IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1055 of 2007
and
M.P.No. 1 of 2007

The Branch Manager,
National Insurance Co. Ltd.,
Door No.7, Thiru.Vi.Ka. Industrial Estates,
Guindy, Chennai. .. Appellant/3rd Respondent

Vs.

1. Pachiammal ..1st Respondent/Claimant
2. M.Sakthivel
3. N.Nalliappan .. Respondents2&3/Respondents 1&2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.10.2006 made in M.A.C.T.O.P.No.344 of 2004 on the file of the Motor Accident Claims Tribunal (Additional District and Special Judge), Salem.

For Appellant : Mrs.N.B.Surekha
For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the awards of a sum of Rs.82,000/- towards compensation to the first respondent, due to the death of her mother in a motor vehicle accident.

2.The case in brief is as follows:

On the fateful day, i.e., on 10.01.2003, about 6.00pm, when the deceased palaniammal was standing at the mud road on its north side of the Seelanaickenpatti Bye pass road, near Singh Valganising shop, a Eicher Tempo bearing registration No.TN 28 S 7366 belonging to the third respondent and insured with the appellant insurance company driven by its driver viz., second respondent, came in a rash and negligent manner and hit the pedestrian Palaniammal from behind. As a result of the same, the deceased died on the spot. Her only daughter, being the surviving legal heir, filed the aforesaid claim petition seeking compensation of Rs.2,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.82,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Questioning the liability fixed on the appellant Insurance Company, the present appeal came to be filed.

4.The learned counsel for the appellant Insurance Company has disputed only the liability fastened on the insurance company to pay compensation. According to her, the driver of the Tempo did not possess a valid driving licence to drive the vehicle carrying explosives at the time of accident and hence, the appellant is not liable to pay any compensation.

5.Heard the learned counsel appearing for the appellant and perused the materials available on record carefully and meticulously.

6.Despite the service of notice and the name of the respondents have been printed in the cause list, there is no representation on behalf of the respondents 1 to 3. However, considering the passage of time, this Court is inclined to proceed with this appeal, on merits.

7.There is no dispute with regard to the manner of accident. What is disputed is the liability of the appellant insurance company to pay compensation. According to the learned counsel for the appellant insurance company, the driver of the tempo, at the time of accident, did not possess a valid driving licence to drive the vehicle carrying explosives and thus, the second respondent/owner has violated the conditions of the policy and the rules framed under the Motor Vehicles Act, 1988. Hence, the appellant insurance company is not liable to pay compensation to the first respondent/claimant. On a perusal of the records, it is seen that the driver of the tempo was having licence to drive the vehicle, however, there was no endorsement authorising him to carry dangerous and hazardous goods, which is in violation of the policy conditions. In such circumstances, the Tribunal ought to have directed the appellant insurance company to pay compensation initially and then recover the same from the owner of the vehicle, but it has fastened the liability on the appellant insurance company on behalf of the owner of the vehicle. Hence, the finding of the Tribunal is modified to that extent alone and is accordingly, modified.

8.Since the quantum of compensation is not disputed, the same need not be interfered with by this Court.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle. On such deposit being made by the appellant insurance company, the Tribunal shall transfer the amount lying in the deposit to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

-s/d-
Assistant Registrar(Arb)

True Copy

Sub-Assistant Registrar

av

To

1.The Additional District and Special Judge,
Motor Accident Claims Tribunal,
Salem.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.N.B.Surekha , Advocate SR.No. 47156

C.M.A.No.1055 of 2007
and
M.P.No. 1 of 2007

sv co
A.SK(16/07/2020)