IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2436 of 2014
and
M.P.No.1 of 2014

M/s. United India Insurance Company Limited,
Katpadi Road,
Vellore. .. Appellant/2nd Respondent

Vs.

1.Rani

2.Anbu

3.Geetha

4.Minor. Sudha

5.Minor. Ashok Kumar
(Minor respondents 4 and 5 are represented by next friend, their mother Rani, 1st respondent herein)

6.N.Ravikiran .. Respondents/Petitioners 1 to 5 & 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.02.2011 made in M.C.O.P.No.194 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi, Vellore District.

For Appellant : Mr.J.Chandran
For RR 1 to 5 : Mr.F.Terry Chella Raja
for Ms.M.Malar

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 28.02.2011 made in M.C.O.P.No.194 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi, Vellore District.

3.The appellant is the 2nd respondent in M.C.O.P.No.194 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi, Vellore District. The respondents 1 to 5 filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of one Ramu, who died in the accident that took place on 25.04.2007.

4.According to respondents 1 to 5, on 25.04.2007 at about 02.15 P.M., while the deceased was traveling as a pillion rider in the motorcycle bearing Registration No. KA 21 E 3378 on Devarajpuram - Chinthakamanibenta main road at Chinthakamanibenta Village opposite to Chinnathambi house, the rider of the motorcycle rode the same in a rash and negligent manner and overturned the motorcycle and caused the accident. Due to the said impact, the said Ramu sustained injuries on his nose, mouth and left side head. Immediately after the accident, the said Ramu was taken to Government Hospital, Vaniyambadi and thereafter he was referred to CMC Hospital, Vellore. Inspite of treament, the said Ramu succumbed to injuries on 25.04.2007. Therefore, the respondents 1 to 5 filed the said claim petition against the 6th respondent and appellant-Insurance Company, being the owner and insurer of the motorcycle respectively.

5.The 6th respondent-owner of the motorcycle remained exparte before the Tribunal.

6.The appellant-Insurance Company, insurer of the motorcycle filed counter statement and denied all the averments made by the respondents 1 to 5. According to the appellant, the accident has not occurred as alleged by the respondents 1 to 5. The respondents 1 to 5 have to prove the manner of accident. The rider of the motorcycle was not possessing valid driving license at the time of accident. As per the death report of CMC Hospital, the rider of the motorcyle and the deceased were under the influence of alcohol at the time of accident. At the time of accident, there was no possibility for a Bull to cross the road. Neither the respondents 1 to 5 nor the 6th respondent-owner of the motorcycle has furnished the particulars of the insurance policy. The motorcycle belonging to 6th respondent was used for taking passengers for hire in breach of the terms and conditions of permit and insurance policy. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 5. The respondents 1 to 5 have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 5 are highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Muththan, eyewitness to the accident was examined as P.W.2 and 6 documents were marked as Exs.P1 to P6. The appellant-Insurance Company examined one Kumar, Senior Assistant as R.W.1 and marked 2 documents as Exs.R1 and R2.

8.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to 6th respondent and directed the appellant to pay a sum of Rs.4,67,000/- as compensation to the respondents 1 to 5 at the first instance and recover the same from the 6th respondent-owner of the motorcycle.

9.Against the said award dated 28.02.2011 made in M.C.O.P.No.194 of 2010, the appellant-Insurance Company has come out with the present appeal.

10.The learned counsel appearing for the appellant-Insurance Company contended that at the time of accident both the rider of the motorcycle as well as the deceased consumed alcohol and both the rider of the motorcycle and deceased are responsible for the accident. The rider of the motorcycle did not possess driving license at the time of accident. In the absence of driving license, the Tribunal erroneously ordered pay and recovery. The policy issued by the appellant is only an Act Policy. The deceased was a pillion rider and hence the respondents 1 to 5 are not entitled to any compensation from the appellant. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the respondents 1 to 5 contended that there is no evidence to show that the deceased was under the influence of alcohol and he is responsible for the accident. The rider of the motorcycle rode the motorcycle in a rash and negligent manner and overturned the motorcycle and caused the accident. Due to the injuries sustained in the accident, the said Ramu died. The Tribunal considering the judgment of this court, ordered pay and recovery and there is no error. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and perused the entire materials on record.

13.From the materials available on record, it is seen that it is the contention of the respondents 1 to 5 that the rider of the motorcycle rode the motorcycle in which the deceased was a pillion rider in a rash and negligent manner, overturned the motorcycle and caused the accident. Due to the injuries sustained in the accident, the pillion rider died. The motorcycle belonging to 6th respondent was insured with appellant and hence both the 6th respondent and appellant are liable to pay the compensation. On the other hand, it is the contention of the appellant that the rider of the motorcycle was not possessing driving license at the time of accident and the policy issued by them is only an Act Policy and appellant is not liable to pay the compensation to the risk of pillion rider. The Tribunal considering the materials placed before it came to the conclusion that the rider of the motorcycle did not possess driving license at the time of accident and relying on the judgment of this Court, ordered pay and recovery directing the appellant to pay the compensation to the respondents 1 to 5 at the first instance and recover the same from the 6th respondent-owner of the motorcycle. The appellant filed Ex.R2/policy issued by them for the offending vehicle. On perusal of Ex.R2/Policy, it is seen that the policy issued by them is only an Act Policy. The Tribunal failed to consider Ex.R2 and ordered pay and recovery directing the appellant to pay the compensation at the first instance and recover the same from the 6th respondent. In view of the fact that Policy issued by the appellant was only Act Policy, the appellant is not liable to pay the compensation. Further the Hon'ble Apex Court in the judgment reported in AIR 2020 SC 4453, [Beli Ram Vs. Rajinder Kumar], has held that when a rider/driver of the vehicle does not possess driving license, the Insurance Company is not liable to pay compensation. In the present case, the rider of the motorcycle did not posses driving license at the time of accident. In view of the judgment of the Hon'ble Apex Court, cited supra, the appellant is not liable to pay the compensation and the award of the Tribunal directing the appellant to pay the compensation at the first instance is liable to be set aside and it is hereby set aside. Therefore, the 6th respondent-owner of the motorcycle is liable to pay the compensation to the respondents 1 to 5.

14.As far as quantum of compensation is concerned, the Tribunal considering the entire materials on record, has awarded a sum of Rs.4,67,000/- as compensation to the respondents 1 to 5, which is not excessive and hence the same is confirmed.

15. In the result, this Civil Miscellaneous Appeal is allowed and a sum of Rs.4,67,000/- awarded by the Tribunal as compensation to the respondents 1 to 5, along with interest and costs is confirmed. The 6th respondent-owner of the motorcycle is directed to deposit the award amount along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.194 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi, Vellore District. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective

share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 4 and 5 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 4 and 5 attain majority. On such deposit, the 1st respondent, being the mother of the minor respondents 4 and 5 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 4 and 5. It is made clear that if any amount is deposited by the appellant-Insurance Company and the same was withdrawn by the respondents 1 to 5, the appellant is not entitled to recover the same. However, the appellant is permitted to recover the said amount only from the 6th respondent. The appellant-Insurance Company is permitted to withdraw the amount, if any deposited to the credit of M.C.O.P.No.194 of 2010 before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Vaniyambadi,
Vellore District.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.40237
+1cc to Ms.M.Malar, Advocate, S.R.No.40461

C.M.A.No.2436 of 2014

PA(CO)
CB(31/08/2021)