IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.Nos.1789 & 1791 of 2020
and
C.M.P.Nos.13162 & 13168 of 2020

Manager,
M/s.Bajaj Allianz General Insurance Company Limited,
Branch Office,
G.S.N.Arcade, 1st Floor,
Near Vimaladevi Kalyanamandapam,
Krishnagiri Bypass road,
Hosur - 635 109.

.. Appellant in both the CMAs/
3rd Respondent in both cases

Vs.

1. Munisamy

.. 1st Respondent/Petitioner
in CMA 1789 of 2020

2. Suresh
3. M/s.Chennai Solatta Private Limited,
No.9/3, Annasali, Nagalkeni,
Chrompet, Chennai.

.. Respondents 2 & 3 in C.M.A.
No.1789 of 20/Respondent 1 & 2

Sadhamma (Died)
1. Munisamy
2. Kumar
3. Nadhya
4. Haripriya

.. Respondent 1 to 4/
Petitioner in CMA 1791 of 2020

5. Suresh
6. M/s.Chennai Solatta Private Limited,
No.9/3, Anna Salai, Nagalkeni,
Chrompet, Chennai.

.. Respondents 5 & 6 in C.M.A.
No.1791 of 2020/Respondent 1 & 2

Prayer in both the CMAs: Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, 1988 against the Common Order and Decree dated 24.10.2019, made in M.C.O.P.Nos.304 and 484 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.M.B.Raghavan
in both the CMAs

COMMON JUDGMENT

The insurance company questioning its liability to pay the compensation awarded by the Motor Accident Claims Tribunal has come up with these appeals.

2. The first respondent in C.M.A.No.1789 of 2020 (M.C.O.P.No.304 of 2017) is the injured claimant seeking compensation for the injuries sustained by him in a road accident and respondents 1 to 4 in C.M.A.No.1791 of 2020 (M.C.O.P.No.484 of 2017) seek compensation for the death of one Sadhamma, who is the wife of the first respondent and mother of the respondents 2 to 4.

3. The case of the claimants before the Tribunal is as follows:

(i) On 28.04.2010, at about 08.00 p.m. the first respondent in C.M.A.Nos.1789 & 1791 of 2020 was riding his two wheeler along with his wife and his minor daughter Nadhiya from Hosur to Krishnagiri. At that time, a Maruthi car bearing Registration No.TN-22-AW-7967, belonging to the second respondent in C.M.A.No.1789 of 2020 and insured with the appellant/insurance company came in a rash and negligent manner in a high speed and dashed against the two wheeler, in which, all the three sustained serious injuries.

(ii) Subsequently, Sadhamma was admitted in the Government Hospital, Hosur, thereafter she was shifted to Sagar Hospital, Bangalore, for further treatment, subsequently she succumbed to the injuries on 12.05.2010.

(iii) In the said circumstances, claiming a sum of Rs.15,00,000/- for the injuries sustained by the first respondent herein and Rs.25,00,000/- for the death of his wife Sadhamma two claim petitions have been filed by the claimants before the Tribunal.

4. The appellant / insurance company contested the claim petitions on the ground that at the time of the accident, the driver of the Maruthi car was only having a LLR licence and he does not possess a valid driving licence to drive the car. Hence, claiming it as a violation of policy condition, the appellant/insurance company contended that it is not liable to pay the compensation. Further, it is contended that the compensation claimed by the claimants are highly excessive.

5. After considering the materials available on record, the Tribunal has held that the accident had taken place due to the rash and negligent driving of the driver of the car and so far as negligence is concerned, the proof of negligence is only the preponderance of probability and the onus is on the insurance company to establish that the accident had taken place due to the negligent driving of the first claimant. In the absence of any evidence to the same, the Tribunal has held that the accident had taken place due to the rash and negligent driving of the car. The Tribunal has further held that admittedly the driver of the car is having a LLR, which is as equal to that of a regular licence and on that ground the insurance company cannot escape from its liability. In respect of the quantum of compensation, considering the nature of injuries sustained by the first respondent/first claimant awarded a sum of Rs.2,44,657/- and in respect of the death of his wife, the Tribunal has awarded a sum of Rs.15,90,110/-. Aggrieved over the same, the appellant / insurance company is before this Court with these appeals.

6. The learned counsel appearing for the appellant/insurance company would submit that admittedly the driver of the offending car has only having LLR licence, hence, he cannot be considered as having a valid driving licence. That apart, there is also violation of Rule 3 of the Central Motor Vehicles Rules, without considering the same, the Tribunal fixed the liability on the appellant/insurance company. The learned counsel also further contended that the quantum of compensation as awarded by the Tribunal is also highly excessive.

7. I have considered the above submissions and also perused the records carefully.

8. The primordial contention of the learned counsel appearing for the appellant/insurance company is that the driver of the offending car does not possess a valid driving licence to drive a light motor vehicle but he was only having a LLR licence. As he drove the car without a valid licence, it is a violation of policy condition, for which, the appellant/insurance company is not liable to pay any compensation.

9. The said contention of the learned counsel for the appellant cannot be countenanced for the simple reason that the Hon'ble Supreme Court in National Insurance Co Ltd., Vs. Swaran Singh reported in 2004 ACJ 1 has held that learners licence is also valid as that of a regular driving licence and therefore if a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree and cannot escape from its liability.

10. So far as the quantum of compensation is concerned, the injured claimant sustained 30% disability and the Tribunal for the partial permanent disability has awarded a sum of Rs.3000/- per percentage and granted a sum of Rs.90,000/- towards disability and other heads also only reasonable compensation was granted totalling a sum of Rs.2,44,657/-. In respect of the deceased, she was an agricultural coolie and admittedly she is 45 years old and hence the Tribunal fixed her notional monthly income as Rs.7,000/- and added 25% towards future prospectus and deducting 1/4 towards her personal expenses arrived at the notional monthly income at Rs.6,562/- and applying multiplier 14 awarded a sum of Rs.11,02,416/- towards loss of dependency and other heads also following the guidelines issued by the Hon'ble Supreme Court in National Insurance Company Limited vs. Pranay Sethi and Ors reported in (2017) 16 SCC 680 only reasonable compensation was granted totalling a sum of Rs.15,90,110/-.

11. In view of the above, I do not find any error or illegality in the orders passed by the Tribunal warranting interference. Further, there is no merit in the appeals and the appeals are liable to be dismissed and accordingly dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (Audit)

// True Copy //

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   Special Subordinate Court, Krishnagiri.

C.M.A.Nos.1789 & 1791 of 2020 and
C.M.P.Nos.13162 & 13168 of 2020

BR(CO)
B.VC (03/09/2021)