

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1539 of 2010
and M.P.No.1 of 2010

National Insurance Company Ltd.,
Pondicherry

.. Appellant/Respondent2

Vs

1.Indira
Gandhi (Deceased)

..Respondent1/Petitioner

2.Vijayashankar

.. Respondent2/Respondent3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 12.1.2009 made in OP.No.21of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge/Fast Track Court No.1), Chidambaram.

For Appellant : Mr.D.Bhaskaran

For Respondents: R1- Served -No Appearance
Mr.P.Anbazzhagan for R2

J U D G M E N T

(This Appeal was heard through the Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 12.1.2009 passed by the Motor Accidents Claims Tribunal (Additional District and Sessions Judge/Fast Track Court No.1) in OP.No.21of 2008.

2.Heard Mr.D.Bhaskaran, learned Counsel for the Appellant and Mr.P.Anbazzhagan, learned Counsel for the second respondent.

3.The Appellant Insurance Company has challenged the impugned Award mainly on the ground that the driver of the insured two wheeler did not possess a valid driving license at the time of the accident and hence they are not liable to

compensate the claimant.

4.It is the case of the Appellant that as per settled law as laid down by various decisions of the Hon'ble Supreme Court as well as the High Courts that in case of policy violation committed by the insured, the Tribunal necessarily will have to grant pay and recovery rights to the Insurance Company. According to them, in the instant case, despite the Appellant being able to establish before the Tribunal that the driver of the insured vehicle did not possess a valid driving license, the Tribunal has not awarded pay and recovery rights to the Appellant Insurance Company. Insofar as the quantum of compensation awarded by the Tribunal is concerned, the Appellant has raised a ground in this appeal that it is excessive.

5.This Court has perused and examined the evidence available on record before the Tribunal and has also examined the impugned Award. The same defence which was raised before this Court has also been raised by the Appellant before the Tribunal. The defence raised by the Appellant has been duly considered by the Tribunal under the impugned Award. The Tribunal has observed that the driver of the vehicle was not charged by the Police for non possessing a valid driving license under Section 3 of the Motor Vehicles Act. As seen from the oral and documentary evidence let in by the claimants before the Tribunal, there is no admission on their part that the driver of the insured motorcycle did not possess a valid driving license. Therefore, it is for the Appellant Insurance Company to prove through oral and documentary evidence that the driver of the insured vehicle did not possess a valid driving license at the time of the accident which they have failed to discharge properly as seen from the evidence available on record before the Tribunal. The Tribunal has rightly considered all these aspects and has held that the Appellant/Insurance Company is liable to compensate the claim of the claimants.

6.The Tribunal has assessed the compensation under the impugned Award in the following manner:

Disability compensation for	
19% permanent disability	Rs.59,280
Pain and suffering	Rs.5,000/-
Annual income	Rs.24,000/-

Total	Rs.88,280/-

7.Considering the nature of injuries sustained by the claimant which has not been disputed by the Appellant as seen from the evidence available on record before the Tribunal, this Court is of the considered view that the quantum of compensation

awarded to the claimant is a just compensation and it does not call for any interference by this Court.

8. For the foregoing reasons, there is no merit in this appeal. Accordingly, the appeal shall stand dismissed. The Appellant and the second respondent are directed to deposit the entire Award amount jointly and severally together with interest at the rate of 7.5% per annum from the date of petition till the date of realization as fixed by the Tribunal, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the amount by filing an appropriate application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pam

To

1. The Additional District and Sessions Judge
The Motor Accidents Claims Tribunal
Fast Track Court No.1), Chidambaram.

Copy to

The Section Officer,
Vernacular Section,
Madras High Court.

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EV (CO)
RMP (19/12/2020)

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