

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.10.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.1660 of 2014

M/s.Iffco Tokio General Insurance Co. Ltd.,
O.K.S. Buildings, Near I.T. Office,
No.5, College Road, II Cross,
Thiruppur - 641 602.

...Appellant

vs.

1.Kaliayammal
2.R.Palanisamy
3.P.Rani
4.R.Nagamani
5.Natarajan
6.Padmavathi
7.Vaijanthimala
8.Manimohan
9.K.Selvaraj
10.B.Karthick

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 26.09.2013 passed in MCOP.No.152 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Sathyamangalam.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.Ma.Pa.Thangavel - R1 to R8

Mrs.M.Malar - R9 & R10

J U D G M E N T

The appellant the Iffco Tokio General Insurance Company Limited is the third respondent in MCOP.No.152 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Sathyamangalam. The respondents 1 to 8 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.8,00,000/- for the death of one Subbathal, mother of the claimants 1 to 4, mother-in-law of the

fifth claimant and grandmother of the claimants 6 to 8 in a road accident on 18.02.2011.

2. The case of the claimants in nutshell is as follows:

On 18.02.2011, the deceased was walking along Sathyamangalam - Mettupalayam Main Road and at about 10.00 hours, when she was nearing Sirumugai Karikadaisnathu, a speeding motorcycle bearing Registration No. TN 40 D 3493 hit the deceased, as a result whereof, she fell down and sustained fatal injuries. Immediately, she was rushed to Government Hospital, Mettupalayam. However, she succumbed to injuries on the same date.

3. According to the claimants, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 40 D 3493, belonging to the tenth respondent, ridden by the ninth respondent, was the cause of the accident and that since the said motorcycle was insured with the present appellant / Iffco Tokio General Insurance Company Limited, the owner and Insurer of the motorcycle are jointly and severally liable to pay compensation.

4. The owner of the motorcycle remained absent before the Tribunal and therefore they were set exparte. The appellant / Iffco Tokio General Insurance Company Limited, contested the claim petition on all the grounds available to the insurer and the learned Subordinate Judge / Motor Accident Claims Tribunal, Sathyamangalam while awarding compensation of Rs.4,00,600/- together with interest at the rate of 7.5% per annum to the claimants, concluded that since the rider of the motorcycle was not in possession of a valid driving licence on the date of the accident, the Insurance Company should pay the award amount in the first instance and then recover the same from the owner of the motorcycle. Aggrieved over the orders passed by the Tribunal, the Iffco Tokio General Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the appellant, Mr.Ma.Pa.Thangavel, learned counsel appearing for the respondents 1 to 8 and Mrs.M.Malar, learned counsel appearing for the respondents 9 & 10.

6. In the decisions in (i) New India Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The New India Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN

MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

7. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the Iffco Tokio General Insurance Company Limited to pay the award amount in the first instance and then recover the same from the owner and rider of the motorcycle is perfectly in order.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection or appeal was filed by the claimant. A perusal of the award also shows that it is not on the higher side and in the facts and circumstances, the appeal fails and is dismissed.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The order passed by the Tribunal is upheld.

(iii) The present appellant / Iffco Tokio General Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.4,00,600/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.152 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Sathyamangalam within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the motorcycle bearing Registration No. TN 40 D 3493 on the same cause of action.

(iv) On such deposit being made, the respondents 1 to 8 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Sathyamangalam.

+1 cc to M/s.Malar Advocate sr89982
+1 cc to M/s.N.Vijayaraghavan Advocate sr89922
+1 cc to M/s.Ma.P.Thangavel Advocate sr89750

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