IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1713 of 2016
and
C.M.P.No.12928 of 2016

The Manager,
Bharti AXA General Insurance Co. Ltd.,
1st Floor, Ferns Icon, Survey No.28, Doddanakudi Village,
K.R.Puram, Hobli, Bangalore-37,
Karnataka State. …Appellant/2nd Respondent

Vs.

1.Chinnaponnu …1st Respondent/Petitioner

2.Mrs.V.Radha …2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.06.2015 made in M.C.O.P.No.1005 of 2013 on the file of Motor Accident Claims Tribunal, Special District Judge, Krishnagiri.

For Appellant : Mr.K.Poomalai

For Respondents : Mr.Mukund R.Pandiyan for R1
Mr.S.Nambirajan for R2.

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award dated 30.06.2015 passed by the Motor Accidents Claims Tribunal, Special District Judge, Krishnagiri in MCOP No.1005 of 2013.

2. Heard Mr.K.Poomalai, learned counsel for the appellant/ Insurance Company and Mr.Mukund R.Pandiyan, learned counsel for the first respondent and Mr.S.Nambirajan, learned counsel for the second respondent.

3. The appellant/Insurance Company has challenged the impugned award on the following grounds :

a) They are questioning their liability on the ground that the driver of the insured vehicle was not possessing driving licence at the time of accident.

b) The quantum of compensation awarded by the Tribunal is excessive.

4. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

5. With regard to the 1st contention is concerned, admittedly, the driver of the insured vehicle was not possessing a driving licence at the time of accident. The driving licence has not been marked as an exhibit before the tribunal. The Regional Transport Officials (RW1) Hosur, has also been examined and has also deposed that no driving licence was issued by their office in favour of the driver of the insured vehicle. The appellant/Insurance Company has also issued notice to the owner of the vehicle as well as driver which was marked as Ex.R3 and duly acknowledged by the owner of the vehicle which was marked as Ex.R4 before the Tribunal. Despite the said notice, the owner of the vehicle failed to produce the driving licence. The owner of the vehicle has also remained exparte before the Tribunal. Therefore, it is very clear that the owner of the vehicle was not possessing a driving licence at the time of accident. Hence, in view of the policy violation, the Tribunal ought to have granted pay and recovery rights to the appellant but has erroneously failed to do so under the impugned award. Hence, pay and recovery right is granted by this Court to the appellant/Insurance Company and the appellant is directed to pay the compensation amount and recover the same from the owner of the vehicle namely, the 2nd respondent herein. Therefore, the first contention raised by the appellant is answered in favour of the appellant.

6. Insofar as the next contention raised by the appellant, questioning the quantum of compensation is concerned, this Court is of the considered view that the over all compensation of Rs.4,90,000/- awarded by the Tribunal to the 1st respondent/claimant cannot be considered to be excessive for the following reasons:

The 1st respondent/claimant is the mother of the deceased minor Divya, aged 11 years at the time of accident who was a student. The Tribunal has fixed her notional annual income at Rs.40,000/- p.a. which cannot be considered to be excessive as the accident happened on 28.01.2012. The Tribunal has also rightly deducted 50% towards the personal expenses of the deceased. The assessment of the compensation by the Tribunal towards loss of future income at Rs.3,60,000/-, towards loss of love and affection for the 1st respondent/claimant at Rs.1,00,000/-, Rs.10,000/-towards transportation and Rs.20,000/- towards funeral expenses cannot be considered to be excessive.

Thus, the total compensation of Rs.4,90,000/- awarded by the Tribunal to the 1st respondent/claimant cannot be considered to be excessive and the same is confirmed by this Court.

7. Except for granting pay and recovery rights to the appellant/Insurance Company, the other ground raised by the appellant / Insurance Company in this appeal is rejected by this Court.

8. In the result, the appeal is partly allowed by granting pay and recovery rights to the appellant / Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

9. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.1005 of 2013 on the file of Motor Accident Claims Tribunal, Special District Judge, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this Judgment and then recover the same from the owner of the vehicle, namely, the 2nd respondent herein on the same cause of action. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent /claimant, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssn

To
1. The Motor Accident Claims Tribunal,
   Special District Judge, Krishnagiri.

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

+1cc to M/s.K.Poomalai, Advocate, S.R.No.26885/21
+1cc to M/s.Mukund R.Pandiyan, Advocate, S.R.No.27093/21

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and C.M.P.No.12928 of 2016

GP(CO)
RGA(07/09/2021)