IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2334 of 2011

1. Shanthi W/o.
   Late Govindaraj @ Govindarajan

2. Suganya

3. Maheswari

4. Muniammal ...Appellants/Claimants

Versus

1. Victor Sagayaraj
   S/o.Devamanickam

2. ICICI Lombard General Insurance Co., Ltd.
   Zenith House, Keshav Rao Khade Marg,
   Mahalakshmi, Mumbai - 400 034

3. V. Ponnusamy

4. N. Jawahar

5. National Insurance Co. Ltd.
   78, T.V. Chetty Street,
   Erode - 638 001. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 29.06.2010 made in M.C.O.P.No.260 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Erode.

For Appellant	:	Mrs.Zenith Begam
For Respondent1	:	Mr.C.S. Saravanan
For Respondent2	:	Mrs.R. Sreevidhya
For Respondent3&4	:	Mr.S. Sivakumar
For Respondent5	:	Mr.J. Chandran

J U D G M E N T

The legal heirs of the deceased/the appellants herein who are the petitioners/claimants before the Tribunal have filed the present appeal against the Judgment and order in M.C.O.P. No.260 of 2008 dated 29.06.2010 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Erode.

2. The brief facts of the case are as follows:

On 26.12.2007 at about 11 a.m., the deceased Govindaraj @ Govindarajan was travelling from L.I.C. Nagar to Vettukkattuvalasu in the mini door auto bearing Registration No.TN-30-Z-3755, driven by the 3rd respondent herein that belonged to the 4th respondent herein and insured with the 5th respondent herein. At that time, the 1st respondent driving the TATA ACE vehicle bearing Registration No. TN-34-E-9226, insured with the 2nd respondent in a very high speed in a rash and negligent manner, hit against the mini door auto. Due to the impact of the accident, the deceased Govindaraj @ Govindarajan fell down on the road from the mini door van and the mini door van fell on the deceased Govindaraj @ Govindarajan. In view of the fatal injury sustained in the accident, the deceased Govindaraj @ Govindarajan was admitted to the Government Hospital, Erode and then he was shifted to KMCH, Erode, where he died undergoing treatment. Hence, the legal heirs of the deceased Govindaraj @ Govindarajan has filed the claim petition in M.C.O.P. No.260 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Erode wherein the petitioners/claimants were awarded a sum of Rs.7,41,831/- by fixing the liability on the 1st respondent alone, who is the owner cum driver of the offending vehicle and exonerated the Insurance company from the liability.

3.Not satisfied with the award passed by the Tribunal, the claimants/appellants herein have filed the present appeal against the liability fixed on the 1st respondent alone and consequently, exonerating the Insurance company from the liability.

4. The learned counsel for the appellants would submit that the Insurance company should have been directed to pay the compensation in terms of pay and recovery to the dependants of the deceased in order to satisfy their immediate requirement. The deceased was a third party so far as the 1st respondent who has driven the TATA ACE vehicle bearing registration No.TN-34-E-9226 in a rash and negligent manner and dashed against the mini door auto bearing registration No.TN-30-Z-3755 in which the deceased Govindaraj @ Govindarajan was travelling. Even though

the offending vehicle was insured with the 2nd respondent and the insurance policy was in existence at the time of the accident, the Tribunal had erred in fixing the liability on 1st respondent alone leaving the Insurance company/2nd respondent herein to be liable to pay the compensation on the terms of pay and recovery. Hence, this Court may be pleased to direct the Insurance company/2nd respondent herein, insurer of the TATA ACE vehicle, to pay the compensation amount to the claimants/appellants herein on the basis of pay and recovery.

5.The learned counsel for the 2nd respondent/Insurance Company, Insurer of TATA ACC, would submit that the Tribunal has rightly awarded the compensation in fixing the liability on the 1st respondent who is owner of the offending vehicle since he did not have proper licence to drive the offending vehicle at the time of the accident thereby he had violated the policy conditions. Hence, the 2nd respondent/Insurance company is not liable to pay the compensation on behalf of the 1st respondent herein. Hence, the appeal filed by the appellants is liable to be set aside in accordance with law.

6. The learned counsel for the 3rd and 4th respondent would submit that since there is no cause of action against the 3rd and 4th respondent and due to impact of the strong hit in the mini door auto bearing registration No.TN-30-Z-3755, by the TATA ACC Vehicle bearing registration No.TN-34-E-9226, the deceased Govindaraj @ Govindarajan fell down from the vehicle and the mini door skidding, fell on the deceased. Hence, the 3rd and 4th respondents are not at all responsibility for the aforesaid accident and liable to pay any compensation to the appellants herein.

