

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 25.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.121 of 2016

and

CMP No.1100 of 2016

IFFCO Tokio General Insurance Co. Ltd.,
TULSI Chambers, 3rd Floor,
No.195, T.V.Samy Road,
RS Puram, Coimbatore. ...Appellant/2nd Respondent

Versus

1.Chittammal
2.Marakkal
3.Lakshmi
4.Krishnaveni ... Respondents 1 to 4/Petitioner.
5.M.Kuppusamy ... 5th Respondents/1st Respondent.

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act against the judgment and decree dated 05.09.2012 made in M.C.O.P.No.558 of 2009 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Erode at Gobichettipalayam.

For Appellant :: Mr.N.Vijayaraghavan

J U D G M E N T

IFFCO Tokio General Insurance Company Limited has brought this appeal before this court challenging the impugned award awarding a sum of Rs.1,60,000/- to the respondents/claimants for the loss of life of the deceased Kariappanaicker who died in the accident on 09.04.2009 at about 6.45 a.m.

2.Learned counsel appearing for the Insurance Company would submit that since the driver of the insured vehicle was not possessing the valid license, the Tribunal ought not to have applied the principles of pay and recovery on the appellant Insurance Company. On the other hand, it should have held that the driver of the insured vehicle or owner of the vehicle is fully liable for the payment of compensation. Since the learned Tribunal has erred in ordering pay and recovery on the appellant Insurance company, the impugned award is liable to be set aside.

3.This court is not able to find any merit on her submission or any of the ground of appeal for the simple reason that the deceased Kariappanaicker and his grandson Sakthivel were walking from east to west on the left side of the road opposite to Thambiran temple on 09.04.2009 at about 6.30 a.m. At that time, Yamaha Libera bearing Registration No. TN 36 W 6998 coming from the backside in the same direction dashed against the deceased, as a result, he sustained multiple injuries all over his body with the bleeding from his nose. Immediately he was taken to the Government hospital, Sathyamangalam through ambulance for treatment. After giving first aid, the deceased was taken to Coimbatore medical college hospital, but no fruitful purpose was served since the deceased died. Therefore, the claim petition was filed by the respondents/claimants. The learned Tribunal, accepting the statement of the eyewitness P.W.2 Sakthivel, taking support from the FIR marked as Ex.P1 dated 09.04.2009, implicating the driver of the offending vehicle, has found the negligence on the driver of the insured vehicle. This apart, the learned Tribunal has also found that on the date of accident, the driver of the vehicle was having LLR. Therefore, the learned Tribunal, accepting the case of the claimant that the owner of the insured vehicle is liable for compensation held that the Insurance company is liable for payment of compensation. Moreover, while fixing the liability of the compensation, rule of pay and recovery has also been ordered. Finally, when the learned Tribunal has come forward to award a sum of Rs.1,60,000/- as total compensation for the loss of the life of the deceased aged about 70 years on the date of accident. In such circumstances, it is not known as to why the Insurance company took much pain to waste their precious time and money. Therefore, the civil miscellaneous appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed. Since the award amount has already been deposited, it is open to the claimants to withdraw the amount along with the interest accrued thereon by moving appropriate application before the Tribunal.

vri

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal,
III Additional District and Sessions Judge,
Erode, Gobichettipalayam.

+ 1 cc to M/s.N.Vijayaraghavan, Advocate SR 5254

rsi(co)

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CMA No.121 of 2016