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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.2.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.470 of 2011

M.P.No.1 of 2011

M/s.United India Insurance Co. Ltd.,
D.O.II (Ist Floor), 104-A,
Peramanur main road,
Salem 636 007.

...Appellant / 5th Respondent

..Vs..

1.Rathinasamy

2.Janaki

3.Karuppusamy

... Respondents 1 to 3/Petitioners

4.Sakthivel (Driver)

5.G.Maragatham (Owner)

6.A.S.Sathish (Driver)

7.D.Murugesan (Owner)

8.M/s.The New India Assurance Co. Ltd.

5/1/333, Annapoorna Building,

Ooty Main road, Mettupalayam-641 301

Coimbatore District.

(R4 to R7 set Exparte in the

Lower Court)

... Respondents 4 to 8/
Respondent-1 to 4 & 6

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 9.10.2007 made in M.C.O.P.No.782 of 2004 on the file of I Additional District Court (Motor Accident Claims Tribunal), Coimbatore.

For Appellant : Mrs.R.Sreevidhya

For Respondent No.1 to 3 : Mr.P.Krishnan

For Respondent No.8 : Mrs.S.R.Sumathy

For Respondent No.4 to 7 : Notice unserved

JUDGMENT

Brief facts of the case is as follows:

On 24.05.2003 when the deceased Dhanapal repairing the vehicle bearing registration No.TN-10-A 3103 at Periya Seeragapadi yerikarai bus stop at Sankagiri - Salem road at the left side of the road by lying on the ground under the said



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vehicle, a lorry bearing registration No.TDL 7787 driven by the first respondent in a rash and negligent manner and with over speed in the same place hit against the vehicle standing in the jack and dragged the said vehicle to a distance of 50 feet, thereby caused accident, resulting in the deceased Dhanapal sustained multiple fatal injuries all over the body and he died on the way to Salem Government hospital. The legal heirs of the deceased have filed a claim petition before the tribunal claiming compensation to the tune of Rs.10,00,000/- from the respondents/Insurance companies and the owner of the vehicles.

2. The respondents 4 to 7 owners and drivers of the vehicle remained exparte before the tribunal. On the side of the claimants, P.W.1 to 3 were examined and Ex.P1 to 10 were marked. On the side of the respondent, no witness was examined or any exhibits were marked.

3. Tribunal, based on the oral and documentary evidence adduced by both sides, awarded a sum of Rs.3,60,500/- as compensation to the claimants along with interest at the rate of 7.5% per annum from the date of claim petition till realization. The tribunal while awarding compensation to the claimants, has held that appellant/Insurance Company is liable to pay compensation to the claimants.

4. Challenging the said award, the appellant/Insurance Company has filed the present appeal both against the liability fastened against the Insurance Company as well as the quantum of compensation awarded by the tribunal.

5. Heard the learned counsel appearing for the appellant/Insurance Company, the learned counsel appearing for the respondents/claimants, learned counsel appearing for the 6th respondent/Insurance Company and perused the materials available on record.

6. According to the counsel appearing for the appellant/Insurance Company, the driver of the insured vehicle at the time of accident, had no valid driving licence and therefore, the Insurance company is not liable to pay any compensation to the claimants. Tribunal without appreciating the contention raised by the appellant in proper perspective, has fixed the liability on the appellant/Insurance company. According to the learned counsel appearing for the appellant, there is no material has been placed by the claimants before the tribunal to establish that the driver of the insured vehicle possessed a valid driving licence. Therefore, the finding of the tribunal against the Insurance Company is liable to be set aside. However, there is no dispute raised by the appellant in respect of the quantum of compensation awarded by the tribunal.



7. On a perusal of the award passed by the tribunal, there is no such plea raised before the tribunal. The tribunal has discussed negligence aspect on the part of the driver of the vehicle. Further, there is no evidence placed before this Court that the appellant has disproved the validity of the driving licence of the driver of the insured vehicle. Considering at any angle, there is no such issue raised before the tribunal and also, the appellant has not produced any material to prove that the aforesaid ground raised before the tribunal. Therefore, the contention raised by the appellant/Insurance company cannot be sustained and the same is liable to be rejected.

8. Consequently, the appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge,
(Motor Accidents Claims Tribunal)
Coimbatore.

2.The Section Officer,
V.R.Section,
Madras High Court, Chennai-104.

+1cc to Mr.P.Krishnan, Advocate, S.R.No.10616

+1cc to M/s.R.Sree Vidhaya, Advocate, S.R.No.10799

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KV(CO)
SB(02/09/2021)