IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.478 of 2018
and
C.M.P.No.4303 of 2018

M/s.Reliance General Insurance Company Limited
Rep.by its Manager,
Sri Lakshmi Complex, 1st floor,
Bharathi street, Omalur Main Road,
Swarnapuri Salem, Salem District.
... Appellant /2nd Respondent

Vs.

1. Devi
2. Suganya
3. Kowsalya (minor)
4. Sivasankar (minor)
(respondents 3 and 4 minors,
rep. by mother and NF - 1st respondent)
5. C.Chandraganesh
... Respondents 1 to 4/Claimants/
5th Respondent/1st Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 03.11.2016 made in MCOP.No.338 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.D.Ramesh Kumar for RR-1 to 4
: No appearance for R-5

J U D G M E N T
(The Judgment of the Court was delivered by R.Subbiah, J)

The appellant / Reliance General Insurance Company Ltd., is the second respondent in M.C.O.P.No.338 of 2014 on the file of the Motor Accident Claims Tribunal / Special District Court, Krishnagiri.

2. The deceased in this case is one Kempraj. On 28.08.2014 at about 9 p.m, when the deceased alighted from a bus and was slowly proceeding on the extreme left side of the Krishnagiri-Dharmapuri Main Road, near Subramaniyapuram, a Pulsar Bike bearing Registration No.TN-24-R-3577, which came behind the deceased in a rash and negligent manner, dashed against the deceased, which resulted in the deceased sustaining grievous injuries. Immediately, he was taken to Government Hospital, Krishnagiri, where he was given initial treatment, and since his condition has become worse, he was immediately shifted to Government Hospital, Kaveripattinam. Inspite of the treatment given to him, he died on 29.08.2014 in the hospital. Hence, the respondents 1 to 4 herein being the wife of the deceased and their two daughters and one son, have preferred the claim petition as against the owner of the two-wheeler (Pulsar bike mentioned above) and the insurer, namely the appellant-Insurance Company, claiming a compensation of Rs.20 lakhs.

3. The case of the claimants was resisted by the appellant-Insurance Company by taking a defence that the accident occurred only due to the negligent act of the deceased, who had suddenly crossed the road without noticing the on-coming vehicle. Further, the Insurance Company has taken a specific stand that the rider of the two-wheeler was not possessing valid and effective driving licence on the date of accident, which is in gross violation of the policy conditions and therefore, the Insurance Company is not liable to pay compensation.

4. In order to prove their claim, on the side of the claimants/respondents 1 to 4 herein, the wife of the deceased was examined as P.W.1 and one Murugan was examined as P.W.2 who took the deceased to the hospital and he is the eye-witness to the accident, and Exs.P-1 to Ex.P-7 were filed on their side. On the side of the appellant/Insurance Company, the Legal Manager of the Insurance Company was examined as R.W.1 and Exs.R-1 to R-6 were marked.

5. The Tribunal, on an analysis of the oral and documentary evidence, has come to the conclusion that the accident is a result of rash and negligent driving of the two-wheeler (Pulsar motor-vehicle) and thus passed an award as against the appellant-Insurance Company for a sum of Rs.16,78,570/- with 7.5% interest per annum from the date of claim petition till the date of realisation. The Tribunal directed the Insurance Company to pay the compensation amount indemnifying the owner of the two-wheeler, as against which, the present Civil Miscellaneous Appeal is filed by the Insurance Company, questioning the liability of the appellant/Insurance Company.

6. The break-up details of the amounts awarded by the Tribunal under the various heads are as follows:

Head under which the amount is awarded by the Tribunal	Amount in Rs.
Loss of earnings	12,48,000
Transport to hospital	5,000
Funeral expenses	25,000
Loss of consortium	1,50,000
Loss of love and affection	2,00,000
Medical expenses	50,570
Total	16,78,570

5. Heard Mr.M.B.Raghavan, learned counsel appearing for the appellant/Insurance Company and Mr.D.Ramesh Kumar, learned counsel appearing for respondents 1 to 4/claimants. Though Court notice was sent and there was also newspaper publication, there is no representation on behalf of the fifth respondent either in person or through a counsel.

