IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3187 of 2017
and C.M.P.No.19580 of 2017

M/s.United India Insurance Co.Ltd.,
Divisional Office No.1,
104-A, Peramanur Road,
Salem - 7. ...Appellant

Vs

1.Sengodan
2.Kamalam
3.Mathesh
4.Vasantha
5.Santhi
6.Saradha
7.Shivakumar
(R5 to R7 impleaded as per order
dated 04.04.2016 made in IA.No.157 of 2016
amended as per order dated 22.11.2016
made in IA.No.248 of 2016.)
8.Manikandan ... Respondents

Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.07.2017 made in M.C.O.P. No.730 of 2015 on the file of the Motor Accident Claims Tribunal, (III Additional District Court), Salem.

For Appellant : Mr.D.Bhaskaran
For R1 to R7 : Mr.P.Jagadeesan

JUDGMENT

Challenging the liability of the appellant insurance company to pay compensation to the respondents 1 to 7/claimants, this Civil Miscellaneous Appeal has been filed.

2.The case in brief, is as follows:
The respondents 1 to 7/claimants, who are the legal heirs of one Pavayee, filed a claim petition, seeking a sum of Rs.5,00,000/- as compensation for the death of the aforesaid Pavayee in an accident that took place on 04.03.2015 on account of the carelessness and negligence on the part of the driver of

the Maruti Omni Van bearing Registration No.TN-09-BF-9070 belonging to the 8th respondent and insured with the appellant insurance company. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.2,55,000/- with interest at the rate of 7.5% per annum from the date of petition.

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 entire liability on the appellant Insurance Company. According to him, since the driver of the Maruti Omni Van did not possess the valid and effective driving licence at the relevant point of time, the Insurance Company is not liable to pay any compensation to the respondents 1 to 7/claimants.

4.The learned counsel for the respondents 1 to 7/claimants, has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation 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 respondents 1 to 7/claimants and perused the materials available on record carefully and meticulously.

6.With regard to the contention of the appellant Insurance Company that the driver of the Maruti Omni van was not possessing the valid driving licence at the relevant point of time, an employee of the Athur Regional Transport Office has been examined as R.W.1. He deposed before the Tribunal that no driving licence has been issued to the driver of the Maruti Omni van from their office, in this connection. The Assistant Manager of the Insurance Company, who has been examined as R.W.2, also deposed before the Tribunal that the driver of the Maruti Omni van was not possessing the valid driving licence. R.W.2 further deposed that only the owner of the vehicle is liable to pay compensation to the claimants, as he remained ex-parte before the Tribunal. But the Tribunal has fixed the liability on the part of the appellant Insurance Company on the ground that they have not taken any steps to send notice to the driver of the vehicle for production of the driving licence before the Tribunal. But the fact remained that the driver of the Maruti Omni van was not possessing the valid driving licence, as is evident from the deposition of R.W.1. In such circumstances, the Tribunal ought to have permitted the appellant Insurance Company to pay the compensation to the claimants and thereafter, recover the same from the owner of the vehicle, as there was a breach of policy conditions on the part of the owner of the vehicle, by allowing a driver to drive the vehicle without having the valid driving licence. Therefore, this Court is inclined to modify the finding of the Tribunal to that effect and is accordingly, modified. Except the same, there is no modification with regard to the quantum of compensation and the rate of interest awarded by the Tribunal.

7.Accordingly, 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 and thereafter, recover the same from the owner of the vehicle, ie., 8^{th} respondent, in accordance with law. On such deposit being made, the respondents 1 to 7 / claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

av/km

To

1. The III Additional District Judge,
   Motor Accidents Claims Tribunal,
   Salem.

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

+1 CC to Mr.Bhaskaran, Advocate sr 81084.

C.M.A.No.3187 of 2017
and C.M.P.No.19580 of 2017

MG(CO)
SP(24/07/2020)