IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2018

Coram

THE HON'BLE MR. JUSTICE S. BASKARAN

C.M.A.No.146 of 2018

1.Rathinammal
2.Saroja
3.Vedammal
4.Shenbaghavalli
5.Sangeetha ...Appellants/Claimants

Versus

1. R.Sankar

2. The Branch Manager
Bajaj Alliance Insurance Company Limited,
25/26, College Road,Nungambakkam,
Chennai - 600 006 ... Respondents/Defendants

PRAYER :

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.03.2012 passed in M.C.O.P.372 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Mannargudi.

For Appellants :Mr.S.Nagarajan

For Respondents :Mr.Mr.N.Vijayaraghavan for
M/s.M.B.Gopalan Associates for R2
R1-Set exparte before the Tribunal

J U D G M E N T

The Petitioners/claimants have come forward with this appeal seeking to set aside the Judgment and Decree dated 30.03.2012 passed in M.C.O.P.372 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Mannargudi.

2.For convenience sake, the parties are referred to hereunder according to their litigative status before the tribunal. The case of the petitioners/claimants is that on 21.08.2007 at about 07.00 p.m, while the deceased Veeraiyan was walking near the petty shop in ThillaiVilakam village, the two wheeler bearing Registration No.TN-50-E-1450 came in a high speed and dashed against the deceased resulting in his death subsequently. At the time of accident, the deceased was aged 57 years and he was earning Rs.7,500/- per month from his employment. The petitioners who are the wife, children and grand children of the deceased were dependent on the income of the deceased. Hence they seek a sum of Rs.6,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the petitioners, the second respondent/Insurance company filed counter stating that the age and income of the deceased is not true. The accident did not occur in the manner as alleged by the petitioners. The driver of the two wheeler was not having valid license. The petitioners/claimants have to prove that the first respondent vehicle was insured with the second respondent. The 2nd respondent is not liable to pay any compensation. Hence, the second respondent seeks dismissal of the petition.

4. Before the Tribunal, the petitioners examined PW-1 and produced documents Exhibits P1-P9 to prove their contention. On the other hand, the 2nd respondent examined RW-1 and produced documents Exhibits R1 to R4 to contradict the claim of the petitioners. On the basis of available evidence on record, the Tribunal held that the negligence of the first respondent van driver alone caused the accident and passed an award for a sum of Rs.5,24,564/- and directed the first respondent owner alone is liable to pay the compensation amount as the rider of the vehicle was not having valid driving license at that time. The Tribunal further held that since the first respondent van driver was not having valid driving license and there is violation of policy condition, the second respondent/ Insurance company is not liable to pay any compensation.

5. Aggrieved over the said findings, the petitioners/claimants have come forward with the present appeal.

6. The learned counsel for the appellants/petitioners contends that the appellants/petitioners are concerned only with the failure on the part of the Tribunal to direct the second

respondent/Insurance company to pay the award amount and then recover the same from the owner of the vehicle. In view of the violation of policy condition and the non inclusion of such a direction in the award, the petitioners/claimants are not in a position to utilise the quantum of award passed by the Tribunal. The learned counsel for the petitioners/claimants contends that the first respondent vehicle was having valid policy coverage at the time of the accident.

7. The claim of the appellants/petitioners about the cause of death of deceased and the quantum of the award passed by the Tribunal is not disputed or challenged by the second respondent/Insurance company. As such, the only issue raised before this Court is, as to whether the second respondent/Insurance company is to be directed to pay the award amount at the first instance and then recover the same from the owner of the offending vehicle viz., the first respondent in the M.C.O.P proceedings.

8. The vehicle bearing Reg.No.TN-50-E-1450 belongs to first respondent and the same was insured with the second respondent which is clearly evidenced from Exhibit P.3-MVI report. The 2nd respondent also produced Ex.R.3 copy of the Insurance coverage, from which, it is clear that the offending vehicle was having the policy coverage on the date of the accident. The second respondent/Insurance company also produced Exhibit R.4-copy of policy condition and ensured that the vehicle was driven by the person who has not possessed driving license. Hence, violation of policy condition occurred and they are not liable to pay any compensation. However, considering the fact that the offending vehicle was having valid Insurance coverage and that the vehicle was driven by the third party, the claim against the Insurance company is sustainable.

9. It is contended by the learned counsel for the appellants/petitioners that the petitioners are entitled to seek for their claim of award against the Insurance company also.

10. The learned counsel for the second respondent/Insurance company has no serious objection in respect of Pay and Recover the compensation.

11. On consideration of entire materials placed before this Court, it is clear that there is violation of policy condition. In such circumstances, the findings of the Tribunal that the

second respondent/ Insurance company is not liable to pay any compensation is not just and proper. As there was violation of the policy condition. In such circumstance, the findings of the Tribunal that the second respondent Insurance company is not liable to pay any compensation is not just and proper. As ther was no voilation of policy coverage, but violation of the policy condition. Merely for the reason of no valid driving license to drive the first respondent vehicle by the driver, the Insurance company escape its liability. In any event, the second respondent Insurance/company is entitled to be reimbursed by the owner of the vehicle/1st respondent. Therefore, in view of the above discussion, this court is of the considered view that the second respondent/Insurance company is liable to pay the compensation as awarded by the Tribunal at first instance and then they are permitted to recover the same from first respondent/owner of the vehicle. The Point is answered accordingly.

12. In the result,

(i) This civil Miscellaneous Appeal is partly allowed.

(ii) The award amount of Rs.5,24,564/- is confirmed. The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(iii) As discussed above, the second respondent/Insurance company is directed to deposit the award amount along with proportionate interest and cost within a period of six weeks from the date of receipt of this order. The 2nd respondent is directed to pay the award amount at the first instance with liberty to recover the same from the first respondent/owner of the vehicle.

(iii) The appellants/ petitioners are permitted to withdraw the award amount with accrued interest, in the apportionment as ordered by the Tribunal, by filing proper application before the Tribunal.

(iv) In view of the order of this Court dated 19.01.2018 passed in CMP.No. 20521 of 2016 in CMA.Sr.No.104728 of 2015, the appellants shall forego interest for the delay period.

(vi) The Tribunal shall pass appropriate directions for the disbursal of the award amount.

(vii) No Costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

smn/nvsri

To.

1.The Motor Accident Claims Tribunal, Sub Court, Mannargudi.

Copy to:The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.S.Nagarajan, Advocate Sr.No.16871

+1cc to M/s.M.B.Gopalan Asso., Advocate SR.No.17477

SSI(CO)

sm:30.10.2018

C.M.A.No.146 of 2018 &
C.M.P.19413 of 2016