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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA NO.1726 OF 2007

The General Manager,
United India Insurance Company,
No.24, Whites Road,
Chennai-600014

...Appellant/2nd Respondent

..vs..

1. Mumtaj Begam
S/o.Abdul Salam

...1st Respondent/Petitioner

2. Muthukumaran
S/o.Renganathan

...2nd Respondent/1st Respondent

3. Abdul Salam
S/o.Sulaiman
(R2 & R3 are exparte
before Tribunal)

...3rd Respondent/3rd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.08.2001 made in M.C.O.P.No.465 of 1999, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Nagapattinam.

For Appellant : Ms. Shobana
for Mrs.R.Sreevidhya

For Respondents : Notice unserved

J U D G M E N T

Dissatisfied with the judgment and decree, dated 27.08.2001, passed by the tribunal awarding compensation of Rs.1,00,000/- along with interest at the rate of 9% per annum, the Insurance Company is before this Court to set aside the judgment and decree by the tribunal.

2. It is the case of the claimant/1st respondent herein that on 11.03.1998 at 1.15 p.m at Thiruthuraipoondi to Nagai Road, Opposite to Murugaiyan Rice Mill, the deceased Sirajudeen was standing in the north side of the Road. At the time, the driver of the vehicle/2nd respondent herein bearing Reg.No. TN02 -A-9663



came from east to west in a rash and negligence manner and dashed against the deceased boy, due to which, he sustained severe injury. In spite of best treatment, he was declared dead on the next day i.e. on 12.03.1998 at 9 a.m. The mother of the deceased/1st respondent herein has filed a claim petition for compensation of Rs.2,00,000/- against the owner and insurer of the vehicle.

3. The tribunal after analyzing both oral and documentary evidences, has fixed the negligence on the rider of the motor cycle bearing Reg.No. TN02 -A-9663 and being insurer of the said vehicle, directed the insurance company to pay the total compensation of Rs.1,00,000/- along with interest at the rate of 9% p.a from the date of petition till realization.

4. The learned counsel appearing for the appellant/ Insurance Company has submitted that the award passed by the tribunal is contrary to law, weightage of evidence and against all the probabilities of the case. The learned counsel for the appellant/Insurance Company has further submitted that the tribunal has failed to note that the driver Suresh was not duly licensed to drive a two wheeler, as such the appellant/insurance company cannot be made liable to pay the compensation. Hence prayed to set aside the award passed by the tribunal only as against the appellant/insurance company.

5. Heard the learned counsel appearing for the appellant/ Insurance Company and perused the materials available on record.

6. Earlier this Court ordered notice and private notice to the respondents on 12.09.2007 and 26.07.2010. Subsequently, when the case was taken up for hearing, fresh notice was ordered to the 1st respondent on 17.09.2020. It is seen from the records that notice was served to the 1st respondent, but none appeared on behalf of the 1st respondent. Despite service of notice, none appeared for the 1st respondent. This Court by taking note of the pendency of the appeal from the year 2007, decided to dispose of the case on merits.

7. It is seen from the award, before the Tribunal, two witnesses P.W.1 & P.W.2 were examined and Exhibits P1 to P5 were marked on the side of the claimant/1st respondent herein, whereas R.W.1 was examined and Ex.R1 to R3 were marked on the side of the 2nd respondent/appellant herein.

8. The main ground raised by the learned counsel for the appellant/insurance company is that the rider of the two wheeler did not possess valid driving licence at the time of the accident, hence the liability fixed on the appellant/insurance company is erroneous.



9. On a perusal of the evidence in the award passed by the tribunal, it is seen that the said objections of the insurance company was considered and elaborately discussed by the tribunal. The driving license was marked as Ex.R3 before the tribunal, which reveals that the rider of the two wheeler was holding valid driving license for driving Light Motor Vehicle. Further, the reply received from the Regional Transport Authority, Tiruvaur also confirms that the driving license issued to the rider of the motor cycle/ 2nd respondent herein was valid till 18.11.2009. Therefore, as per Ex.R3/Policy, on the date of accident i.e., 11.03.1998, the subsisting policy was in existence and the rider of the two wheeler (M 80) was not disqualified from riding motor cycle. Hence, being the insurer of the said vehicle, the insurance company is liable to pay the compensation amount.

10. In view of the clear discussions made by the tribunal and in the absence of any materials to prove the grounds raised by the appellant/insurance company, this Court is of the view that the grounds raised by the appellant are unsustainable and liable to be dismissed. Accordingly, this Court confirms the liability fixed by the tribunal on the insurance company. Insofar as quantum of compensation, there is no dispute by the appellant/insurance company, hence the compensation awarded by the tribunal at Rs.1,00,000/- along with interest is confirmed.

11. In the result, this Civil Miscellaneous Appeal preferred by the appellant/insurance company is dismissed and the compensation awarded by the Tribunal at Rs.1,00,000/- together with interest from the date of petition till the date of deposit is confirmed. The appellant/insurance company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
(Motor Accidents Claims Tribunal),
Nagapattinam.

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

+1cc to M/s.Sree Vidhya, Advocate, S.R.No.10802

CMA.No.1726 of 2007

JP-II (CO)
RGA (28/10/2021)