IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.772 of 2018
and C.M.P.No.6503 of 2018

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

Vs

1. Sumathi
2. Baskaran ... Respondents/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.10.2014 made in M.C.O.P.No.121 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge's Court, Chengalpattu.

For Appellant : Mr.M.B.Gopalan

For R1 : Mr.J.Karthikeyan

For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.1,50,807/- towards compensation to the first respondent, due to the injuries sustained by her in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, i.e., on 16.04.2009 about 1.45 pm, the first respondent/claimant and others were travelling in the van bearing Reg.No.TN-21-AX-1548 belonging to the second respondent and insured with the appellant insurance company, which was proceeding on the Vandalur Road. When the van reached near Kannapuram Village Road Junction, due to the rash and negligent driving of the driver of the van, the van fell in a ditch. Due to the said impact, the first respondent sustained grievous injuries all over the body. She filed a claim petition before the Tribunal claiming compensation of Rs.2,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,50,807/- with interest at the rate of 7.5% per annum from the date of the petition. Questioning the liability fixed on the appellant Insurance Company, the present appeal came to be filed.

3.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the Tribunal has erred in fixing the liability on the appellant Insurance Company, since the driver of the van did not possess the valid and effective driving licence at the time of accident and hence, the Insurance Company is not liable to pay any compensation to the first respondent/claimant.

4.The learned counsel for the first respondent/claimant has submitted that the Tribunal has rightly considered the materials and evidence and has passed the impugned judgment and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

6.Since the quantum of compensation is not disputed, the same does not require any interference by this Court.

7.Ex.P1-First Information Report was registered against the driver of the van bearing Reg.No.TN-21-AX-1548 stating that he was responsible for the accident, which corroborated with the evidence of P.W.2/claimant. From Ex.P15-Charge Sheet, it is seen that the driver of the offending vehicle had been charged for the absence of driving licence at the time of accident. Relying on these exhibits, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent act on the part of the driver of the van, which is not disputed by both sides. With regard to the non-possession of valid driving licence, the Tribunal has held that the Insurance Company had not sought any particulars in this regard from the owner or driver of the vehicle and no efforts have been taken to summon the officials / licensing authorities from the concerned Regional Transport Office, to prove that the driver was not possessing the valid driving licence at the relevant point of time. Stating so, the Tribunal has fastened the liability on the appellant Insurance Company and directed them to pay the compensation to the claimant. According to the appellant Insurance Company, in the absence of any driving licence, no particular RTO can be summoned and that the Tribunal has wrongly blamed the appellant for non-examination of RTO official. Even though the Tribunal has observed that the Insurance Company had not taken any efforts to send notice and call for particulars in this regard from the owner or driver of the vehicle, the fact remains that upon notice by the Tribunal, the owner of the van remained ex-parte before the Tribunal. Even before this Court, there is no appearance for the second respondent / owner of the van. In the circumstances, this Court deems it fit to direct the Insurance Company to pay the compensation to the first respondent / claimant and thereafter to recover the same from the owner of the vehicle.

8.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent is permitted to withdraw the same on making proper application before the Tribunal. Thereafter, the Insurance Company shall recover the same from the owner of the vehicle, the second respondent herein, in the manner known to law.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

av/km

To

1.The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Chengalpattu.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.J.Karthikeyan, Advocate SR.No.89827

+1cc to Mr.M.B.Gopalan, Advocate SR.No.90880

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KK(CO)
GMY(21/02/2020)