IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3538 of 2013

M/s. Iffco Tokio General Insurance Company Ltd.
The Branch Office,
Tulsi Chambers, 3rd Floor,
No.135, T.V. Samy Road (West),
R.S. Puram, Coimbatore - 641 002.

..Appellant/3rd Respondent

Versus

1.S. Latha W/o. Late. Sekar

2.Minor S. Kousika

3.Minor S. Ranjith

RR2 & 3 Minors rep by Mother and
N.F. 1st Respondent

4. Vijaya

5. K. Andavan

6. S. Saravanan

7. M/s. Ashok Leyland Ltd.
No.1, Sardar Patel Road,
7th Floor, Guindy,
Chennai- 600 032.

..Respondents/Petitioners 1 to 5 and 2nd and 3rd Respondents

(R2 & R3 are represented by their Mother and
Next Friend-1st respondent)

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 22.06.2012 made in M.C.O.P.No.139 of 2010 on the file of the Motor Accident Claims Tribunal, Principal District Court, Erode.

For Appellant : Mr.M.B. Gopalan

For Respondents 1to5 : Mr.E. Rajadurai
(For Mr. N. Vijayaraghavan)

For Respondents 6 & 7 : Ex-parte

J U D G M E N T

The Insurance company has filed this appeal against the Judgment and decree in M.C.O.P.No.139 of 2010 dated 22.06.2012 on the file of the Motor Accident Claims Tribunal, Principal District Court, Erode, questioning the liability on its side and quantum of the compensation awarded to the claimants.

2. The respondents 1 to 5 herein who were the petitioners / claimants, the appellant herein who was the 3rd respondent, and 6th and 7th respondent who are driver and owner of the offending vehicle respectively, were 1st and 2nd respondent respectively, before the Tribunal. For the sake of convenience, the parties are referred to in the same ranking as before the Tribunal.

3. The facts of case briefly are as under:

On 10.11.2009 at about 12.30am the deceased Mr.Sekar was proceeding from Chennai to Vellore district by riding the Santro Car bearing registration No.TN 09 R 6613, at the time, 1st respondent driving one Chasis bearing No.TN 18 TC AER 2707 in a rash and negligent manner without observing traffic rules, all of sudden, stopped the vehicle in the middle of the high road without showing signal or indication for that effect. As a result of sudden stopping of the vehicle, the deceased who was coming behind the chassis, dashed the Chassis, since the deceased was unable to control his car. Due to the impact of the accident, the deceased succumbed to injuries. Hence, the legal representatives of the deceased have filed the claim petition in M.C.O.P. No.139 of 2010 seeking for compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) before the Tribunal whereby they were awarded a sum of Rs.9,01,000/- (Rupees Nine Lakh and One Thousand Only) as compensation directing the Insurance Company/appellant herein to pay the same to the claimants.

4. Being aggrieved by the award, the Insurance company/appellant herein has filed the present appeal challenging the award passed by the Tribunal.

5.The learned counsel for the appellant would submit that even though the driver of the offending vehicle had no valid driving licence which was proved as fake/bogus through oral and documentary evidence of R.W.2 to R.W.4 and Ex.R3 and Ex.R4, the Tribunal has awarded the compensation on the basis of pay and recovery directing the Insurance company to deposit the award amount in favour of the petitioners and recover the same from the owner of the vehicle/2nd respondent by initiating execution proceedings is not sustainable in accordance with law. When the driver of the vehicle did not have valid driving licence at the time of the accident which ought to have been considered as breach of the Motor Vehicle Act as well as the policy of insurance, whereas the Insurance company should not be directed having considered to be liable to pay the compensation in favour of the petitioners even it was the terms of pay and recovery. Without considering the P.W.2, eye witness and Ex.P1, FIR which are oral and documentary evidence to prove the rash and negligent driving of the deceased, the Tribunal has failed to exonerate the Insurance company/insurer of the Chassis from fixation of the liability instead of fixing liability on the Insurer of the car driven by the deceased. Hence, this Court may be pleased to set aside the award passed by the Tribunal.

