

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

CMA.No.2063 of 2011

The Divisional Manager,
M/s.United India Insurance Co.Ltd.,
J.N.Street, Puducherry.

... Appellant/2nd Respondent

Versus

1.Essaya Christopher
2.Sheela
3.Esther

... Respondents 1 to 3/
Petitioners

4.John Kennedy

...4th Respondent/Ist
Respondent

This civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the award and decree dated 10.3.2011 made in M.C.O.P.No.298 of 2008 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Puducherry.

For Appellants : Mr.S.Arunkumar

For Respondents : Mr.T.Ananthasekar for RR 1 to 3

J U D G E M E N T

The present appeal has been filed by the United India Insurance Company Limited, challenging the impugned award dated 10.3.2011 made in M.A.C.T.O.P.No.298 of 2008 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Puducherry.

2. Mr.S.Arunkumar, learned counsel appearing for the United India Insurance Company Limited would submit that when there is no liability, the principle of pay and recovery should not have been adopted in this present case, therefore, the insurance company aggrieved by the award directing the Insurance Company to pay first the award amount to the injured and then recover the same from the owner of the vehicle, has approached this Court on the ground that the insurance company is not

required to pay. Secondly, the driver of the offending vehicle, who caused the accident taking away the life of the pedestrian, was not holding valid licence at the time of accident. Therefore, the insurance company cannot be made liable for the negligence committed by the driver, who was not having valid licence at the time of causing accident.

3. The owner of the two wheeler, the fourth respondent has not chosen to enter into the witness box although, he received summon from the Tribunal. Without examining the driver, who was responsible for the cause of the accident, the learned Tribunal has committed serious error in holding that the insurance company has to indemnify the claim contrary to the Section 149 (2)(d) (ii) of the M.V. Act. Adding further, he would submit that when RW1 had deposed that the rider has obtained only Learner licence on 18.2.2008, the judgement reported in 2010 (2) CTC 423, cannot be made applicable to the facts of the present case.

4. Admittedly the victim, who was the pedestrian was killed by the offending vehicle driven by its driver. Of course, he was not having valid licence at that time. In this context, it is well settled that even if the driver of the vehicle, who caused the accident, was not having valid licence and the victim was a third party, the insurance company cannot escape from the third party liability. It is well settled in the judgement namely, *Jawahar Singh vs Bala Jain and others* reported in (2011) 6 SCC 425 that the doctrine of pay and recovery can be resorted to in a circumstances like this.

5. Therefore, in any event as the victim was a pedestrian, the Insurance company having been given liberty to recover the award amount after paying the same to the claimants, this court is not inclined to see any prejudice to the appellant to make out this appeal.

6. With regard to the quantum of award passed by the learned Tribunal, learned counsel appearing for the appellant firmly contended that the learned Tribunal has taken liberal approach in awarding the sum of Rs.2,40,000/- towards loss of dependency and similarly, Rs.40,000/- towards loss of love and affection.

7. This Court is not able to see any justification on the said contention, for the reason that the Apex Court in *Rajesh & others vs. Rajbir Singh & others* reported in 2013 (3) CTC 883, has held that Rs.1,00,000/- should be awarded towards loss of consortium. But, in the present case a sum of Rs.40,000/- has alone been awarded towards loss of love and affection and similarly only Rs.2,40,000/- has been awarded towards loss of dependency.

8. More particularly, as highlighted above, when the deceased pedestrian walking on the road was killed by the driver of the offending vehicle, who was not having valid licence, this Court is not able to accept the argument advanced by the learned counsel appearing for the Insurance company that Rs.40,000/- awarded towards loss of love and affection is on the higher side.

9. Hence, the appeal is dismissed. No costs. Consequently the connected M.P.No.1 of 2011 is also dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
II Additional District Judge, Puducherry.

2.The Section Officer,
VR Section High Court Madras

+1 cc to Mr.S.Arunkumar Advocate sr.4229/16

+1 cc to Mr.T.Ananthasekar Advocate sr.3985/16

C.M.A.No.2063 of 2011

aa28/03/2016

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