IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3469 of 2013
and
M.P.No.1 of 2013

United India Insurance
Company Limited
AKM tower, 1st floor
397-1, Junction main road
Salem-4. .. Appellant/ Respondent

Vs.

1.Baskaran .. Respondent1 to 3/ Petitioner

2.Minor. B.Dharshanraj
3.Minor Shalini
(Minors/respondents 2 & 3 rep. by their next friend and father 1st respondent)

4.Detavaraj
(R4 remained exparte before the Tribunal)
5.K.Kumar
(Notice to R5 is dispensed with)
.. Respondents 4& 5/ Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2012 made in M.C.O.P.No.287 of 2010 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellant : Ms.I.Malar
For R1 to R3 : Ms.A.Kunjammal for Mr.K.A.Mariappan
R4 & R5 -Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 24.02.2012 made in M.C.O.P.No.287 of 2010 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.287 of 2010 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Kavitha, who died in the accident that took place on 29.01.2010.

3.According to the respondents 1 to 3, on the date of accident i.e., on 29.01.2010 at about 12.15 p.m., while the deceased Kavitha was standing on the left side road with bi-cycle near old Ramesh theatre, Trichy Road, Namakkal, the driver of the lorry belonging to the respondents 4 & 5, which came in the opposite direction, driven by its driver in a rash and negligent manner, ran over the deceased and caused the accident. Due to the said impact, the deceased Kavitha died on the spot. Therefore, the respondents 1 to 3 filed the above claim petition claiming compensation against the respondents 4 & 5 and appellant/Insurance Company.

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

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident has occurred, when the deceased Kavitha suddenly crossed the road, without noticing the lorry. Therefore, the Tribunal ought to have fixed contributory negligence on the part of the deceased. The driver of the lorry did not possess valid driving license to drive the heavy motor vehicle and thereby, the respondents 4 & 5 violated the terms and policy conditions and hence, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 3. The appellant/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent, husband of the deceased, examined himself as P.W.1 and one Dhanapal, eye-witness to the accident, was examined as P.W.2 and marked seven documents as Exs.P1 to P7. The appellant/Insurance Company examined one M.Muralidharan, Assistant Manager of the appellant/Insurance Company as R.W.1 and marked two documents as Exs.R1 and R2.

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 lorry belonging to the respondents 4 & 5 and directed the appellant/Insurance Company being insurer of the said lorry to pay a sum of

Rs.7,20,000/- as compensation to the respondents 1 to 3 at the first instance and recover the same from the respondents 4 & 5/owners of the lorry, as the driver of the lorry did not possess valid driving license to drive the lorry.

8.Against the said award dated 24.02.2012 made in M.C.O.P.No.287 of 2010, granting compensation to the respondents 1 to 3, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on them as well as quantum of compensation granted by the Tribunal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the driver of the lorry belonging to the respondents 4 & 5 did not possess valid driving license to drive the heavy motor vehicle at the time of accident and he has possessed driving license only to drive light motor vehicle. On the date of accident, the 5^{th} respondent is the owner of the lorry, but the insurance policy stood in the name of the 4^{th} respondent. The Tribunal erred in ordering pay and recovery and the Tribunal ought to have exonerated the appellant/Insurance Company from its liability. The monthly income of the deceased fixed by the Tribunal is on the higher side. In any event, the compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the respondents 1 to 3 made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.From the award of the Tribunal, it is seen that the Tribunal considering the materials available on record, has held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the respondents 4 & 5 and ordered pay and recovery. Even if the driver of the offending vehicle did not possess valid driving license at the time of accident, the Insurance Company cannot escape from its liability. In the present case, the driver of the lorry was in possession of driving license to drive light motor vehicle. The Tribunal considering Ex.R2/driving license held that the driver of the lorry did not possess license to drive heavy motor vehicle and ordered pay and recovery. This issue was decided by the Hon'ble Apex Court in the judgment reported in 2017 (4) SCC 663 (Mukund Dewangan v. Oriental Insurance Company Ltd.), wherein the Hon'ble Apex Court has held that when a person holds a driving license to drive vehicles of particular class, he is entitled to drive all the categories of vehicle in that class including commercial vehicle and there is no necessity to obtain badge or endorsement. In view of the judgment of the Hon'ble Apex Court referred to above, the appellant/Insurance Company cannot be exonerated from its liability on the ground that the driver of the offending vehicle did not possess valid driving license. The Tribunal rightly held that the appellant/Insurance Company is liable to pay compensation, ordered pay and recovery and the same does not warrant any interference by this Court.

12.As far as quantum of compensation is concerned, it is the contention of the respondents 1 to 3 that the deceased was doing job typing and was earning a sum of Rs.10,000/- per month. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased. The accident is of the year 2010 and the notional income fixed by the Tribunal is not excessive. The Tribunal after considering all the materials available on record in proper perspective, awarded a total sum of Rs.7,20,000/- as compensation to the respondents 1 to 3 under different heads, which is not excessive. In the above circumstances, this Court is not inclined to interfere with the award of the Tribunal.

13.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.7,20,000/- awarded by the Tribunal as compensation along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the respondents 4 & 5. On such deposit, the 1st respondent is permitted to withdraw the respective share of the award amount, as per the apportionment made by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minors/respondents 2 & 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st respondent being father of the minors/respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Principal District Judge
Motor Accident Claims Tribunal
Namakkal.

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

+1cc to Mr.T.Ravichandran , Advocate SR.No. 22473
+1cc to Mr.K.A.Mariappan , Advocate SR.No. 22914

C.M.A.No.3469 of 2013
and
M.P.No.1 of 2013

A.SK(21.01.2021)