

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.416 of 2014 and
M.P.No.1 of 2014

M/s Iffco Tokio General Insurance Co., Ltd.,
Tulsi Chambers, III Floor,
No.195, T.V.Swamy Road West,
R.S.Puram, Coimbatore

... Appellant/3rd Respondent

Vs.

1. Tmt.Savithri

2. S.Radhika

3. P.Suresh

4. P.Ponnusamy

5. Mahendran

6. M.Prakash Kumar

... Respondents 1 to 4/Petitioners

... Respondents 5 & 6/Respondents 1 & 2

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Award of the Motor Accident Claims Tribunal (IV Addl. District and Sessions Court), Coimbatore in M.C.O.P.No.565 of 2011 dated 06.12.2012.

For Appellant : Mr.M.B.Gopalan

For Respondents 1 to 4 : Mr.Ma.P.Thangavel

For Respondents 5 and 6 : Mr.C.R.Prasannan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 06.12.2012 passed in M.A.C.T.O.P.No.565 of 2011 by the Motor Accident Claims Tribunal (IV Addl. District and Sessions Court), Coimbatore.

2. Heard the learned counsel appearing for the appellant as well as the learned counsel for the respondents and perused the

materials available on record.

3. The appellant is 3rd respondent-Insurance Company in M.C.O.P.No.565 of 2011 on the file of Motor Accident Claims Tribunal, IV Additional District & Sessions Court, Coimbatore. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of one Palanisamy, who is the husband and father of the respondents respectively, had died in the accident that took place on 29.07.2010. 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 two wheeler belonging to the 2nd respondent and directed the appellant-Insurance Company being insurer of the said two wheeler to pay a sum of Rs.4,22,000/- as compensation to the claimants 1 to 4, at the first instance and recover the same from the respondents 1 and 2. Challenging the said award dated 06.12.2012 made in M.C.O.P.No.565 of 2011, the appellant-Insurance Company has come out with the present appeal.

4.The learned counsel appearing for the appellant-Insurance Company contended that at the time of accident, 1st respondent-driver of the two wheeler did not possess driving licence and in contravention of policy condition, he drove the vehicle and caused the accident. The appellant is not liable to pay compensation. The Tribunal has awarded higher compensation under the different heads without any basis.

5. Though the 1st respondent-driver of the two wheeler has violated the policy condition, the appellant has not denied the accident and driver of the two wheeler was not examined. The Tribunal considering the materials available on record, has held that even if the driver of the offending vehicle did not possess valid driving license at the time of accident, the Insurance Company cannot escape from its liability. It is well settled Law 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 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].

6. In view of the judgments of the Hon'ble Apex Court referred to above, the appellant/Insurance Company cannot be exonerated from its liability on the ground that the driver of the offending vehicle did not possess valid driving license. The Tribunal had rightly held that the appellant/Insurance Company is liable to pay compensation and ordered pay and recovery.

7. As far as quantum of compensation is concerned, the Tribunal considering the age, avocation of the deceased, oral and documentary evidence let in by the 1st respondents in proper perspective, has awarded a total sum of Rs.4,22,000/- as compensation to the respondents 1 to 4 under different heads, which is not excessive and just compensation. In the above circumstances, this Court is not inclined to interfere with the award of the Tribunal.

8. In the result, the Civil Miscellaneous Appeal is dismissed and award of the Tribunal is confirmed. The appellant-Insurance Company is directed to deposit the entire amount awarded by the Tribunal 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 at the first instance and recover the same from the respondents 5 and 6. On such deposit, the respondents 1 to 4 / claimants 1 to 4 are permitted to withdraw their respective share amount as per the apportionment made by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The IV Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Coimbatore

copy to:

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

+1cc to Mr.M.B.Gopalan, Advocate sr.69485

+1cc to Mr.c.R.Prasanan, Advocate sr.68748

C.M.A.No.416 of 2014

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