IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2821 of 2017
&
CMP.No.16122 of 2017

Bharti AXA General Insurance Co. Ltd.,
First Floor, Divya Trade Centre,
No.2, Brindavan Road, Fairlands,
Salem - 636 016.

.... Appellant/2nd Respondent

Vs.

1. Ganesan
2. Uma
3. Poongodi ...Respondents 1 to 3/Petitioners
(Disabled person)
4. Silambarasan ... 4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.03.2017 made in MCOP No.1926 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Salem.

For Appellant : Mr.S.Arunkumar

For R1 to R3 : Mr.S.P.Yuvaraj
R4 : NA

J U D G M E N T

This appeal is preferred by the appellant Insurance Company against the award of a sum of Rs.4,66,000/- towards compensation for the death of one Thangammal, who died in a motor vehicle accident.

2. The case in brief, is as follows:-

On the fateful day, i.e., on 23.06.2015 at about 20.00 hours, the deceased Thangammal was proceeding from North to South direction as a pedestrian in the Mamangam to Jagirreddypatty Road, near KPC Complex Salem. At that time, the Goods Auto bearing Registration No. TN 36 K 2625, belonging to the fourth respondent and insured with the appellant Insurance Company, came in a rash and negligent manner and hit the deceased Thangammal from behind. Due to the said impact, the deceased sustained grievous injuries and she later on, died in the hospital. The husband and two daughters of the deceased, being the surviving legal heirs, filed a claim petition before the Tribunal, seeking compensation of Rs.20,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.4,66,000/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance company has submitted that the deceased had also contributed to the accident and hence fastening the liability by the Tribunal on the appellant alone is erroneous. He further submitted that the Tribunal has failed to note that the driver of the Goods Auto which was insured with the appellant was not having valid driving license at the time of accident. He also submitted that in any event, the award of the Tribunal is disproportionate and it needs significant reduction.

4.Per contra, the learned counsel appearing for the respondents 1 to 3/claimants has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

5.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

6.A perusal of the award of the Tribunal would reveal that Ex.P1-First Information Report was registered against the driver of the goods auto bearing Registration No.TN-36-K-2625 stating that he was responsible for the accident, which corroborates with the evidence of P.W.1 & P.W.2. As per Ex.R2 -Insurance policy, it covers the risk of the offending vehicle. Placing reliance on those materials and evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent act on the part of the driver of the Goods Auto insured with the appellant insurance company and accordingly fixed the liability on the Appellant Insurance Company. But while coming to such conclusion, the Tribunal failed to note that the driver of the Goods Auto was not possessing the valid driving license at the time of accident. It is the submission of the learned counsel for the appellant that the Tribunal ought to have appreciated the evidence let in on the side of the appellant and ought to have noted the fact that the driver was charged under Section 3 of the Motor Vehicles Act and the fourth respondent has violated Section 5 of the Motor Vehicles Act and the terms of policy conditions, since the driver was not possessing the valid driving license. It is also submitted that the Tribunal has miserably failed to frame an issue on driving license, in spite of the defence taken by the appellant, examining R.Ws.1 and 2 and marking Exs.R1 to R5. On a perusal of the judgment of the Tribunal, it is seen that the Tribunal has not discussed the issue with regard to non-possession of driving license by the driver of the vehicle. The Tribunal has not appreciated the evidence let in on the side of the Insurance Company, in this connection. Taking note of the facts and circumstances of the case, this Court is of the considered view that the Tribunal ought to have permitted the appellant Insurance Company to pay the compensation to the claimants and thereafter, recover the same from the owner of the vehicle, as there was a breach of policy conditions, by not possessing the valid driving license by the driver of the Goods Auto. Accordingly, in respect of liability, the judgment passed by the Tribunal directing the Insurance Company to pay the compensation, is modified to the effect that the Insurance Company, shall, at the first instance, pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle, the fourth respondent herein.

7.With regard to the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses, Legal Heirship Certificate, Post Mortem Certificate and Death Certificate of the deceased and all other aspects in a proper perspective and has awarded the compensation amount under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

8.The appellant Insurance Company is directed to deposit the compensation amount along with interest and costs, as awarded by the Tribunal, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle, in accordance with law. On such deposit being made, the respondents 1 to 3 / claimants are permitted to withdraw the same on making proper application before the Tribunal.

9.Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs. Consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   I Additional District Judge, Salem.

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

+1cc to Mr.S.Arunkumar, Advocate Sr.26933

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srg 06/05/2021