BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **11.03.2019**
CORAM:
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
C.M.A.(MD)No.1433 of 2016

1.Mrs.Parkath

2.Minor B.Rabiyathullaithul Bashiriya
Represented by her mother and
next friend Mrs.Parkath, first appellant

3.Mahaboobbee : Appellants/Claimants

vs.

1.Mohammed Rafi

2.M/s.United India Insurance Company Ltd.,
Represented by its Branch Manager,
Office at 74-A, Salai Road,
Trichy. : Respondents/Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 06.11.2015, made in M.C.O.P.No.2031 of 2012 on the file of the Motor Accident Claims Tribunal/II Additional District Judge, Trichy.

For Appellants : Mr.N.Sudhagar Nagaraj

For Respondent No.1 : Mr.K.Sivabalan

For Respondent No.2 : Mr.A.Ilango

JUDGMENT

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The appeal has been preferred by the claimants against the award of Rs.8,03,000/- to be paid by the first respondent owner for the death of one Piyare John @ Basha. The first appellant's husband aged about 52 years, salesman in Foot Wear shop was allegedly earning about Rs.7,000/- per month. On 09.07.2012, when he was walking on the road, hit by the Motor Cycle belonging to the first respondent, driven by one Pavithiran and died. Therefore, claim petition was filed and an amount of Rs.8,03,000/- was awarded, taking Rs.6,000/- as monthly income and applying multiplier “11” as per the age of the deceased 52. Since, the Tribunal held that minor aged about 17 years, who does not having driving licence, Insurance

Company was absolved of liability and the first respondent / owner was directed to pay the compensation. Against the award of the Tribunal to direct the first respondent / owner to pay the compensation, the present appeal has been filed by the claimants.

2. Heard Mr.N. Sudhagar Nagaraj, learned counsel appearing for the appellants and Mr. K.Sivabalan, learned counsel appearing for first respondent and Mr.A.Elango, learned counsel appearing for second respondent.

3. Only grievance of the appellants is that though the amount of Rs.8,03,000/- was awarded in favour of the appellants, pay and recovery should have been ordered whereas the Tribunal directed the owner to pay the compensation stating that there was no liability on the part of the second respondent / Insurance Company as the motor cycle was driven by one Pavithran aged about 17 years.

4. A perusal of the records would show that the Tribunal based on Ex.P1 - First Information Report and Ex.R2, investigation report came to the conclusion that the age of the said Pavithran is 17 years. A close scrutiny of the records would show there is nothing to show the said Pavithran was a minor at the time of accident. Ex.P1 First Information Report only shows that the said Pavithiran was riding two wheeler. Even Ex.R2 investigation report filed by the Insurance Company does not give details as to how the rider is a minor. In the absence of any documentary evidence to show that Pavithiran is a minor, the oral evidence of RW.1 is not sufficient. Therefore, question raised by the Tribunal that Pavithiran was aged about 17 years and he was a minor is perverse and therefore, the said finding is set aside.

5. Further, the First Information Report does not mention about Section 4 of the Motor Vehicles Act and only, Section 304(A) was mentioned in the First Information Report. If Section 4 of the Motor Vehicles Act is said to have been violated, then atleast in the First Information Report it should have been mentioned. Once this Court comes to the conclusion that the Insurance Company did not prove that the said Pavithiran was not minor, question of directing the first respondent owner to pay the entire amount does not arise and therefore, the said direction is also set aside.

6. Now, the question arises as to who has to pay the compensation as the minority of the rider was not proved by the Insurance Company. The insurance company issued notice to the owner to produce the driving licence and other details. Exs.R3 to R5 are the proof for having issued notice. For come to the conclusion that the rider was not having driving licence, atleast some documents should have been filed by the Insurance Company like Accident Register report and other documents. They should have summoned the

RTO officials who have got jurisdiction over the residence of the rider to prove that rider was not having any valid licence to ride the motorcycle. No such efforts have been taken by the Insurance Company and therefore, the Insurance Company has not discharged its burden in proving that the rider was not having driving licence.

7. However, in this case, though the owner has filed counter statement before the Tribunal he did not adduce any evidence. A perusal of the counter statement would reveal that he has not spoken anything about the existence of driving licence or not. In any event that will not absolve the liability of the Insurance Company and if at all it can be deemed that, the owner allowed the person who did not have valid licence. In that event only pay and recovery has to be ordered for having allowing a person to ride the motorcycle who does not have the valid license and it would be violation of policy condition. If there is violation of policy condition, it is well settled that the insurer has to pay the amount and recover the same from the owner. Therefore, order of the Tribunal directing the first respondent owner to pay the amount is set aside and second respondent Insurance Company is directed to pay the compensation of Rs.8,03,000/- awarded by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order and recover the same from the first respondent.

8. The Hon'ble Supreme Court in the Judgment reported in ***National Insurance Company Limited Vs. Swaran Singh and others*** reported in ***2004(1) ACJ Page No.1 in Clause X of Paragraph 102*** states that even if the Insurance Company satisfactorily proved the defence, it is always open to the Courts to pay the amount and recover the same from the insured / owners. Clause X of Para 102 is extracted as follows:-

> *"(X) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."*

Even as per the said Judgment the Insurance Company is liable to pay and recover the same from the owners.

9. As far as quantum of compensation of Rs.8,03,000/- awarded by the Tribunal is concerned, there is no arguments advanced by any of the parties. Therefore, adequacy of compensation is not gone into. Accordingly, this Civil Miscellaneous Appeal is allowed as above. No costs.

Sd/-

Assistant Registrar (T AND P)

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To
The Motor Accident Claims Tribunal/
II Additional District Judge,
Trichy.

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Judgment made in
C.M.A.(MD)No.1433 of 2016

11.03.2019

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