IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1153 of 2017
and
CMP.No.5789 of 2017

The Oriental Insurance Company Limited,
Siddha Veerappa Chetty Street,
Dharmapuri Town.

... Appellant/2nd Respondent

Vs

1.Kaveriammal
2.Muniyappan
3.Munirathinam
4.Muniyammal
5.P.Palani

... Respondents/Petitioners 1 to 4/1st Respondent

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 21.01.2016 passed in M.C.O.P.No.2511 of 2014 on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.M.Selvam

JUDGMENT

The claimants in the MCOP.No.2511 of 2014 are the legal heirs of the deceased Chinnasamy. It is canvassed that the said Chinnasamy was standing on the road side on Dharmapuri-Krishnagiri Highway on 24.02.2014. At that time at about 7.00 p.m. a motor cycle bearing Registration No.TN-29-AL-9942 driven by its driver in a rash and negligent manner dashed against the deceased Chinnasamy. The deceased Chinnasamy was taken to hospital and he died, as a result of the injuries sustained in the accident on 28.02.2014. At the time of accident, the age of the deceased Chinnasamy was 60 years and he was having his own business of making bricks.

2.The 1st respondent remained exparte and the 2nd respondent contended that the accident took place only due to the negligence of the deceased. It has been shown that the deceased was under the influence of alcohol and that the driver of the vehicle did not have a valid driving licence. Therefore, the Insurance Company has vehemently pleaded that they are not liable to pay compensation.

3.The Tribunal considered the rival contention and awarded a sum of Rs.6,28,000/- to the claimant and directed the Insurer to pay the said amount and to recover the same from the owner of the vehicle. Aggrieved by the order of the Tribunal, the Insurance Company has preferred the present appeal.

4.I heard Mr.M.B.Raghavan, learned counsel for the appellant and Mr.M.Selvam, learned counsel for the respondents and perused the entire materials available on record.

5.Firstly, the question of negligence is to be decided. The deceased was admittedly under the influence of alcohol and he was allegedly standing on the road side. It is also alleged that the driver of the motor cycle had hit the deceased. Eventhough the deceased was under the influence of alcohol, no evidence to show that he crossed the road or did anything under the influence of the alcohol, which resulted in the accident. Yet he was admittedly under the influence of alcohol. But how that contributed to the accident has not been canvassed by the appellant/2nd respondent. Therefore, the drunkenness of the deceased would not have altered the position. Since it is the motor cycle, which hit against the deceased. The evidence is irrefutable and thus it is decided it would not have altered the course of accident. The accident according to eyewitness account to PW2 took place due to the rash and negligent driving of the driver of the motor cycle.

6.Secondly the question of liability is to be decided. The accident occurred due to the rash and negligent driving of the driver of the motor cycle. But it has been shown by the Insurance Company that the driver of the motor cycle Kaveri did not have a valid driving licence at the time of accident. This is a serious lapse and a violation of policy condition. Where there is a policy violation the Insurance Company cannot be saddled with the liability. However, it is well settled that where there is a violation of policy condition such as driver not having valid driving license, the Insurance Company can be directed to pay the compensation and to recover the same from the Insured. This is now decided in Swaran Singh case as follows:

> "The Insurer had to indemnify the compensation amount payable to the Third Party and the Insurance

company may recover the same from the insured. Doctrine of "Pay and Recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the Insurance Company in cases of breach of Policy condition due to disqualifications of the Driver or invalid Driving Licence of the Driver and held that in case of Third Party risks, the Insurer has to indemnify the compensation amount to the Third Party and the Insurance company may recover the same from the insured. Elaborately considering the Insurer's contractual liability as well as statutory liability vis-à-vis the claims of Third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, "pay and recover" can be ordered"

"As per the decision in Swaran Singh case, onus is always upon the Insurance company to prove that the Driver had no valid Driving Licence and that there was breach of Policy conditions. Where the Driver did not possess the valid Driving Licence and there are breach of Policy conditions, "Pay and recover" can be ordered in case of Third Party risks. The Tribunal is required to consider as to whether the Owner has taken reasonable care to find out as to whether the Driving Licence produced by the Driver, does not fulfill the requirements of law or not will have to be determined in each case"

7.Lastly the quantum of compensation, as per the post-mortem report the deceased Chinnasamy was 65 years old at the time of accident. He was in the business of selling bricks and he is said to be earning Rs.15,000/- p.m. PW3 Lorry driver deposed on behalf of the claimant and deposed that he used to carry bricks for the deceased and the deceased also earned Rs.20,000/- p.m. But there are no documentary evidence to prove the same. The Tribunal fixed a sum of Rs.6,000/- which is not unreasonable. The Tribunal deducted 1/4th and arrived at Rs.4,500/- as the contribution of the deceased to his family and arrived at Rs.3,78,000/- as the loss of income of the petitioner which is not on the higher side. The Tribunal has awarded a sum of Rs.1,00,000/- for loss of consortium. The deceased has left behind a window and the compensation in the head is reasonable. The Tribunal has awarded a sum of Rs.1,00,000/- for loss of love and affection, it would suffice that a sum of Rs.40,000/- is awarded on the head. The Tribunal has awarded a sum of Rs.25,000/- for transportation, it would suffice a sum of Rs.10,000/- is awarded for transportation and Rs.25,000/- for funeral expenses, which is reasonable.

Now the compensation is as follows:

Loss of income	: Rs.3,78,000/-
Loss of consortium	: Rs.1,00,000/-
Loss of love and affection	: Rs. 40,000/-
Transportation charges	: Rs. 10,000/-
Funeral expenses	: Rs. 25,000/-
	Rs.5,53,000/-

8.In the result, the award of the Tribunal is partly modified and a total Rs.5,53,000/- is awarded to the claimants. The appellant is directed to pay the same to the claimant with interest at the rate of 7.5% from the date of petition till the date of payment. The appellant is at liberty to recover the amount so paid from the insured. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal,
Special District Court,
Dharmapuri.

+1cc to Mr.M.Selvam, Advocate, S.R.No.74487
+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.74558

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NMI(Co)
CS/20/02/2019