6. The learned counsel for the appellant/Insurance Company fairly contended that in the present appeal, he is only questioning the liability of the Insurance Company in indemnifying the owner of the vehicle in question. In this regard, the learned counsel for the appellant/Insurance Company submitted that, before the Tribunal, the Insurance Company has taken a specific defence that the rider of the motor vehicle (pulsar bike), who had caused the accident, did not possess a valid driving licence at the time of accident. In order to prove their defence, on the side of the appellant/Insurance Company, a legal notice (Ex.R-4) was sent to the owner of the said two-wheeler (pulsar bike) calling upon him to produce the licence and the acknowledgement of the said legal notice is marked as Ex.R-5. Inspite of the receipt of the said notice, the owner of the two-wheeler has not come forward to produce the licence. Even before the Tribunal, the fifth respondent herein (second respondent before the Tribunal) remained ex-parte. In fact, the owner of the two-wheeler has not chosen to appear even before this Court. Under such circumstances, the Tribunal ought to have drawn adverse inference and rendered a finding that there is no valid driving licence. Instead of doing so, the Tribunal has come to the conclusion that the appellant/Insurance Company has failed to prove their defence by summoning the Regional Transport Officer (RTO) to prove that the rider of the two-wheeler did not possess a valid driving licence. In this regard, the learned counsel for the appellant/Insurance Company submitted that the owner of the two-wheeler has not come forward to produce the licence. Hence, the question of summoning the RTO does not arise. Furthermore, when there is no licence, summoning

the RTO will not serve any useful purpose. But without considering these aspects, the Tribunal had fixed the liability on the appellant/Insurance Company.

7. Heard both sides and perused the materials available on record.

8. A perusal of the records shows that the Insurance Company issued notice to the owner and rider of the offending motor cycle to produce the driving licence and in spite of receipt of the said notice, the fifth respondent/owner of the vehicle did not produce the driving licence and also remained absent before the Tribunal and was set ex-parte and had not appeared even before this Court inspite of newspaper publication.

9. We find some force in the submissions made by the learned counsel for the appellant/Insurance Company. When a notice was issued by the Insurance Company, it is for the owner of the vehicle to produce the driving license, but the Tribunal held that it is for the Insurance Company to summon the RTO and produce the licence. Therefore, we are of the opinion that the finding rendered by the Tribunal is liable to be set aside on this score. The onus is on the appellant/Insurance Company to initially pay the compensation to the claimants and thereafter recover the same from the owner of the offending vehicle in question.

10. In the above context, it is useful to refer the decisions of the Supreme Court. In the decision of the Apex Court in the case of Shamanna Vs. Divisional Manager, The Oriental Insurance Company Limited, reported in 2018 (2) TN MAC 151 (SC) = 2018 ACJ 2163 (SC) = 2018 (9) SCC 650 and in the case of Kempaiah and others Vs. S.S.Murthy and another, reported in 2017 (1) TN MAC 737 (SC) = 2018 (12) SCC 706, the Honourable Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with liberty to recover the same from the owner of the vehicle. On the same issue, the decision of the Supreme Court in the case of National Insurance Company Limited Vs. Swaran Singh and others, reported in 2004 (3) SCC 297 was followed in the decision reported in 2018 (12) SCC 706 (cited supra).

11. In the facts and circumstances of the present case, the award of the Tribunal in fixing the liability on the appellant/Insurance Company and directing the Insurance Company to pay the award amount, is liable to be set aside. Accordingly, the same is set aside. Therefore, the Insurance Company is directed to pay the award amount to the respondents 1 to 4 / claimants at the first instance and then recover the same from the owner of the motor cycle bearing Registration No. TN 24 R 3577.

12. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the

appellant/Insurance Company and no cross objection or appeal is filed by the claimants. A perusal of the award also shows that it is not on the higher side.

13. In the result,

(i) The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The present appellant / Oriental Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal, less the amount if any already deposited, together with interest and proportionate costs, as awarded by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment. Thereafter, the appellant/Insurance Company is directed to recover the amount paid to the claimants from the fifth respondent/owner of the vehicle in question in accordance with law.

(iv) On such deposit being made, the claimants 1 and 2 (respondents 1 and 2) are at liberty to withdraw their share of compensation in accordance with law. The apportionment made by the Tribunal with regard to the share of compensation is confirmed herein. The share of the minor claimants, namely the third and fourth respondents herein, shall be deposited by the Tribunal in any one of the Nationalised Banks in an interest bearing Fixed Deposit Account, till they attain majority and on such Fixed Deposit, the mother, namely the first respondent-claimant is permitted to withdraw the quarterly interest thereon directly from the Bank.

(v) In other respects, the impugned award of the Tribunal remains unaltered.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

dpq/cs

To

1. Motor Accident Claims Tribunal,
(The Special District Judge),
Krishnagiri.

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

+1cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No. 19883

C.M.A.No.478 of 2018

VBA(CO)
GN(06/10/2020)