IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2019

Coram

THE HONOURABLE MR. JUSTICE R. MAHADEVEN

Civil Miscellaneous Appeal No.1981 of 2009
and M.P.No.1 of 2009

The Manager,
Bajaj Allianz General Insurance
Company Limited,
No.25/26, Prince Towers,
College Road,
Nungambakkam, Chennai 6 Appellant /2nd Respondent

Vs

1.N.Elumalai
2.Minor.Renuka
3.Minor.Sujatha
4.Minor.Kannan
(minors are rep.by their mother and guardian
Kanthamma)
5.Datchayani
6.Lakshmi ... 1 to 6th Respondents/Petitioners

7.J.Dhayalan ... 7th Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 30.01.2009 passed by the Motor Accidents Claims Tribunal, Principal District Court, Thiruvallur in MCOP No.486 of 2007.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.R.Neelakandan for R1 to R6
R7 - No appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred by the appellant / Insurance Company against the award of a sum of Rs.1,35,000/- passed by the Motor Accident Claims Tribunal in M.C.O.P.No.486 of 2007 dated 30.01.2009.

2.The case in brief, is as follows:
On 04.03.2005 at about 09.15 hours, the deceased-Nagan was

proceeding in the G.N.T.Bye Pass Road, Gummidipoondi, by walk. At that time, the motorcycle bearing Registration No. TN 04 L 2558, belonging to the seventh respondent and insured with the appellant Insurance Company, came from behind in a rash and negligent manner and hit the deceased. Due to the impact, the deceased sustained grievous injuries all over the body. Immediately, he was taken to the Government Hospital for treatment, but he succumbed to the injuries on the next day i.e., 05.03.2005. The legal representatives of the deceased filed a claim petition before the Tribunal. Considering the materials and evidence available on record, the Tribunal held that the accident had occurred only due to the rash and negligent riding of the rider of the two-wheeler and ultimately fastened the liability on the insurer/ appellant herein and awarded a sum of Rs.1,35,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant/ Insurance Company has preferred this appeal.

4.The learned counsel appearing for the appellant has submitted that the Tribunal has erred in holding that the appellant is liable to pay the compensation, since the fact remained that the rider of the motorcycle is a truck driver and he was not possessing the valid driving licence to drive the two-wheeler. He further submitted that the quantum arrived at by the Tribunal is on the higher side.

5.Per contra, the learned counsel appearing for the respondents 1 to 6/ claimants would submit that the Tribunal has analysed Exs.R1 to R3 coupled with the evidence of RW.1 and correctly fastened the liability on the appellant herein. He further submitted that the Tribunal has considered each and every aspect into consideration and has awarded the compensation, which is just, fair and reasonable.

6.Heard the learned counsel for the appellant and the learned counsel for the claimants and perused the materials available on record carefully and meticulously.

7.R.W.1-Legal Officer of the Insurance Company, deposed before the Tribunal that the rider of the two wheeler was possessing LLR Licence to drive the two-wheeler. If a person having LLR licence for the two-wheeler, he can ride the two-wheeler provided that he should be accompanied by an Instructor holding an effective driving licence to drive the vehicle. The Tribunal held that when the fact remained that the rider was possessing LLR licence, the Insurance Company cannot shirk its responsibility by stating that the rider was not accompanied by an instructor having an effective driving licence to drive the vehicle and the said violation is not a serious one. In this connection, Section 3 of the Central Motor Vehicle Rules, will come into play. Section 3 of the Central Motor Vehicle Rules reads as under:

> "Section 3(a). Such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;
>
> (b) Such person to accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and
>
> (c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under."

8.A reading of the above makes it clear that it is mandatory that the rider has to be accompanied by an Instructor having an effective driving licence to drive the vehicle. Hence, the Tribunal ought to have drawn adverse interference against the rider of the two wheeler. Even though the Tribunal has given a finding that the rider was not accompanied by an instructor, the Tribunal has observed that it is not a serious violation, which in the considered opinion of this Court, is not correct. In these circumstances, this Court deems it fit to direct the Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle, on the ground of violation of policy conditions by the owner of the motorcycle.

9.As far as the quantum of compensation is concerned, the Tribunal has fixed the monthly income of the deceased as Rs.3,000/- as Chithal, deducted 1/3rd of the amount towards personal expenses and arrived at the monthly contribution of the deceased to the family at Rs.2,000/-, adopted the multiplier of 5 and arrived at the loss of income at Rs.1,20,000/-. The Tribunal has also awarded a sum of Rs.5,000/- each towards 'funeral expenses', 'love and affection' and 'loss of happiness'. Thus the Tribunal has arrived at the total compensation at Rs.1,35,000/- payable by the appellant herein to the claimants. The Tribunal has correctly fixed the monthly income of the deceased, adopted the correct multiplier and arrived at the compensation towards loss of income. Hence the same does not require any interference by this Court. The amounts awarded towards other heads are also very reasonable and hence the same are also confirmed.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

11.The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. The minor respondents 2 to 4 would have attained majority by now. Hence, on such deposit being made, all the claimants are permitted to withdraw the same on making proper application before the Tribunal. Thereafter, the Insurance Company shall proceed against the owner of the motorcycle, the seventh respondent herein, to recover the compensation, in accordance with law.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Principal District Judge,
   Motor Accident Claims Tribunal,
   Thiruvallur.

Copy To

The Section Officer
V.R.Section
Madras High Court
Chennai 104.

+1cc to Mr.R.Neelakandan, Advocate, S.R.No. 71472
+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 71491

CMA No.1981 of 2009
and
M.P.No.1 of 2009

GP(CO)
GN(23/09/2020)