of the first respondent, but it is insured in the name of one Arumugam. They have further contended that no police complaint was lodged immediately after the alleged accident and the FIR came to be registered only after a period of two months. They have also questioned the involvement of the vehicle in the said accident. The insurance



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company has further contended that the policy does not cover the pillion rider in view of the fact that it is liability only policy.

4. The Tribunal, after considered the oral and documentary evidence, arrived at finding that the claimants have laid the FIR after a period of two months from the date of the accident and this causes suspicion in the minds of the Court. The Tribunal has further found that though the claimants have contended that their mother was admitted as an in-patient in the hospital for nearly two months, not a single record has been produced before the Court. The Tribunal has further held that since the death has happened nearly two months after the alleged date of the accident, the claimants have not established the connection between the injuries sustained in the accident and the death. Based on the said findings, the Tribunal has proceeded to dismiss the claim petition in entirety. Challenging the same, the present appeal has been filed by the claimants.

5. According to the Learned Counsel appearing for the appellants, the deceased was subjected to post mortem and the certificate has been marked as Ex.P5. This would clearly establish the fact that the deceased was admitted in the hospital for nearly two months for the injuries sustained by her. He



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further contended that the policy marked as Ex.P10 would clearly reveal that the policy is not liability only policy, but this is a policy covering pillion rider also. Hence, he prayed for allowing the appeal and award compensation as prayed for in the claim petition.

6. Per contra, Learned Counsel appearing for the Second Respondent contended that the claimants, having failed to establish the involvement of the vehicle and the connection between the accident and the death of the deceased person, are not entitled to maintain the claim petition before the Motor Accident Claims Tribunal. Hence, he prayed for sustaining the order passed by the Tribunal.

7. I have carefully considered the submissions made on either side and perused the materials placed on record.

8. The claimants have contended that the accident has taken place at about 07.40 p.m., on 25.09.2005. Their mother, who was the pillion rider had fallen down from the vehicle, sustained grievous injuries and passed away on 25.11.2005. However, the FIR has been lodged only after the death. That apart, though the claimants have contended that their mother was hospitalized



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for nearly two months, no medical records have been filed to establish the said fact. Therefore, the Tribunal is constrained to arrive at the finding that the claimants have not established the connection between the accident and the death. Though the Insurance Company has raised a specific defence that they are doubting the involvement of the vehicle, no steps have been taken on the side of the claimants to establish the said fact.

9. In view of the aforesaid findings, this Court does not find any merit in the appeal. Hence, this civil miscellaneous appeal is dismissed. No costs.

12.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR, J.

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To

1. The Motor Accident Claims Tribunal cum IV Additional District Judge,
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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