IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4344 of 2019
and
C.M.P.No.24765 of 2019

M/s.Reliance General Insurance
Company Limited,
Reliance Towers,
No.6, Haddows Road,
Chennai - 600 006. ..Appellant/2nd Respondent

Vs.

1.Alamelu
2.Indusekar ..Respondents 1 & 2/Petitioners
3.Mr.Gangadharan
..3rd Respondent/Respondent No.1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.3116 of 2016, dated 31.01.2019, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Small Causes Court, Chennai.

For Appellant : Mr.M.B.Gopalan
For M/s.M.B.Gopalan Associates

For Respondent : M/s.Maithri Mahalingam
[For R1 & R2]
R3-No such person

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 31.01.2019 passed in M.C.O.P.No.3116 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Small Causes Court, Chennai.

2. The learned counsel appearing on behalf of the appellant mainly contended that the Tribunal has wrongly rejected the defence of the appellant regarding the fact that the Driver, who has driving the vehicle, which was met with an accident, was not

possessing driving license and on the ground that proof of service of notice was not produced by the appellant. When the owner of the Vehicle and driver did not appear or proved that the driver, who was driving the vehicle, which met with an accident, had no valid license, then the Tribunal ought to have considered for Pay and Recovery by adopting the principles laid down by the Apex Court of India in Nanjappan's Case. The Victim in the accident was a five year old child and therefore, the award of compensation is excessive. The compensation of a sum of Rs.9,00,000/-(Rupees Nine Lakhs only) is excessive and therefore, the quantum is also to be interfered with by this Court.

3. The learned counsel for the appellant is of the strong opinion that the Tribunal has committed an error in not accepting the fact that the Driver was not possessing a Driving License and the quantum of compensation is also excessive.

4. The learned counsel appearing on behalf of the respondents/claimants disputed the contentions by stating that the appellant/Insurance company has not proved the defects regarding the driving license of the Driver. In the absence of any valid proof that the driver of the vehicle was not possessing the driving license, the Tribunal is right in rejecting the defence taken by the appellant/Insurance company before the Tribunal. As far as the quantum of compensation is concerned, the learned counsel for the respondents is of an opinion that the Tribunal elaborately considered the age of the deceased and the manner, in which, the compensation is to be considered for the minor deceased. The Tribunal has considered the judgments of the Hon'ble Supreme Court of India in the case of National Insurance Company Limited Vs. K.Sugumar, reported in 2017 (2) TN MAC 805 and further, in the case of Kishan Gopal and another Vs. Lola, reported in 2013 (2) TN MAC 358 (SC). Therefore, the quantum fixed by the Tribunal is proper and the appeal is to be dismissed.

5. The accident occurred at Madhur to Padur Road, Uttramerur Taluk, Kancheepuram District on 09.03.2016 at about 5.00 p.m. and the injured died due to multiple injuries. D-5 Salavakkam Police Station filed a case in Crime No.89/2016 and the Claim Petition was filed, seeking the compensation of a sum of Rs.15,00,000/-. The Tribunal considered the issues and documents. As far as the negligence aspect is concerned, the Tribunal arrived a conclusion that the accident occurred due to the rash and negligent act of the rider of the Motor Vehicle bearing Registration No.TN-25-AT-8472. The 1st respondent, before the Tribunal one Mr.Gangadharan remained exparte and the 2nd respondent has not produced any proof regarding the driving license. However, perusal of the fact as well as the counter

filed by the Insurance company, it is clearly stated that the driver did not have driving license to ride a MCWG. The owner of the vehicle has not produced any document to show that the driver was possessing the driving license. In the absence of any such proof, the Tribunal cannot draw a factual inference regarding the driving license, which is a vital document to decide the issue regarding the liability.

6. In the present case, the appellant/Insurance company has taken a defence before the Tribunal. Neither the Driver of the Vehicle nor the owner of the Vehicle had produced any evidence, regarding the driving license. Admittedly, the 1st respondent before the Tribunal, did not contest the case. Admittedly, there was a policy coverage and therefore, the valid insurance policy was issued by the Insurance company at the time of accident. The appellant / Insurance company pleaded before the Tribunal that the rider of the Motor cycle bearing Registration No.TN-25-AT-8472 has no driving license at the time of accident. To establish the same, the Insurance company had examined Inspector of D5 Salavakkam Police Station and their Legal Executive as R.W.1 & R.W.2. It has been mentioned in Ex.R.1, the Xerox copy of the Inspection Report of Motor vehicles that C/R issued, in Ex.R2, the Xerox copy of the charge sheet, it has not been mentioned. The copy of the notice sent to Mr.Gangadharan/ the 1st respondent before the Tribunal was marked as Ex.R5. However, there is no proof for receiving the same by the 1st respondent. On that ground, the Tribunal had negatived the defence of no license.

7. This Court is of the considered opinion that when the Inspector of Police and the Legal Executive could able to establish that there was no driving license and they have issued a notice to the driver properly. Mere non-receipt is insufficient to arrive a definite conclusion that the driver of the vehicle was possessing a driving license, factual inference cannot be drawn in the matter of a valid driving license. In the absence of driving license or non production of driving license by the driver or the owner of the vehicle, it is to be construed that there is no driving license at all. Contrarily, the Tribunal cannot arrive a conclusion that the proof of service of notice has not been produced by the Insurance company and therefore, the defence regarding the no driving license cannot be considered at all. In accident claim, the Tribunals are bound to consider, whether a valid driving license is produced before the Court of law for consideration. Neither the authority nor the driver or owner of the vehicle has produced the driving license, then the legal presumption would be the driver, who was driving the vehicle, which met with an accident, was not possessing the driving license at all. This being the possible inference, which can be drawn for the purpose of deciding the

issue, this Court is of the considered opinion that the Tribunal has committed an error in arriving a conclusion that the appellant / Insurance company had not established or proved the ground of no driving license. In fact, for the purpose of deciding the issue, the Insurance company had established the fact that the driver was not possessing the driving license and the issue is answered accordingly.

8. As far as the quantum of compensation is concerned, this Court is of the considered opinion that even in case of considering the grounds, this Court cannot interfere by reducing a small amount from the compensation. However, the method and the procedure adopted by the Tribunal cannot be said to be perverse and under these circumstances, this Court is not inclined to consider the grounds raised by the appellant / Insurance company to interfere with the quantum of compensation and this Court is of the opinion that the quantum of compensation is proper and the Tribunal had followed the procedure for arriving the quantum of compensation.

9. For all these reasons, this Court is of the opinion that the appellant is entitled for Pay and Recovery. When the appellant could able to establish that the driver of the vehicle, which met with an accident, was not having driving license, then the Insurance company is liable to pay the compensation at the first instance and recover the compensation from the owner of the vehicle by following the procedures as contemplated.

10. Accordingly, the award of the Tribunal regarding the liability is modified and quantum of compensation is confirmed. Thus, the appellant / Insurance company is directed to pay the award amount within a period of 12 weeks from the date of receipt of a copy of this judgment and thereafter, recover the award amount from the owner of the vehicle as per law.

11. With these modifications, the Civil Miscellaneous Appeal in C.M.A.No.4344 of 2019 stands allowed in part. No costs. Connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Special Subordinate Court No.2,
Small Causes Court, Chennai.

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

C.M.A.No.4344 of 2019

MG(CO)
SP(02/02/2021)