

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.742 of 2015

1.S.Baby
2.Minor S.Ulaganathan
3.Minor Kiruthikha ..Appellants
(Minors 2 & 3 rep. by their next friend,
guardian, Mother S.Baby)

Vs.

1.S.Karuppusami
2.K.Kamalaveni
3.Minor K.Arun Prakesh
4.Minor K.Priyanka
(R3 & R4 represented by Court
guardian Advocate N.Thilageswari)

5.United India Insurance Co. Ltd.,
No.5, Big Bazaar Street,
Dharapuram.
(Insurer)

6.A.Shanmugam

7.Deivanai .. Respondents
(R1 driver of the lorry remained ex-parte
and hence notice to R1 may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.06.2012 made in M.C.O.P.No.134 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode.

For Appellants : Mr.P.Parthikannan
for Mr.A.K.Kumarasamy

R1 : Exparte

For R2 to R4 : No appearance

For R5 : Mr.T.Ravichandran

For RR6 & 7 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellants/claimants challenging the portion of the award dated 21.06.2012 made in M.C.O.P.No.134 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode.

2.The appellants are claimants in M.C.O.P.No.134 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode. They filed the said claim petition claiming a sum of Rs.12,59,500/- as compensation for the death of one Sivachalam, who died in the accident that took place on 12.08.2006. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent/driver of the lorry belonging to the respondents 2 to 4, directed the respondents 2 to 4 to pay a sum of Rs.8,80,000/- as compensation to the appellants and respondents 6 & 7 and dismissed the claim petition against the 5th respondent/Insurance Company insurer of the said lorry. The appellants have come out with the present appeal challenging the portion of the award dismissing the claim petition against the 5th respondent/Insurance Company from its liability.

3.The learned counsel appearing for the appellants/claimants contended that the Tribunal failed to follow the various judgments of the Hon'ble Apex Court as well as this Court wherein time and again held that the benefit of the awards should not be avoided to the victims of the road accident on technicalities and the Tribunal must be liberal in compensating the victims and if there is any violation of policy condition, it is always open to the Insurance Company to pay the compensation to the victims at the first instance and recover the same from the owner of the vehicle. The Tribunal having found that the accident has occurred due to rash and negligent driving by the 1st respondent/driver of the lorry, ought to have directed the 5th respondent/Insurance Company to pay the award amount at the first instance and recover the same from the insured. The Tribunal ought to have considered the plight of the appellants who are made to run from pillar to post to realize the award amount in the claim petition against the 5th respondent/Insurance Company and ought to have directed the Insurance Company to pay the compensation at the first instance and recover the same from the owner of the lorry and prayed for setting aside the portion of the award dismissing the claim petition against the 5th respondent/Insurance Company from its liability.

4. Per contra, the learned counsel appearing for the 5th respondent/Insurance Company contended that the offending vehicle was insured with the 5th respondent at the time of the accident. The 1st respondent/driver of the vehicle in his evidence before the Tribunal, has deposed that he did not possess driving license at the time of the accident. In view of the same, the Insurance Company cannot be directed to pay compensation. The Tribunal has rightly dismissed the claim petition against the 5th respondent/Insurance Company and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellants and 5th respondent/Insurance Company and perused all the materials available on record.

6. From the materials available on record, it is seen that the Tribunal dismissed the claim petition against the 5th respondent/Insurance Company only on the ground that the driver of the lorry did not possess driving licence at the time of accident. The said reasoning for dismissal of the claim petition against the 5th respondent is erroneous. It is well settled that if the rider of the two wheeler or driver of the four wheeler, the offending vehicle did not possess driving licence, the Insurance Company must satisfy the award at the first instance and recover the same from the owner of the vehicle. In the judgment reported in 2004 ACJ 1 SC [National Insurance Co. Ltd., Vs. Swaran Singh and others], the Hon'ble Apex Court has held that if the driver of the vehicle did not possess valid driving licence at the time of accident, the Insurance Company can be directed to pay the amount to the claimant and then realise it from the owner of the offending vehicle. In the judgment reported in 2012 1 TN MAC 226 [ICICI Lombard General Insurance Co. Ltd., Vs. Annakkili], it has been held that the Insurance Company cannot be exonerated from the liability to pay the compensation to the 3rd party claim for the reason that the driver had no licence or badge and the Insurance Company after paying the amount to claimant, recover the same from the owner of the vehicle. The similar finding has been reiterated in another judgment reported in 2012 1 TN MAC 536 [National Insurance Co. Ltd., Vs. T.Mathiazhagan].

7. By applying the said principle of law to the present case, the portion of the award dismissing the claim petition against the 5th respondent/Insurance Company, on the ground that the driver of the lorry belonging to the respondents 2 to 4 did not possess driving licence, is set aside and the 5th respondent/Insurance Company is directed to pay the compensation amount of Rs.8,80,000/- to the appellants at the first instance

and later on, recover the same from the respondents 2 to 4, owners of the vehicle.

8. In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is hereby modified setting aside the portion of award dismissing the claim petition against the 5th respondent / Insurance Company and the compensation awarded by the Tribunal is confirmed. The 5th respondent/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the respondents 2 to 4. On such deposit, the 1st appellant and the respondents 6 & 7 are permitted to withdraw their respective shares of the award amount on the basis of the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minors/appellants 2 & 3 are directed to be deposited in any one of the Nationalised Bank till the minors attain majority. The 1st appellant being the mother of the appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-

Assistant Registrar (C.O.)

//True Copy//

Sub Assistant Registrar

To

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

Copy to : The Section Officer, V.R. Section,
High Court, Madras.

+1 cc to M/s.S.Kaithamalai Kumaran, Advocate Sr.No. 34507
+1 cc to M/s.T.Ravichandran, Advocate Sr.No.35183

AKM/07.11.19/4P-5C /

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