

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.907 of 2018

A.A.Kuppusamy @ Periya Kuppan (Deceased)

1.Sivagami

Vembu (deceased)

2.Vinayagam

3.Ramya

4.Minor Thilagavathi

5.Minor Devi

6.Minor Gomathi

(minors rep. By their father
natural guardian Vinayagam)

.. Appellant

(Cause title accepted vide Court
order dated 05.03.2018 made in
C.M.P.No.65 of 2018 in
C.M.A.SR.No.93512 of 2017)

Vs.

1.V.Saraswathy

2.ICICI Lombard General Insurance Co. Ltd.,
Priya Prasad, 2nd Floor,
19-A Officer Lane,
Vellore 632 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.06.2017, made in M.C.O.P.No.172 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruttani.

For Appellants : Mr.D.Anandan

For R2 : Ms.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award dated 13.06.2017, made in M.C.O.P.No.172 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruttani.

2.Initially one A.A.Kuppusamy @ Periya Kuppan/1st claimant, 1st appellant/2nd claimant and Vembu/3rd claimant filed M.C.O.P.No.172 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruttani, claiming a sum of Rs.19,80,000/- as compensation for the death of one Malliga, who died in the accident that took place on 25.04.2013. Pending appeal, the claimants 1 and 3 died. The 1st appellant who is the only legal heir of the deceased 1st claimant was already on record and the legal heirs of the deceased 3rd claimant were impleaded as the appellants 2 to 6.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the omni van belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.7,45,000/- as compensation to the claimants/1st appellant, deceased A.A.Kuppusamy @ Periya Kuppan and Vembu and exonerated the 2nd respondent/Insurance Company from its liability.

4.Against the portion of the award dated 13.06.2017, made in M.C.O.P.No.172 of 2013 directing the 1st respondent to pay the compensation, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in directing the 1st respondent alone to pay the compensation when the insurance policy issued by the 2nd respondent-Insurance Company was in force. The Insurance Company cannot be exonerated from its liability totally when the driver of the offending vehicle did not possess driving license and prayed for directing the 2nd respondent-Insurance Company to pay the compensation.

6.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the omni van insured with the 2nd respondent was not involved in the accident and the driver of the omni van also did not possess valid driving license at the time of accident. Hence, the award of the Tribunal directing the 1st respondent to pay the compensation is not erroneous and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.From the materials on record, it is seen that the Tribunal has held that no liability can be fastened on the 2nd respondent-Insurance Company on the ground that the driver of the 1st respondent did not possess driving license and directed

the 1st respondent alone to pay compensation awarded to the appellants. The said reasoning is contrary to the well settled judicial pronouncement wherein it has been held that even if the driver of the vehicle is not possessing the driving license, the Insurance Company must pay the compensation at the first instance and recover the same from the owner of the vehicle. This principle evolved with a view to benefit the claimants so as to enable them to receive the compensation amount awarded to them. The award should not be a paper award without any benefit to the claimants. In view of the above reason, the appeal is allowed and the 2nd respondent-Insurance Company is directed to pay the compensation at the first instance and recover the same from the 1st respondent, owner of the vehicle.

9. In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is hereby modified setting aside the portion of award exonerating 2nd respondent and the award amount granted by the Tribunal at Rs.7,45,000/- along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount along with interest and costs, 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.172 of 2013 at the first instance and recover the same from the 1st respondent. On such deposit, the 1st appellant is entitled to a sum of Rs.3,72,500/- along with proportionate interest and costs. The appellants 2 to 6 each are entitled to a sum of Rs.74,500/- along with proportionate interest and costs. The major appellants 1 to 3 are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The shares of the minor appellants 4 to 6 are directed to be deposited in any of the Nationalized Bank, till the minors attain majority. The 2nd appellant/father of the minor appellants 4 to 6 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 4 to 6. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruttani.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Ms.R.Sreevidhya, Advocate SR.No.42796

+1cc to Mr.S.Udayakumar, Advocate SR.No.42093

C.M.A.No.907 of 2018

VI(CO)
GMY(23/01/2020)