

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3015 of 2013
and M.P.No.1 of 2013

National Insurance Company Limited,
Divisional Office-1, L.R.N. Complex,
Saradha College Road, Salem - 7. ...Appellant /2nd Respondent

vs.

1.Minor Yasmin
Rep. By her father YeikaBasha

2.Chandrashekhar Sathiri ...Respondents1 & 2/
Claimant/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.979 of 2006 dated 09.02.2012, on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, at Salem.

For Appellant : M/s.N.B.Surekha

For Respondents :
R1 : No such Address
R2 : Exparte

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 09.02.2012 passed by the Motor Accident Claims Tribunal, II Additional Subordinate Judge, at Salem in M.C.O.P.No.979 of 2006.

2.Heard Ms.N.B.Surekha, learned counsel for the Appellant. Since this Court is confirming the impugned award, notice to the respondents are dispensed with.

3.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Transport to Hospital	-	Rs.5,000/-
Extra nourishment	-	Rs.5,000/-

Pain and suffering	-	Rs.50,000/-
25% disability	-	Rs.25,000/-

Total		Rs.85,000/-

4.The following grounds have been raised by the Appellant Insurance Company in this appeal:

(a) The driver of the insured vehicle did not possess a valid driving license.

(b) There was no eye witness to the accident.

(c) The Doctor who has issued the disability certificate Ex.P3 in favour of the first respondent is not a Doctor who treated the first respondent at the time of the accident and therefore, the said certificate cannot be relied upon.

5.Insofar as the first contention raised by the Appellant is concerned, the Tribunal has rightly awarded pay and recovery rights to the Appellant under the impugned Award. It is settled law that if a driver of the insured vehicle was not possessing a valid driving license, the insurer will have to necessarily pay the claimant and recover the same from the owner of the insured vehicle. Therefore, the first contention raised by the Appellant is rejected.

6.Insofar as the second contention raised by the Appellant that there was no eye witness to the accident is concerned, the Appellant/insurance company has not produced any contra evidence to disprove the contention of the claimant that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened. The oral and documentary evidence available before the Tribunal also conclusively establishes that the driver of the insured vehicle was alone responsible for the cause of the accident. Therefore, the Tribunal has rightly held the Appellant/Insurance Company liable to compensate the claimant.

7.Insofar as the third contention raised by the Appellant that the Doctor who examined the first respondent/claimant (PW2) was not a Doctor who examined and treated the first respondent/claimant at the time of the accident cannot be relied upon as an evidence is concerned, the Appellant/Insurance Company has also failed to produce any evidence before the Tribunal to disprove the contents of the disability certificate Ex.P2 issued by the Doctor (PW2). Any adjudication with regard to motor accident claims is made based on preponderance of probabilities. When the claimant has produced evidence to show that he has suffered disability as per Ex.P2 disability certificate, the Tribunal has rightly accepted the same and has awarded compensation to the first respondent/claimant.

8.For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal.

9.Accordingly, this appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the entire amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of the claim till the date of realization to the credit of M.C.O.P.No.979 of 2006, on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Salem within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, they are permitted to recover the same from the second respondent/owner of the vehicle. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accidents Claims Tribunal,
II Additional Subordinate Judge, Salem.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Ms.N.B.Surekha, Advocate SR.27601

C.M.A.No.3015 of 2013

MR (CO)
CB(19/12/2020)

WEB COPY