

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.982 of 2014

The Oriental Insurance Co.Ltd.,
Divisional Office, A.A.Complex, First Floor,
No.159, Kumaran Road,
Tiruppur - 641 601.Appellant/3rd Respondent
vs.

1.N.Palani
2.N.Umapathy
3.N.Parammeshwari
4.N.Usha
5.N.Sakila
6.N.Akila
7.N.R.Palani
8.Chinnappan

... Respondents/Petitioners and
1st and 2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying an appeal against the judgment and decree made in MACT O.P.No.512 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Harur, dated 04.07.2012.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Mr.K.Thiruvengadam for R1 to R6

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 04.07.2012, passed by the Motor Accident Claims Tribunal, Subordinate Judge, Harur, in M.C.O.P. No.512 of 2009.

2. Heard Mr.M.Krishnamoorthy, learned counsel for the petitioner and Mr.K.Thiruvengadam, learned counsel for the respondents 1 to 6.

3. The appellant has not challenged the quantum of compensation Award by the Tribunal, but they have challenged only the non-grant of pay and recovery rights to them. The Tribunal under the impugned Award has directed the appellant to pay the respondents 1 to 6 a sum of Rs.11,62,000/- as compensation together with interest and cost for the death of

M.Natesan, as a result of an accident caused by a vehicle, insured with the appellant.

4. The details of the Compensation Award by the Tribunal are as follows:

Loss of Pension 54,000 x8	-	Rs.4,32,000/-
Loss of Salary earning of the deceased	-	Rs.7,09,296/-
Love and affection for the defendants 1 to 4	-	Rs.10,000/-

Transport expenses	-	Rs.5,000
Funeral Expenses	-	Rs.5,000/-

Total - Rs.11,61,296/-

Rounded off to Rs.11,62,000/-

5. The only contention raised by the appellant/Insurance Company in this appeal is that the Rider of the motor cycle (insured vehicle) was not possessing driving license and hence they are not liable to compensate the claim.

6. Before the Tribunal, the appellant/Insurance Company has filed four documents which were marked as Exs.R1 to R4 and two witnesses were examined on their side namely RW1 - the Assistant from the Regional Transport office and RW2 - an Assistant, employed with the appellant / Insurance Company. The RTO official has deposed before the Tribunal that the rider of the Motor Cycle, Chinnappan, who is 8th respondent in this appeal was not possessing a driving license. The appellant / Insurance Company has also called upon the respondents 7 and 8 in this appeal, who are the Rider and Owner of the vehicle respectively, to produce a copy of the driving license by notice dated 28.04.2010, which was marked as Ex.R2, before the Tribunal. The said notice was also duly acknowledged by the rider of the motor cycle namely Mr.Chinnappan (insured) and the acknowledgment card was also marked as Ex.R4 before the Tribunal. The notice sent to the owner of the motor cycle (insured) was returned and the returned cover was also marked as Ex.R3 before the Tribunal. The owner and rider of the vehicle have remained exparte before the Tribunal.

7. A consistent stand has been taken by the appellant / Insurance Company that the rider, the 8th respondent herein was not possessing a driving license at the time of the accident. The same is also established as seen from Exs.R2 to R4 as well the deposition of the RW1, the RTO official. Before the Tribunal, they have categorically deposed that the rider of the motor cycle, 8th respondent herein was not possessing a driving license at the time of the accident. The Tribunal has also given a finding in the impugned Award that the rider of the motor cycle namely the 8th respondent was not possessing a

driving license. In spite of aforementioned oral and documentary evidence produced by the appellant / insurance company which conclusively establishes that the rider of the motor cycle, the 8th respondent herein was not possessing a driving license at the time of the accident, the Tribunal has erroneously given a finding that the appellant / Insurance Company has not been able to prove that the rider of the motor cycle was not possessing a driving license. The said finding of the Tribunal is absolutely erroneous as the evidence placed by the appellant / Insurance company conclusively establishes that the rider of the motor cycle 8th respondent was not possessing driving license at the time of the accident. The respondent Nos.7 and 8 have also remained exparte before the Tribunal, despite the 7th respondent the owner of the vehicle having received a communication from the appellant / Insurance Company requesting him to produce the copy of the driving license of the rider, the 8th respondent herein. The Tribunal ought have considered all these undisputed facts and ought have granted pay and recovery rights to the appellant / Insurance Company. It is settled law that in case of the rider of a vehicle was not possessing a driving license at the time of accident, pay and recovery rights will have to be necessarily granted to the Insurance Company. But in the case on hand, despite the evidence available on record, the Tribunal has erroneously not granted pay and recovery rights to the appellant.

8. For the foregoing reasons, the appeal filed by the Insurance Company is partly allowed by directing the appellant to deposit the compensation amount assessed by the Tribunal under the impugned Award together with accrued interest if not already deposited within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to recover the said amount by filing an execution petition against the 7th respondent/owner before the Tribunal. On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount directly to the bank accounts of the respondents 1 to 6/claimants, through RTGS, within a period of two weeks thereafter. No costs.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Harur.

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

C.M.A.No.982 of 2014

SR(CO)
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