IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.09.2020

Coram:

THE HONOURALE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1956 of 2016
and
C.M.P.No.14229 of 2016

Reliance General Insurance Company Ltd.,
Sri Lakshmi Complex, First Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem-4. ... Appellant/2nd Respondent

/versus/

1.Paramasivam
2.Madeshwaran
3.Lakshmi
4.Saraswathi
5.Suguna ...1 to 5 Respondent/Petitioners
6.M.Palanisamy ..6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 24.03.2016 made in M.C.O.P.No.2143 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Salem.

For Appellant :Mr.S.Arunkumar

For Respondents:No appearance

JUDGMENT

(The case has been heard through Video conference)

This appeal is preferred by the Insurance Company against the award passed by the Tribunal.

2.The claim petition was filed by the dependants of the deceased Unnamalai. She died in the motor accident on 22.10.2013 at about 7.00 p.m when she was walking along Veppadai to Sankari main Road, a two wheeler bearing Reg.No.TN 34 F 5854 dashed against her causing grievous injuries. She died on 23.10.2013 at the hospital. At the time of accident, the deceased was 68 years old, working in a Spinning Mill and earning a sum of Rs.6,000/-

per month. The claimants, who are the husband and children of the deceased sought Rs.10,00,000/- as compensation.

3.In the counter, the Insurance Company has taken a plea that the driver of the offending vehicle had no valid driving license and inspite of causing notice to produce the driving license, he has not produced the driving license. Therefore, the Insurance Company is not liable to pay any compensation, since the offending vehicle owner has violated the policy condition. Further, the income of the deceased stated in the claim petition was also seriously disputed.

4.The Tribunal, after going through the facts and evidence has held that the accident has occurred due to the negligence of the two wheeler rider by name, Pavithran. The deceased Unnamalai was hit by the two wheeler and she died on 23.10.2013. Though the insurance company has caused notice to the insured to produce the driving license of the rider, who is none other than the son of the insured, the insured has not produced the driving license. However, the Tribunal has held that non production of driving license by the insured will not lead to the inference that the insured has failed to follow the policy condition. On this basis, the Tribunal has awarded Rs.5,00,000/- as compensation.

5.The learned counsel appearing for the Insurance company would submit that when the insurer has established violation of policy condition, the Tribunal ought to have exonerated the insurance company in toto or should have permitted the insurance company to pay and recover. Contrary to the principles laid down by the Hon'ble Supreme Court in National Insurance Co.Ltd., Vs. Swaran Singh and others reported in [2004(1) TN MAC 104], the Tribunal has ordered the insurer to pay. The award of the Tribunal is also highly excessive.

6.In spite of receiving notice, the respondents have not taken interest to contest the appeal and they have not engaged any counsel to represent them.

7.On perusing the records, this Court finds that the Insurance Company has caused notice to the insured immediately after knowing that the vehicle has involved in the accident. In the notice, the Insurance has called upon the insured to produce the driving license of the rider. The insured has not responded. These facts are elucidated by the Insurance Company by examining RW1, who is the Law Officer working in the Insurance Company and through Exs.R1 to R3. From the First Information Report, this Court finds that one Mr.Pavithran was the rider of the offending vehicle at the time of the accident. A Specific plea is raised by the insurance company that the rider of the two wheeler had no valid driving license. Hence, there is violation of policy condition. Inspite of the specific pleadings and evidence to that effect, the Tribunal has not taken note of that fact while fixing the liability. It is now well settled principles of law that in case of this nature, the insurance company has to be given liberty to recover the award amount from the insured, after satisfing the claimants.

8.In this case, this Court finds that the Tribunal has not given liberty to the insurance company the right to recover the award amount from the owner of the vehicle, who has gravely violated the policy condition by allowing person to ride the motorcycle with gear and who had no valid driving license to ride the motor cycle with gear. This Court also finds that though the quantum of compensation is also challenged in this appeal.

9.On over all consideration of fact, this Court finds that a sum of Rs.5,00,000/- for the demise of 68 years old lady in the year 2013, considering the cost of living, is just and reasonable. As far as the liability is concerned, the award of the Tribunal is modified to that effect that the insurance company given liberty to recover the award amount from the owner of the vehicle Palanisamy, after paying the same to the claimants.

10.Therefore, this Civil Miscellaneous Appeal is partly allowed to the effect that the Insurance Company is permitted to recover the award amount from the insured/owner of the vehicle the 6th respondent herein/1st respondent in the claim petition, as per the judgment of the Hon'ble Supreme Court in Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in (2004) ACC 524 (SC).

11. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   Additional District and Sessions Court,
   Salem.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.32374

C.M.A.No.1956 of 2016

CA(CO)
GMY(17/08/2021)