

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3452 of 2011
and
M.P.No.1 of 2011

National Insurance Company Limited,
represented by its Divisional Office-1,
LRN Complex, Salem - 7.

... Appellant/2nd
Respondent

Vs.

1.Rajammal

2.Chinnusamy

..R1&R/Claimants 1 & 2

3.T.Velmurugan

.. R3 Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 05.07.2011 passed in M.C.O.P.No.213 of 2008 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Salem.

For Appellant : Mr.D.Bhaskaran

For Respondents : No appearance

J U D G M E N T

The National Insurance Company Limited, the second respondent in M.C.O.P.No.213 of 2008 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Salem has filed the present appeal. The respondents 1 and 2 / claimants filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.7,00,000/- for the death of one C.Srinivasan, son of the claimants 1 and 2 in a road accident on 17.05.2007.

2. The case of the claimants is that on 17.05.2007, about 10.30 P.M. the deceased C.Srinivasan was riding his two wheeler bearing Registration No. TN 34 C 8484 on Thoothukudi - Ettayapuram main road and while he was nearing Valasamuthiram, a speeding motor cycle bearing

Registration No. PY 01 AJ 9707, hit the two wheeler, as a result of which, the deceased C.Srinivasan sustained grievous injuries and died in the hospital. According to the claimants, the rash and negligent riding of the rider of the motor cycle belonging to the third respondent was the cause of the accident and that since the said motor cycle van was insured with the appellant / National Insurance Company Limited, both the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the motor cycle remained absent before the Tribunal and therefore he was set exparte. The National Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned I Additional District Judge / Motor Accident Claims Tribunal, Salem, awarded a compensation of Rs.3,83,000/- to the first claimants together with interest at the rate of 7.5% per annum and dismissed the claim petition against the second claimant. The Tribunal also directed the National Insurance Company Limited to pay the compensation to the claimants and then recover the same from the owner of the motor cycle, since the rider of the motor cycle was not in possession of a valid driving licence on the date of the accident. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant / National Insurance Company Limited.

5. In the decisions in (i) Oriental Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

6. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the National Insurance Company Limited to pay the award amount in the first instance and then recover the same from the owner of the motor cycle is perfectly in order.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The present appellant / National Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.3,83,000/- (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 M.C.O.P.No.213 of 2008 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Salem, 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 motor cycle bearing Registration No. PY 01 AJ 9707 in the manner known to law.

(iv) On such deposit being made, the first respondent / first claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

krk

To

The Motor Accidents Claims Tribunal,
The I Additional District Judge,
Salem.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.92004

C.M.A.No.3452 of 2011

PPA(CO)
CB(22/07/2020)