6. On the other hand, the learned counsel for the petitioners/respondents 1 to 5 herein would submit that the Tribunal has rightly awarded after taking into consideration entire oral and documentary evidence placed before it. Further, even though the 1st respondent/driver of the offending vehicle did not have valid driving licence and it came to know during the trial, the negligence on the part of the 1st respondent was established by the Tribunal on the ground that the F.I.R. was lodged belatedly by P.W.2 and the 1st respondent/ driver of the Chassis did not lodge any complaint against the deceased as to rash and negligent driving of the deceased as well as the 1st respondent/driver of the offending vehicle and the author of the F.I.R were not examined during the trial. In view of the above, the Tribunal has rightly fixed the liability on insurer of the Chassis/appellant herein after relying on the decision of the Apex Court and this Court in the event of fake licence. Moreover, as the deceased was only breadwinner to his family, the family of the deceased is totally mentally disturbed and they are unable to meet their adequate requirement and commitment faced by the family, there is no need to interfere with the award passed by the Tribunal and prayed for dismissal of the appeal.

7. Heard, the learned counsel appearing for for both sides and perused the materials available on record. At the time of the trial, on the side of the petitioners, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P13 were marked. On the side of the respondents, R.W.1 to R.W.4 were examined and Ex. R1 to Ex.R8 were marked. Since there is no representation on behalf of the Respondents 6 & 7 who are set exparte before this Court.

8.On perusal of the award, it is seen that the Tribunal has

fixed the negligence only on the part of the 1st respondent/driver of the Chassis even though the Ex.P.1, F.I.R. was lodged against the deceased by P.W.2 wherein the reason is on the ground that the 1st respondent/driver of the Chassis has neither filed complaint nor informed as to accident before the Police as contemplated under Section 134 of M.V.Act and the 1st respondent/driver of Chassis and the author of the F.I.R. were not examined by the Insurance company during the Trial. Further, as no one was accompanied the deceased at the relevant time, the possibility of lodging complaint against the 1st respondent/driver of Chassis would be very remote. That apart, the delay of filing of the complaint very next day clearly indicate that the FIR has been formally lodged only to complete the investigation and post-mortem purpose. In view of the above, the Tribunal has rightly come to the conclusion that the 1st respondent/driver of Chassis has driven the Chassis in a rash and negligent manner without adhering traffic rules and regulations by stopping the vehicle abruptly without any indication thereby the deceased was unable to control his Car from avoiding the accident and dashed the Chassis. Hence, it cannot be raised to fix the liability on the insurer of the car driven by the deceased since the negligence was established evidently on the part of the 1st respondent/driver of Chassis. The another point is raised by the Insurance company/appellant herein that when the 1st respondent did not have valid driving licence which was being fake/bogus and the same was proved by oral and documentary evidence, the Insurance company is not at all liable to pay compensation to the legal representatives of the deceased. However, in the event of fake licence and no valid licence, the Tribunal after having considered the facts and circumstance of the case, has relied upon the decisions of this High Court reported in 2010(1) TN MAC 123 (ICICI Lambard General Insurance Company Limited Vs. M. Rakkathal) wherein it was observed and relied upon the decision of the Apex Court in the case of "Swaran Singh Vs. Geetha Bhat, that "in case of fake licence and also in case of no licence, principal of pay and recovery could be applied - whenever compensation to third party arose, Insurer should pay at first instance and thereafter recover the same from the owner, even if insurer not liable on being successfully put up their defence... ".
After considering the above observations of the Hon'ble Supreme Court and this Court, the Tribunal has rightly directed the 3rd respondent/appellant herein to deposit the amount of compensation with accrued interest and costs and thereafter, recover the same from the owner of the vehicle by initiating execution proceedings directly against the owner will be justifiable and not defendable. As the findings recorded by the Tribunal are acceptable and reasonable, this Court is not inclined to interfere with award passed by the Tribunal. Hence, the Insurance company/appellant herein is directed to deposit

amount of the compensation together with interest @ 7.5% p.a. less already deposited if any, from the date of petition till the date of deposit within a period of three weeks from the date of receipt of copy of this order. The petitioners/respondents 1 to 5 are permitted to withdraw their shares as per proportion directed by the Tribunal.

9. In the result, the Civil Miscellaneous petition is dismissed and award passed by the Tribunal in M.C.O.P. No.139 of 2010 is confirmed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

lbm

To

1.Motor Accident Claims Tribunal
Principal District Court, Erode.

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

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 11536
+1cc to Mr.S.Kaithamalaikumaran, Advocate, S.R.No. 11177

C.M.A.No.3538 of 2013

CP(CO)
GN(21/01/2021)