

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1173 of 2013

Manager,
IFFCO TOKIYO General Insurance Company Ltd.,
TULSI Chambers, 3rd Floor,
195, TV Swamy Road (West),
RS Puram, Coimbatore.

.. Appellant

vs.

1.Arumugam
2.Easwari
3.M.Suresh
4.M.Mani

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 26.09.2012 passed in MCOP.No.110 of 2011 on the file of the Motor Accident Claims Tribunal / IV Additional District Court, Bhavani, Erode District.

Appellant : Mr.M.B.Gopalan
R1 & R2 : Mr.V.P.Karthikeyan
R3 : No appearance
R4 : Mr.B.Dhinesh

J U D G M E N T

The appellant, IFFCO TOKIYO General Insurance Company Limited is the third respondent in MCOP.No.110 of 2011 on the file of the Motor Accident Claims Tribunal / IV Additional District Court, Bhavani, Erode District. The respondents 1 & 2 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of their Daughter Gokila in a road accident on 01.12.2009

2. The case of the claimants in nutshell is as follows:

On 01.12.2009, the deceased Gokila was a pillion rider in a two wheeler bearing Registration No. TN 27 C 0253 and she was proceeding towards Anthiyur from Bhavani and at about 09.15 p.m,

a speeding Mahindra Van bearing Registration No. TN 36 J 7411 hit the two wheeler, as a result whereof, she fell down and sustained fatal injuries and died on the way to hospital.

3. According to the claimants, the rash and negligent driving of the driver of the Mahindra Van belonging to the fourth respondent was the cause of the accident and that since the said Mahindra Van was insured with the present appellant / IFFCO TOKIYO General Insurance Company Limited, the owner and the insurer of the Mahindra Van are jointly and severally liable to pay compensation.

4. The owner and the driver of the Mahindra Van remained absent before the Tribunal and therefore, they were set ex-parte. The appellant / IFFCO TOKIYO General Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned IV Additional District Judge / Motor Accident Claims Tribunal, Bhavani, Erode District after analysing the evidence on record, awarded a compensation of Rs.5,93,000/- together with interest at the rate of 7.5% per annum to the claimants. Questioning the liability to pay compensation to the claimants, the Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.M.B.Gopalan, learned counsel appearing for the appellant / IFFCO TOKIYO General Insurance Company Limited contended that the Tribunal was wrong in fastening liability on the part of the Insurance Company, especially, when there was no fitness certificate for Mahindra Van as evidenced by a copy of the fitness certificate (Ex.R2).

6. Heard Mr.V.P.Karthikeyan, learned counsel appearing for the respondents 1 and 2 and Mr.B.Dhinesh, learned counsel appearing for the fourth respondent. No appearance on behalf of the third respondent.

7. A perusal of a copy of the fitness certificate (Ex.R2) shows that the fitness certificate for the vehicle was renewed on 28.05.2010 and the previous fitness certificate issued for the vehicle expired on 01.06.2009. The accident took place on 01.12.2009, and therefore, on the date of the accident there was no fitness certificate for the vehicle. The Tribunal without considering the evidence of R.W.3 and the copy of the fitness certificate (Ex.R2), directed the Insurance Company and the owner of the vehicle to pay the Award amount jointly and severally. Since there was no valid fitness certificate on the date of the accident, the Insurance Company should pay the Award amount in the first instance and then recover the same from the owner of the vehicle.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection / appeal was filed by the claimants. A perusal of the award also shows that it is not on the higher side and in the facts and circumstances, the appeal is allowed.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The appellant / IFFCO TOKIYO General Insurance Company Limited is directed to deposit the Award amount i.e., Rs.5,93,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.110 of 2011 on the file of the Motor Accident Claims Tribunal / IV Additional District Court, Bhavani, Erode District within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the Mahindra Van (fourth respondent) bearing Registration No. TN 36 J 7411 on the same cause of action.

(iv) On such deposit being made, the respondents 1 & 2 / claimants are at liberty to withdraw the same as per the apportionment granted before the Tribunal after following due process of law.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
The IV Additional District Judge,
Bhavani, Erode District.

2. The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.N.B. Gopalan, Advocate sr 96684.

CMA.No.1173 of 2013

RR(CO)
SP(14/08/2020)