7. The learned counsel for the 5th respondent/Insurance company, insurer of the mini door auto would submit that it is categorically stated in the award after considering the oral and documentary evidence that the aforesaid accident had taken place in view of the rash and negligent driving of the 1st respondent on the TATA ACC and the 1st respondent is alone liable for the aforesaid accident since he did not possess the valid driving licence at the time of the accident. The appellants have added the respondents 3 to 5 as formal parties. Hence the Insurer of the mini door auto bearing Registration No.TN-30-Z-3755 is not at all liable to pay the compensation as per findings of the Tribunal.

8. Heard, the learned counsel appearing on either sides and perused the materials available on record.

9. On perusal of the award, it is seen that the Tribunal has come to the conclusion with regard to the factum and manner of

the accident that the Ex.P1, F.I.R. was registered against the 1st respondent since the aforesaid accident had taken place due to the rash and negligent driving of the 1st respondent who had driven the TATA ACC vehicle bearing registration No.TN-34-E 9226. The same was confirmed by P.W.2, Eye Witness, during the cross examination before the Tribunal in which P.W.2 deposed that while the mini door auto was proceeding on the Road, the TATA ACE vehicle was proceeding behind the mini door auto in rash and negligent manner driven by the 1st respondent and dashed against the mini door vehicle. In the result, the deceased Govindraj @ Govindarajan fell on the Road and died after falling the mini door auto on him. Further, Ex.R3 shows that the 1st respondent did not have badge endorsement to drive the commercial vehicle such as TATA ACC but having the licence of Motor Cycle with gear and LMV. Under this circumstance, the Tribunal has taken into consideration the decision reported in 2008(2) Tamil Nadu Motor Accident Cases 355, the Hon'ble High Court has held that the Apex Court alone has got power under Article 142 of the Constitution to grant the relief and the same cannot be taken by the Tribunal precedent and on that basis the pay and recovery order passed by the Tribunal has been set aside and exonerated the liability of the Insurance Company. Accordingly, the Tribunal has exonerated the 2nd respondent from the liability after fixing the liability on the 1st respondent alone since he has violated the policy condition for not having the badge endorsement to drive the commercial vehicle. On the other hand, in the case of Oriental Insurance Company Ltd. Vs. Angadkol and others, reported in (1) (200) (3) Supreme Court Cases (Crl) 1371 and in the case of United India Insurance Co. Ltd. Vs. S. Saravanan reported in (2) (2009) 5, The Madras Law Journal reports page 715- it was stated that if the driver of the vehicle has violated the policy conditions, the Insurance company is not liable to pay the amount. However, the Insurance company was directed to pay the amount and the same has to be recovered from the owner of the vehicle without resorting to Civil suit and he can directly file petition for recovery of the amount. Even though there are contrary view in directing the Insurance company to pay the compensation in terms of pay and recovery in the event of the violation of the policy , it is to be noted that the policy amount for the vehicle is being paid for the purpose of granting benefit to the victims involved in the accident.

10. In this accident, there is no fault against the mini door auto in which the deceased was travelling and the mini door was damaged in view of the strong clash made by the 1st respondent driving the offending vehicle. Under this circumstances, the petitioners/claimants could not claim the compensation against the insurer of the mini door vehicle since the cause of the accident is attributed to rash and negligent

driving of the 1st respondent who had driven the TATA ACC vehicle. Further, it is to be considered that the deceased was only breadwinner of the family and the legal heirs were not having any other source of income besides the income of the deceased, to manage their basic requirements at the instance of death of breadwinner of the family.

11. In view of the above, the 1st respondent, who was the owner cum driver of the vehicle, was having driving licence of Two wheeler with gear and Light Motor Vehicle in the capacity to drive them. However, the badge endorsement is required to drive the commercial vehicle. The Insurance amount was paid by the owner cum driver of the offending vehicle during that time. As the insurance policy of the offending vehicle was in existence at the time of the accident, the insurer of the offending vehicle, ie. 2nd respondent-Insurance company has to pay the compensation amount to the legal heirs of the deceased on the terms of pay and recovery even though the driver did not have a badge endorsement at the time of the accident. In the interest of justice, the Insurance company is directed to deposit the compensation amount awarded by the Tribunal, on behalf of the 1st respondent, on the basis of pay and recovery.

12. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Lbm
To:
1.The Motor Accident Claims Tribunal
Principal District Judge, Erode.
2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.V.Rajesh, Advocate Sr.No. 7399
+1 cc to M/s.S.Sivakumar, Advocate Sr.No. 7328
+1 cc to M/s.R.Sreevidhya, Advocate Sr.No. 8220
+1 cc to M/s.J.Chandran , Advocate Sr.No. 7772

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CP(CO)
RMP(06/11/2020)