IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1547 of 2015
and
M.P.No.1 of 2015

M/s.Reliance General Insurance Company Limited,
Unit No.1, 3rd Floor,
No.23, Spur Tank Road, Chetpet,
Chennai - 600 031. .. Appellant/2nd Respondent

Vs.

1.Dharuman
2.Valarmathy .. 1st & 2nd Respondents/Petitioners 1, 2
3.S.Mani .. 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.12.2013 made in M.C.O.P.No.659 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai.

For Appellant : Mr.E.Rajadurai
for M.B.Gopalan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 02.12.2013 made in M.C.O.P.No.659 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai.

2.The appellant is the second respondent in M.C.O.P.No.659 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their son viz.,Seetharaman, who died in the accident that took place on 19.12.2008.

3.According to the respondents 1 and 2/claimants, on 19.12.2008 at 13.10 hours, while the deceased was walking along service road at over bridge, Guindy, an Auto Rickshaw belonging to the third respondent came in a rash and negligent manner and dashed against the deceased and caused the accident. Due to the said accident, the deceased succumbed to injuries. Therefore the respondents 1 and 2/claimants filed claim petition claiming compensation against the third respondent and appellant/Insurance Company being the owner and insurer of the Auto Rickshaw respectively.

4.The appellant/Insurance Company filed counter statement and denied all the averments made by the respondents 1 and 2/claimants. According to appellant/Insurance Company, the driver of the Auto Rickshaw drove the same without any valid driving license at the time of accident. Therefore, the driver of the Auto Rickshaw has been charged by the Police for not having valid driving license at the time of accident. The third respondent being the owner of the Auto Rickshaw was also charged for allowing the driver to drive the Auto Rickshaw without valid driving license at the time of accident by violating the terms and conditions of the policy. Hence, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 and 2/claimants. The quantum of compensation claimed by the respondents 1 and 2/claimants is highly excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, on behalf of the respondents 1 and 2/claimants, first respondent examined himself as P.W.1 and one Lakshmanan, eye-witness was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. On behalf of the third respondent and appellant/Insurance Company, one witness was examined as R.W.1 and two documents were marked as Exs.R1 and R2.

6.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Auto Rickshaw belonging to the third respondent and directed the appellant-Insurance Company, being the insurer of the Auto Rickshaw to pay a sum of Rs.7,69,000/- as compensation to the respondents 1 and 2/claimants.

7.Challenging the said award dated 02.12.2013 made in M.C.O.P.No.659 of 2009, the appellant-Insurance Company has come out with the present appeal.

8.Though the appellant/Insurance Company have raised many grounds in the grounds of appeal, at the time of hearing, the learned counsel appearing for the appellant-Insurance Company restricted his arguments with regard to liability alone due to non-possession of valid driving license by the driver of the Auto Rickshaw at the time of accident.

9.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

10.From the materials available on record, it is seen that the appellant/Insurance Company has not let in any evidence or produced any document to prove that the driver of the Auto Rickshaw was not having valid driving license at the time of accident and also has not taken any steps to examine the official from R.T.O. to prove that the driver of the Auto Rickshaw was not having valid driving license at the time of accident. In such circumstances, the award passed by the Tribunal directing the appellant/Insurance Company to pay the compensation to the respondents 1 and 2/claimants cannot be found fault with and the same does not warrant any interference by this Court.

11.In the result, this Civil Miscellaneous Appeal is dismissed and the amount of Rs.7,69,000/- awarded by the Tribunal as compensation to the respondents 1 and 2/claimants, along with interest and costs is confirmed. 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.659 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

krk

To
The Motor Accidents Claims Tribunal,
The Special Subordinate Judge No.II,
Chennai.

+1cc to Mr.M.B.Gopalan, Advocate SR.No.104600

C.M.A.No.1547 of 2015

RK(CO)
GMY(25/02/2020)