IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1126 of 2015
and M.P.No.1 of 2015

The Chief Executive Claim Office,
Bajaj Allianz General Insurance Company Limited,
No.25/26, Prince Towers, Ground Floor, College Road,
Nungambakkam, Chennai-6.
..Appellant/2nd Respondent

Vs

1.Munusamy

2.Muniammal .. Respondents 1&2/Claimants 1&2

3.M.Rajeshkumar .. 3rd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.08.2014 made in M.C.O.P.No.280 of 2008 on the file of Motor Accidents Claims Tribunal, Sub Court, Gingee.

For Appellant : Mr.Srinivasan Ramalingam
For Respondents 1 & 2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 28.08.2014 made in M.C.O.P.No.280 of 2008 on the file of Motor Accidents Claims Tribunal, Sub Court, Gingee.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.280 of 2008 on the file of Motor Accidents Claims Tribunal, Sub Court, Gingee. The respondents 1 and 2 filed the above claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of their son viz., Aruldass, who died in the accident that took place on 31.08.2008. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the rider-cum-owner of the motor cycle/third respondent and directed the appellant-Insurance Company being the insurer of the said vehicle to pay a sum of Rs.4,95,000/- as compensation to the respondents 1 to 2. Against the said award dated 28.08.2014 made in M.C.O.P.No.280 of 2008, the appellant-Insurance Company has come out with the present appeal challenging the liability fastened on them.

3.The learned counsel appearing for the appellant-Insurance Company contended that the accident did not happen as alleged by the respondents 1 and 2. The unidentified car dashed against the motorcycle and caused the accident. Though the accident did not occur due to rash and negligent driving by the rider of the motorcycle belonging to the 3rd respondent, the police lodged a false complaint. The FIR was lodged four days after the accident. The complaint was lodged with CBCID and investigation was conducted. The Tribunal has failed to see that in the Accident Register, it was mentioned that 3rd respondent was riding motorcycle, he also was injured and took treatment in hospital. The 3rd respondent did not possess valid driving license and therefore, the respondents 1 and 2 have falsely stated that Raji alias Susil Kumar was riding the motorcycle and due to his rash and negligent driving, both the rider as well as the deceased fell down and due to the injuries sustained in the accident, the deceased died. The Tribunal has failed to properly appreciate the documents filed by the appellant and evidence of RW2-Inspector of Police, who investigated the complaint given to CBCID. The Tribunal without appreciating the above facts has erroneously ordered pay and recovery and prayed for setting aside the award of the Tribunal.

4.Though the respondents 1 and 2 entered appearance through the learned counsel Mr.Kanthan, when the matter is taken up for hearing, there is no representation on behalf of the respondents 1 and 2 either in person or through counsel.

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

6.The contention of the learned counsel appearing for the appellant is that the 3rd respondent only was riding the motorcycle and the deceased was a pillion rider. The 3rd respondent did not possess any valid driving license and therefore, the appellant is not liable to pay compensation. The Police lodged a false complaint stating that Raj alias Susil Kumar was riding the motorcycle and he had valid driving license. To substantiate their case, the appellant examined the Inspector of Police as RW2, who investigated the complaint given by the appellant to CBCID against 3rd respondent and others.

7.The Tribunal considering the evidence of RW2 and judgments relied on by the appellant as well as the respondents 1 and 2 held that even if 3rd respondent was riding the motorcycle at the time of accident, in view of the insurance policy in force, directed the appellant to pay compensation at first instance and recover the same from 3rd respondent. The Tribunal has passed this award in view of the fact that the 3rd respondent did not possess driving license at the time of accident. From the materials available on record, it is seen that the 3rd respondent did not possess driving license. It is well settled that the claimants must enjoy the fruits of award. Considering the above principle, the Tribunal directed the appellant to pay compensation at first instance and recover the same from the 3rd respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

8.In the result, the Civil Miscellaneous Appeal is dismissed and award of the Tribunal is confirmed. The appellant-Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2-claimants are permitted to withdraw their respective share amount awarded by the Tribunal on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Admin III)

//True Copy//

Sub Assistant Registrar

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To
The Motor Accidents Claims Tribunal,
Subordinate Judge, Gingee.

C.M.A.No.1126 of 2015
and M.P.No.1 of 2015

VD(CO)
CSL/12.06.2019