

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
and  
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.Nos.796 and 797 of 2018  
and  
C.M.P.Nos.6643 and 6644 of 2018

C.M.A.No.796 of 2018

The United India Insurance Company Limited.,  
13-A, Nethaji Road,  
Manchakuppam,  
Cuddalore.

... Appellant

Vs

1.S.Santhiya

2.T.Shanmugam

3.K.Thambusamy Reddiyar

4.T.Muthulakshmi

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under section 173 of MV Act against the award and decree dated 10.11.2017 made in M.C.O.P.No.4439 of 2016 on the file of Motor Accidents Claims Tribunal, (In the Court of the Chief Judge, Chennai).

For Appellant : Mr.A.Dhiraviyanathan

C.M.A.No.797 of 2018

The United India Insurance Company Limited.,  
No.48, Chandra Plaza,  
Arcot Road,  
Saligramam,  
Chennai 600 093.

... Appellant

Vs

1.S.Sandhya

2.T.Muthulakshmi

3.K.Thambusamy

4.T.Shanmugam

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under section 173 of MV Act against the award and decree dated 10.11.2017 made in M.C.O.P.No.4465 of 2016 on the file of a Motor Accidents Claims Tribunal, (In the Court of the Chief Judge, Chennai).

For Appellants : Mr.A.Dhiraviyanathan

C O M M O N J U D G M E N T  
(Judgment of the Court was delivered by N.KIRUBAKARAN, J )

Both the appeals have been filed by the Insurance Company against the award of Rs.19,34,136/- for the death of one T.Saravanan, aged about 27 years, doing Construction work in the name of Saravana Builders at Chennai, allegedly earning about Rs.2,00,000/- per month, in the accident which occurred on 31.01.2012, when the deceased was riding his motorcycle, which was hit down by a tipper lorry going in the same direction, driven rashly and negligently with high speed.

2.Two claim petitions have been filed. One is filed by the widow of the deceased and another is by the parents of the deceased along with widow. The petitions were filed before Cuddalore and Poonamallee Courts and by virtue of transfer order passed by this Court, both the cases were transferred to the Chief Judge, Court of Small Causes, Chennai. The claim petition filed by the widow was re-numbered as MCOP.No.4439 of 2016 and the claim petition filed by the parents and the widow was re-numbered as MCOP.No.4465 of 2016. Both the cases have been tried together and common award has been passed, holding that the driver of the tipper lorry alone is responsible for the accident and a sum of Rs.19,34,136/- was awarded. The common award passed by the Tribunal is challenged in these two appeals by the Insurance company.

3.Heard Mr.A.Dhiraviyanathan, learned counsel appearing for the appellants. He would submit that the driver of the tipper lorry did not possess driving licence and the same was not marked before the Tribunal. Therefore, the award has to be set aside or atleast pay and recovery should be ordered.

4.It is evident from the records that the Tribunal based on the evidence of PW3 eyewitness, Ex.P.1 - FIR, filed against the driver of the tipper lorry and as there was no rebuttal evidence to rebut what has been stated by PW3, categorically found that the accident had occurred because of the rash and negligent driving of the tipper lorry. Therefore, the finding reached by the Tribunal has to be confirmed.

5.Mr.A.Dhiraviyanathan, learned counsel appearing for the appellant would submit that there was no driving license for the

driver of the tipper lorry and therefore, the award has to be set aside or atleast pay and recovery has to be ordered. It is well settled law that the burden of proof that the driver did not possess effective and valid driving licence is always on the Insurance Company. The appellant/Insurance Company did not choose to adduce any rebuttal evidence, nor summoned any RTO official to prove that the driver of the tipper lorry did not possess valid driving license. Moreover, the insurance company has not even called upon the owner of the tipper lorry to produce the driving license or summon the driver or owner to be examined as a witness. When such is the lapse on the part of the Insurance Company, the Tribunal rightly found that the driver of the tipper lorry was rash and negligent and therefore, no finding has been given with regard to driving licence. That apart, there is no pleading to that effect in the counter statement. In the absence of pleading or in the absence of any evidence with regard to absence of valid driving licence by the driver of the tipper lorry, the contention that too at the appellate stage is not sustainable and therefore, the said contention of the learned counsel for the appellant has to be rejected.

6.The only question to be decided in the above appeals is with regard to the liability of the Insurance Company based on the driving licence. But, in any event, it is according to the evidence on record. Therefore, the appeals fail and are liable to be dismissed.

7.The appellants are directed to deposit the entire award amount along with interest and costs within a period of four weeks from the date of receipt of copy of this order. On such deposit, the Tribunal is directed to transfer the respective shares of the claimants as per the ratio fixed by the Tribunal with proportionate interest and costs to their respective bank accounts through RTGS, within a period of one week thereon.

8.Accordingly, the appeals are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

9.Since the appeals have been dismissed at the admission stage itself, the copy of the order is directed to be sent to the claimants free of cost.

Sd/-

Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

sai

To

1.The Chief Judge,  
Motor Accident Claims Tribunal,  
Court of Small Causes,  
Chennai.

2.Mrs.S.Sandhya  
W/o.T.Saravanan,  
No.1. A. 1<sup>st</sup> Cross Street,  
Thanthai Periyar Nagar,  
Kumananchavadi,  
Poonamallee, Chennai -56.

3.Mrs.T.Muthulakshmi,  
W/o.Thambusamy Reddiyar,  
No.1, A.1<sup>st</sup> Street,  
Thanthai Periyar Nagar,  
Kumananchavadi,  
Poonamallee, Chennai -56.

4.K.Thambusamy Reddiyar,  
S/o.Mr.Kesavan,  
No.1 .A.1<sup>st</sup> Cross Street,  
Thanthai Periyar Nagar,  
Kumananchavadi, Poonamallee,  
chennai 56.

+1cc to Mr.A.Dhiraviyanathan, Advocate SR.No.29076

C.M.A.Nos.796 and 797 of 2018

GMR (CO)  
GN (05/06/2018)

सत्यमेव जयते

WEB COPY