IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2618 of 2013

1.Nirmala

2.Loyius Chrishtina

3.Selvin Joseph .. Appellants /Claimants

Vs.

1.E.Moorthy

2.The Branch Manager
Royal Sundaram Alliance Insurance Company Ltd.
Sundaram Tower
Nos.45 and 46, Whites Road
Chennai-600 014. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.03.2013 made in M.C.O.P.No.684 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam.

For Appellants : Mr.D.Kumaralingam

For R1 : No appearance

For R2 : Mr.K.Vinod for Mrs.Elveera Ravindran

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed challenging the portion of the award dismissing the claim petition filed by the appellants 2 and 3 and dismissing the claim petition as against the 2nd respondent/Insurance Company dated 06.03.2013 made in M.C.O.P.No.684 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam.

2.The appellants are the claimants in M.C.O.P.No.684 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam. The appellants filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Arokiyasamy, who died in the accident that took place on 15.10.2009.

3. According to the appellants, on the date of accident i.e., on 15.10.2009 at about 11.00 a.m., while the deceased was riding in his motorcycle on the left side of the mud road from Villupuram to Tindivanam, near Kootteripattu, a Skoda car belonging to the 1st respondent, which came behind the motorcycle in the same direction, driven by its driver in a rash and negligent manner, dashed against the deceased motorcycle and caused the accident. Due to the accident, the deceased Arokiyasamy sustained fatal injuries and died on the spot. Therefore, the appellants filed the above claim petition claiming compensation against the respondents.

4.The 1st respondent, owner of the car, remained exparte before the Tribunal.

5.The 2nd respondent/Insurance Company being insurer of the car filed counter statement denying the averments made in the claim petition and stated that the driver of the car belonging to the 1st respondent drove the same in a careful manner and the accident has occurred solely due to negligence on the part of the deceased. The driver of the car did not possess driving license at the time of accident. There was no valid insurance policy at the time of accident and hence, the 2nd respondent is not liable to indemnify the 1st respondent. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition as against the 2nd respondent.

6.Before the Tribunal, the 1st appellant, wife of the deceased examined herself as P.W.1, one Prabu was examined as P.W.2 and marked 8 documents as Exs.P1 to P8. The respondents did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.4,29,352/- as compensation to the 1st appellant and dismissed the claim petition filed by the appellants 2 and 3 being daughter and son of the deceased respectively and the claim petition as against the 2nd respondent/Insurance Company, as the car was not insured with the 2nd respondent and the driver of the car did not possess driving license at the time of accident.

8.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company and the claim petition filed by the appellants 2 and 3, the appellants have come out with the present appeal.

9.Though the learned counsel appearing for the appellants raised a ground with regard to fixation of notional income of the deceased, at the time of arguments, he restricted his argument only with regard to dismissal of the claim petition as against the 2nd respondent/Insurance Company and the claim petition filed by the appellants 2 and 3.

10.The learned counsel appearing for the appellants contended that the offending vehicle was insured with the 2nd respondent at the time of accident vide policy No.0111688000100 and the same is mentioned in the claim petition itself. The Tribunal erroneously dismissed the claim petition as against the 2nd respondent/Insurance Company and directed the 1st respondent, owner of the car to pay the compensation, when the policy is in force and no evidence was let in by the 2nd respondent. The appellants 2 and 3, who are daughter and son of the deceased are entitled to claim compensation. The Tribunal erroneously dismissed the claim petition filed by the appellants 2 and 3. The deceased was an Income Tax assessee. The Tribunal ought to have awarded compensation as claimed by the appellants and directed the 2nd respondent Insurance Company to pay the compensation and prayed for allowing the appeal.

11.The learned counsel appearing for the 2nd respondent/Insurance Company made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

13.It is the contention of the 1st respondent that the offending vehicle is insured with the 2nd respondent and the 2nd respondent is liable to indemnify the 1st respondent for the negligence of the driver of the car belonging to the 1st respondent. According to the learned counsel appearing for the appellants, the policy number issued by the 2nd respondent was mentioned in the claim petition, the appellants have given the policy number in the claim petition and the Tribunal erroneously dismissed the claim petition as against the 2^{nd} respondent. On perusal of the claim petition, it is seen that the appellants have not given the policy number and period of policy in the claim petition. They have mentioned the name of the Insurance Company alone. The 2^{nd} respondent in the counter statement has stated that the offending vehicle was not insured with the 2^{nd} respondent/Insurance Company by the 1^{st} respondent. The appellants failed to substantiate their contention that vehicle was insured with the 2^{nd} respondent at the time of accident and hence, the 2^{nd} respondent is not liable to pay any compensation to the appellants. The Tribunal considering the failure on the part of the appellants to prove that the offending vehicle was insured with the 2^{nd} respondent, dismissed the claim petition as against the 2^{nd} respondent/Insurance Company. There is no error in the said award of the Tribunal dismissing the claim petition as against the 2^{nd} respondent/Insurance Company warranting interference by this Court.

14.The Tribunal dismissed the claim petition filed by the appellants 2 and 3, daughter and son of the deceased respectively on the ground that the 2^{nd} appellant was aged 20 years, got married and the 3^{rd} appellant was aged 33 years and hence, they are not lawful legal heirs of the deceased. The said reasoning is erroneous. Even a married daughter and adult are entitled to receive compensation as legal heirs as well as dependants of the deceased. In view of the same, the award of the Tribunal dismissing the claim petition filed by the appellants 2 and 3 is liable to be set aside and it is hereby set aside. The award of the Tribunal is modified to the effect that the 1^{st} appellant is entitled to 60% and the appellants 2 and 3 are entitled to 20% each as compensation awarded by the Tribunal.

15.In the result, this Civil Miscellaneous Appeal is partly allowed and the sum of Rs.4,29,352/- awarded by the Tribunal as compensation along with interest and costs is confirmed. This appeal is dismissed as against the 2^{nd} respondent/Insurance Company. The 1^{st} appellant being wife of the deceased is entitled to 60% of the award amount and the appellants 2 and 3 being daughter and son of the deceased respectively, are entitled to 20% each of the award amount as compensation. The 1^{st} respondent, owner of the car is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To
1.The Principal Subordinate Judge
The Motor Accident Claims Tribunal
Tindivanam.

2.The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to M/s.D.Kumaralingam Advocate sr39244
+1 cc to M/s.Elveera Ravindran Advocate sr38994

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