BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **27.11.2019**
CORAM:
THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD)No.1211 of 2008
and
M.P.(MD)No.1 of 2008

The Branch Manager,
M/s.United India Insurance Company Ltd.,
Tiruppur. ... Appellant / 2nd Accused

versus

1. Minor Manikandan
Rep. by his Guardian
Raju
2. The Manager,
Ravi Cotton Company,
Raja Rajeswari Ginning Factory,
Tharapuram Road, Tiruppur. ... Respondents

(Appeal was dismissed against
R1 vide order dated 18.03.2016)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 07.01.2008 passed in M.C.O.P.No.134 of 2006 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge and Assistant Sessions Court, Devakottai.

For Appellant : Mr.J.S.Murali
For Respondent : Mr.T.Selvakumaran for R2

JUDGMENT

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Subordinate Judge and Assistant Sessions Court, Devakottai, in and by its award, dated 07.01.2008 passed in M.C.O.P.No.134 of 2006 the present Civil Miscellaneous Appeal is preferred by the appellant/Insurance Company.

2. The first respondent herein, is the minor Claimant before the Tribunal. On 10.08.2006, at 6.45 p.m., when the minor claimant went for the purchase of household articles at a shop situated at Pudukottai Main Road, Tripuattur and while he was walking along side left side of the road, from south to east direction, rider of the hero honda, bearing Regn No.TN.39 – V – 6845, came in a rash and negligent manner and dashed against the said minor claimant. Since the rider of the two wheeler is responsible for the accident, the minor claimant, represented by his next friend and guardian father, K.R.Raju. filed a claim petition against both the owner/insured and the insurer, claiming a compensation of Rs.1,75,000/-.

3. The Tribunal, after considering the oral and documentary evidence, has come to the conclusion that the accident had occurred due to the negligence on the part of the driver of the two wheeler and fixed the negligence on the rider of the motor vehicle and fastened the liability as against the owner of the vehicle and Insurance Company jointly and severally and awarded a sum of Rs.1,07,750/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

Sl.No	***Head***	***Award***
1	Pain and Suffering	Rs.25,000/-
2	Medical Expenses	Rs.3,000/-
3	Damage to clothes	Rs. 500/-
4	Rich and Nutritious Food	Rs.5,000/-
6	Attender Charges	Rs.3,000/-
7	Disability	Rs. 25,000/-
8	Loss of income	Rs.56,250/-
7	Total	Rs.1,07,750/-

Challenging the liability as well as the quantum of compensation, the Insurance Company has filed the present Civil Miscellaneous Appeal.

4. As far as the liability is concerned, it is the contention of the learned counsel appearing for the appellant that at the time of accident, the rider of the vehicle was not having a valid driving licence. It is a settled proposition of law that when there is any violation of policy condition without having any valid driving licence, the Tribunal should have ordered pay and recovery. But, in this case, the Tribunal has rightly come to the conclusion that the rider of the vehicle did not possess the valid driving licence, however, by accepting the decision of this Court rendered in the case of ***the Oriental Insurance Company Ltd., vs. Guruvammal and another,*** reported in ***2007 (4) TNLJ 679 (Civil)***, wrongly fastened the liability as against the owner as well as the Insurance Company and directed to pay compensation jointly and severally. Therefore, the order of the Tribunal is liable to be set aside.

5. The learned counsel appearing for the owner of the vehicle/second respondent submitted that the Tribunal, after considering the oral and documentary evidence has rightly passed the order. Hence, no interference is required.

6. I have considered the submissions made by the learned counsel for the appellant as well as the owner of the vehicle. Insofar as the first respondent/claimant is concerned, the appeal was dismissed by order dated 18.03.2016, for non-payment of batta.

7. In this case, the issue to be decided is as to whether the rider of the two-wheeler was having a valid driving licence for driving the two wheeler or not.

8. A perusal of the award passed by the Tribunal shows that the appellant Insurance Company has taken a stand before the Tribunal by way of filing counter that the rider of the two wheeler did not possess a valid driving licence. However, in order to confute the stand taken by the Insurance Company, the second respondent owner of the vehicle has not taken any steps before the Tribunal. In these circumstances, the Tribunal has come to the conclusion that the rider of the vehicle did not possess a valid driving licence, however, the Tribunal, by accepting the decision of this Court rendered in the case of ***the Oriental Insurance Company Ltd., vs. Guruvammal and another,*** reported in ***2007 (4) TNLJ 679 (Civil),*** has wrongly fastened the liability as against the owner of the vehicle and the Insurance Company and held liable for payment of compensation jointly and severally.

9. The Honourable Apex Court, in the case of (**National Insurance Co Ltd., vs. Swaran Singh and others) Accidents Claims Journal 2004 Volume I, page No.1** held that even if there is any policy violation, the insurance company cannot be absolved from their liability to pay the compensation amount.

10. In the present case, admittedly, there is violation of policy condition, as the rider of the vehicle was not having a valid driving licence. Therefore, in the light of the decision of the Honourable Supreme Court, in **Swaran Singh's case (supra),** the Tribunal should have ordered pay and recovery. But, the Tribunal has not done so. Hence, this Court is inclined to set aside the findings of the Tribunal with regard to the pay and recovery.

11. With regard to the quantum of compensation, the learned counsel appearing for the appellant contended that the Tribunal has awarded a sum of Rs.25,000/- towards (25%) disability and further, by taking the income of the minor claimant at Rs.15,000/- p.a. and by adopting the multiplier of 15, awarded a sum of Rs.56,250/- towards future loss of income. It is mainly contended that the Tribunal ought not to have awarded the compensation for disability in two different heads and hence, the same has to be reduced.

12. In the present case, the accident had occurred in the year 2006 and the award was passed in the year 2008, but, the said award was challenged by the Insurance Company by way of filing this present appeal. Considering the fact that as of now, the cost of living has been increasing day-by-day, the amount awarded by the Tribunal seems to be very reasonable. Therefore, the compensation awarded by the Tribunal need not be interferred with. Furthermore, the Hon'ble Apex Court in the case of Kishan Gopal and another vs. Lola, reported in 2013 (2) TNMAC 358 SC, where, a student, aged about 10 years, died in the road accident that had happened on

19.07.1992, has taken the notional income of the deceased as Rs.30,000/-. Considering the same, the amount awarded by the Tribunal seems to be very reasonable. Hence, the same need not be interferred with.

13. In the result, the Civil Miscellaneous Appeal is partly allowed by modifying the Judgment and Decree dated 07.01.2008 passed by the Tribunal that the Insurance Company shall pay the entire award of Rs.1,07,750/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment.

14. Accordingly, the Civil Miscellaneous Appeal is allowed by modifying the Judgment and Decree dated 07.01.2008 in M.C.O.P.No.134 of 2006 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge and Assistant Sessions Court, Devakottai.

15. It is submitted by the learned counsel for the appellant that 50% of the award amount has already been deposited with the Tribunal.

16. Hence, the Insurance Company is directed to pay the balance amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment. The appellant/Insurance Company is permitted to recover the amount from the owner of the vehicle, as per the decision of the Hon'ble Supreme Court in ***ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS*** reported in ***2004(2) CTC 464.*** The minor claimant would have attained majority as of now. Hence, the Tribunal, on such deposit being made, shall transfer the amount to claimant's Bank Account directly through RTGS, within a period of three weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal Cum Assistant Sessions Court,
Devakottai.

Copy to: The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai - 2 copies

+1 CC to M/s.J.S. MURALI, Advocate (SR-102004[F] dated 28/11/2019)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-102529[F]

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