IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1873 of 2017
and C.M.P.No.10098 of 2017

United India Insurance Co.Ltd.,
Represented by its Branch Manager,
Branch Office, No.12/123/1,
Javili Street, Palamner,
Chittoor District. ...Appellant/2nd Respondent

Vs

1.Lakshmamma
2.Krishnappa
3.K.Padma ...Respondents 1 to 3/ Claimants
4.P.M.Srinivasulu ...4th Respondents/ 1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.04.2012 made in MCOP No.577 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Krishnagiri.

For Appellant: Mr.S.Arun Kumar
For R1 to R4 : No Appearance

JUDGMENT

This appeal has been preferred by the Insurance Company against the award of a sum of Rs.4,62,000/- towards compensation to the respondents 1 to 3, for the death of one Venkatachalam @ Jalapathy in a motor vehicle accident.

2.The case in brief, is as follows:

On 16.11.2009, the deceased Venkatachalam @ Jalapathy was proceeding in the Eicher Lorry bearing Regn.No.A.P.03-X-3869, in Kuppan - Krishnagiri National Highway towards Krishnagiri. The said Lorry was driven by one Venkataramana @ Nagaraj in a rash and negligent manner. When the vehicle was nearing Kathalai Medu Idumban Kovil, it suddenly dashed against a tamarind tree on its right side and thereby, caused the accident. Due to the said impact, the deceased sustained grievous injuries and died on the spot. The father, mother and sister of the deceased filed a claim petition claiming a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a compensation at Rs.4,62,000/- with interest at the rate of 6% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in fastening the liability on the insurance company, in spite of the fact that the owner of the vehicle has violated the policy conditions by permitting the cleaner, who did not possess the valid and effective driving licence. However, the learned counsel has not disputed the quantum of compensation awarded by the Tribunal.

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

6.Despite the service of notice, there is no representation on behalf of the respondents/claimants.

7.There is no grievance as regards the finding of the Tribunal on negligence and hence, the same is confirmed as such.

8.The only contention raised in the present appeal assailing the award of the Tribunal by the appellant Insurance company is that the person, who drove the vehicle and caused the accident, was the cleaner of the lorry and he was not having any valid driving licence to drive the vehicle and he was permitted by the driver of the lorry to drive the vehicle and thereby, the owner of the vehicle has violated the policy conditions. Hence, the appellant insurance company is not liable to pay compensation to the claimants.

9.On going through the award passed by the Tribunal and upon considering the materials and evidence available on record, it is seen that the driver of the lorry was having valid driving licence, as per Ex.P4, but he did not drive the vehicle. The cleaner of the lorry drove the vehicle and caused the accident and he was possessing Ex.R1 LMV licence, but he did not possess badge licence. Thus, it is crystal clear that the owner of the vehicle has violated the policy conditions. The Tribunal has also found the same and observed that there was a clear case of breach of policy. However, the Tribunal has failed to apply the theory of pay and recovery. In the case of National Insurance Company Ltd., v. Swaran Singh reported in 2004 ACJ 1 (SC), the Hon'ble Apex Court has dealt with this issue and held that the

Insurance Company is liable to satisfy the award in favour of the third party at the first instance and then to recover the same from the owner or driver of the vehicle, even where the Insurance Company could establish breach of terms of policy on the part of the owner of the vehicle. Applying the same to the facts of the present case, the award of the Tribunal is modified to the effect that the appellant/Insurance Company shall pay the compensation to the claimants initially and thereafter, recover the same from the owner of the vehicle.

10.Since the quantum of compensation awarded by the Tribunal is not disputed by the insurance company, the same is confirmed as such.

11.Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to deposit the award amount with interest and costs, as ordered by the Tribunal, 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 and thereafter, recover the same from the owner of the vehicle, in accordance with law. On such deposit being made, the Tribunal shall transfer the same to the respective savings bank accounts of the respondents 1 to 3/claimants, as per the ratio of apportionment made by the Tribunal, through RTGS, within a period of one week thereafter.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gbi
To
1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

2.The Section Officer,
VR Section, Madras High Court.
+1 cc to M/s.S.Arunkumar, Advocate Sr.No. 94752

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RR(CO)
RMP(22/04/2021)