

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.560 of 2016
and C.M.P.No.4650 of 2016

United India Insurance Co. Ltd.,
Branch Office No.II,
No.77, Oriental Complex, A.A.Street,
Salem-636 001, Salem District.Appellant/2nd Respondent

Vs

1.Valarmathi
W/o.Late.Sadhasivam

2.Ramani
D/o.Late.Sadhasivam

3.Jayashree
D/o.Late.Sadhasivam

4.Sabarinathan
D/o.Late.Sadhasivam

5.Papayee
W/o.Nalliannan

All are residing at:
D.No.2/36, West Street,
Aniyapuram Village & Post
Namakkal District. Respondents 1 to 5/Claimants

6.Chellamuthu
S/o.Seerangan
D.No.63-A, Nadutholur,
Tholur Post,
Namakkal Taluk & District.6th Respondent/1st Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2015 made in M.C.O.P.No.716 of 2013 on the file of the Motor Accidents Claims Tribunal and Principal District Judge, Namakkal.

For Appellant

:Mrs.Malar Ravichandran

For Respondents

:Ms.Revathy
for Mr.R.Nalliyappan

JUDGMENT

(Heard through video conference)

This civil miscellaneous appeal has been filed against the decree and judgment dated 19.08.2015 passed in M.C.O.P.No.716 of 2013, on the file of the Motor Accidents Tribunal and Principal District Judge, Namakkal.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. The Insurance Company being aggrieved by the award of the Tribunal for not permitting it to pay and recover from the tort-feasor who has breached the policy condition by driving the vehicle without license, before this Court.

4. The facts of the case is that the deceased Sadasivam while walking along the road from Aniyapuram to Tholur on 27.01.2013 near AGS Poultry farm one Bajaj Discover bike in a rash and negligently hit him causing head injury. He was taken to the hospital but declared death. The dependants have filed a claim petition for a sum of Rs.12,00,000/- on the ground that the deceased was hail and healthy and earning a sum of Rs.15,000/- per month and he died at the age of 54 years. Hence for loss of dependancy and life expectation laid the claim against the offending two wheeler and its Insurance Company.

5. The Insurance Company in the counter has stated that there is a grave violation of the Insurance Policy condition. The driver of the offending vehicle did not possess valid license at the time of accident and the vehicle was a new vehicle without registration. Rider of the two wheeler ought not to have driving the vehicle in the public road without register and insurance. Therefore, denied their liability. The Tribunal however rejected the said defence and has awarded a sum of Rs.5,53,000/- payable by the Insurance Company.

6. The perusal of the Tribunal award reveals that the Tribunal by relying upon the judgment in the case of National Insurance Company Limited Vs. Swaran Singh and other reported in

2004(1) TNMAC (SC) 104 : 2004(2) LW 744 has held that the aim of the object making the insurance compulsory before the vehicle put on road only with an intention of safety measure. Therefore the Insurance Company has to pay the claim.

7. The Tribunal failed to understand the spirit and language of the Hon'ble Supreme Court in its judgment. When the Insurance Company has clearly proved and established that the vehicle involved in accident was driven by the person, who did not possess driving license and he is the owner of the vehicle, the right of recovery ought to have been given to the insurer.

8. Since the Tribunal has failed to order pay and recovery, the impugned award of the Insurance Company is bound to be interfered.

9. Accordingly, the Civil Miscellaneous Appeal is allowed. The award amount fixed by the Tribunal and paid by the Insurance Company can be recovered applying the pay and recovery principle. Consequently, connected miscellaneous petition is closed. The shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rst/rpl
To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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

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