IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2061 of 2011

and M.P.No.1 of 2011

(Through Video Conferencing)

The United India Insurance Co. Ltd.,
Divisional Office XXV, Temple Squre,
No.82, North Mada Street,
Mylapore, Chennai-4.
... Appellant/2nd Respondent

Vs.

1.Purushothaman

2.Girija

3.Sanjya (Minor)

(R3 declared as Major and her N/F and
national guardian Purushothaman discharged
from guardianship vide order dated 30.08.2019
made in CMP.Nos.16180 & 16182/2019 in CMA.No.2061/2011

..1 to 3Respondents/petitioners

4. M.Nagarajan)

...Respondents/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 19.09.2008 made in M.C.O.P.No.3950 of 2006 on the file of the Motor Accidents Claims Tribunal, (Chief Court of Small Causes) Chennai.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Appellant : Mr.S.Arunkumar

For R1 to R3 : Mr.N.Baskaran

J U D G M E N T

The Insurance Company is the appellant and is aggrieved by the impugned Judgment and Decree dated 19.09.2008 passed by the Motor Accidents Claims Tribunal (Chief Court of Small Causes) Chennai in M.C.O.P.No.3950 of 2006.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,80,000/- as compensation together with interest at 9.5% from the date of the claim petition till the date of deposit, to the respondents 1 to 3/claimants.

3. On 16.05.2004 at about 21.45 hrs, while the deceased Arunkumar was riding his motory cycle bearing Reg.No.TN.20-E-2489, a van bearing Reg.No.TN-01-K-0289 belonging to the 4th respondent and insured with the appellant-Insurance Company, is said to have been driven by its driver in a rash and negligent manner and hit the motorcycle, as a result of which, the deceased Arunkumar sustained injuries and died in the hospital. Therefore, the respondents 1 to 3 filed the above claim petition claimed for compensation against the 4th respondent and the appellant.

4. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the van belonging to the 4th respondent by his driver and directed the appellant/Insurance Company being insurer of the vehicle to pay a sum of Rs.3,80,000/- as compensation together with interest and cost from the date of the claim petition to the Respondent Nos.1 to 3 herein who were the claimants before the Lower Court . The break up of the amount awarded by the Lower Court are summarised below:-

For loss of income Rs.3,000/- x 12x 1/3x14	Rs.3,36,000/-
Love and affection	Rs. 35,000/-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Transport expenses , funeral expenses and damage to clothes and articles	Rs. 9,000/-
Total	Rs.3,80,000-

5. Aggrieved by the said order, the appellant/Insurance Company has filed the present appeal.

6. The learned counsel appearing for the appellant/Insurance Company contended that the driver of the offending vehicle did not possess a valid licence at that time of accident and the same amounted to violation of the policy condition. Therefore, the 4th respondent has violated the policy conditions and the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 3. Hence, this appeal prayed for setting aside the award of the Tribunal.

7. The learned counsel appearing for the respondents 1 to 3/claimants submitted that the driver of the 4th respondent drove the vehicle in a rash and negligent manner and dashed against the motorcycle Since the insured vehicle was insured with the appellant, the appellant can pay and recovery from the 4th respondent. Therefore, prayed for dismissal of this appeal.

8. The 4th respondent, owner of the vehicle, remained exparte before the Tribunal.

9. I have heard the learned counsel appearing for the appellant-Insurance Company and the learned counsel for the respondents 1 to 3 and perused all the materials available on record.

10. From a reading of the impugned Judgment and decree of the Tribunal, it is noticed that the Tribunal concluded that since the appellant-Insurance Company has failed to prove the violation of policy conditions by adducing proof of non possession of valid driving licence by the driver of the insured vehicle and has therefore made the appellant-Insurance Company liable to pay the compensation to the claimants 1 to 3 are the legal heirs of the deceased Arunkumar.

11. The appellant has relied on the investigation report and copy of the policy and notice to the 4th respondent to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

produce the certificate of licence of the driver of the van. However, the 4th respondent did not come forward and remained exparte. The order of the Tribunal indicates that the driver of the van was charged for the offences under Sections 304(A), 338 and 279 of I.P.C and 134(b) r/w 187 of the M.V.Act as the driver failed to produce the driving licence when demanded. There was a thus failure on the part of the 4th respondent to produce the driving licence. Therefore, the Tribunal ought to have given liberty to the appellant- insurance company to pay and recover from the 4th respondent who has remained exparte before the Tribunal. In my view, the interest awarded at 9.5% was excessive. It is therefore modified to 7.5%.

12. In the result, this civil miscellaneous appeal is partly allowed. The appellant-Insurance Company is directed to deposit the compensation of Rs.3,80,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and recover the same from the 4th respondent, owner of the vehicle, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/ claimants are permitted to withdraw their respective share of the award amount as per apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kkd

To:

1.The Motor Accident Claims Tribunal
The Chief Judge, Small Causes Court,
(Chief Court of Small Causes) Chennai.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.The Section Officer

VR Section HighCourt,

Madras

C.M.A.No.2061 of 2011

and M.P.No.1 of 2011

aa26/02/2021

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/