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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.367 of 2013 and
M.P.No.1 of 2013

The Divisional Manager
New India Assurance Company Limited,
Divisional Office, J.N. Street,
Pondicherry 605 002 ... Appellant / second respondent

Vs.

1. Manjula ... First respondent/ Petitioner

2. C.Thangarasu ... Second respondent/first respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 02.06.2011 passed in MCOP No.59 of 2008 by the First Additional Subordinate Judge, Motor Accident Claims Tribunal, Cuddalore.

For Appellant : Mr.K.Vinoth for
M/s.Elveera Ravindran

J U D G M E N T

Aggrieved over the orders passed by the Tribunal, the New India Assurance Company has filed the present appeal.

2. The claimant/ first respondent herein has filed a claim petition before the Tribunal seeking compensation of Rs.10,00,000/- for the death of her son in a road accident that took place on 17.09.2007.

3. The brief case of the claimant is as follows: On 17.09.2007 at about 7.00 p.m, the claimant and her deceased son

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namely Kalaiselvan were walking from Sandhai at Avatti to their home and while nearing Govindasamy's house at Avatti, a tractor bearing registration No. TN-31-S-9242 and trailer bearing registration No.TN-31-V-3570 came from opposite direction, hit the deceased and he succumbed to the injuries. According to the claimant, the rash and negligent driving of the driver of the Tractor and Trailer was the cause of accident and since the first respondent insured his vehicle with the second respondent, both of them are liable to pay compensation to the claimant.

4. The Insurance company has resisted the claim petition by filing the counter affidavit.

5. Before Tribunal, the claimant was examined as PW1 and Ex.P1 to Ex.P7 were marked. On the side of the second respondent, one witness was examined as RW1 and Ex.R1 to Ex.R3 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.4,10,000/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency (1500x12x20)	3,60,000
2	Love and affection	40,000
3	Transportation charges	5,000
4	Funeral expenses	5,000
5	Total	4,10,000

Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeal to set aside the same.

7. Heard the learned counsel for the appellant. The appellant has not taken steps to serve notice to the respondents and hence, this case is posted today for final hearing before this court.

8. The learned counsel appearing for the appellant has raised the ground of negligence as well as the liability. The contention of the counsel of the appellant is that at the time of

accident, only the Tractor was insured with them and the Trailer was not insured and since there is no contract between the owner of the Trailer and the insurance company, they are liable to pay compensation. It is further contended by the counsel for the appellant that there is a violation of the terms and conditions of the insurance policy and hence, the orders passed by the Tribunal is liable to be set aside.

9. As far as the negligence aspect is concerned, the Tribunal has elaborately discussed and found that the negligence is only on the part of the driver of the offending insured vehicle and due to his rash and negligent driving, the accident was occurred and the minor son of the claimant was died on spot. The claimant, mother of the deceased, who was a eyewitness to the occurrence while deposing evidence as PW1, has clearly stated that the driver of the Tractor and Trailer was rash and negligent in driving his vehicle. Further, there is no contra evidence placed before the Tribunal to disbelieve the evidence of the claimant. In the absence of any contra evidence, this court opines that the findings of the Tribunal that the negligent is only on the part of the driver of the vehicle, is liable to be confirmed.

10. As far as the liability is concerned, the contention of the appellant is that there is a violation of policy condition and that the validity of the license of the driver, who drove the tractor and trailer was expired on 10.08.2007 i.e. before the date of accident and hence, the insurance company is not liable to pay compensation. The above license was marked as Ex.P4. The Tribunal has found that on the date of accident, driver was having a valid license to drive the vehicle and since the Tractor was insured with the appellant/insurance company, they are liable to pay compensation.

11. At this juncture, it is relevant to rely upon a decision rendered by the Honourable Supreme Court in Kempaiah and others Vs. S.S.Murthy and another reported in 2017(1) TNMAC 737 (SC), wherein, it is held thus:

> 11. In National Insurance Co. Ltd. Vs. Swaran Singh and others, 2004 (1) TN MAC 104(SC): 2004(3) SCC 297, this court has inter alia, observed as follows:
>
> " The breach of policy condition e.g.

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disqualification of the Driver or invalid driving licence of the driver, as contained in sub-Section (2) (a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time"

In the light of the above decision, the insurance company cannot escape from its liability to pay valid compensation to the claimants, merely because the driver did not possess valid licence. Further, the Tribunal had not found any fault in respect of the violation of the terms and conditions of the policy. If there is any violation of the policy condition, at this stage, this court cannot go into that aspect in the present appeal. It is to be noted that the appellant has not taken any steps to serve the notice to the owner of the vehicle in the present appeal. Therefore, it is for the insurance company to workout its remedy for recovering the compensation from the owner of the vehicle, according to law.

12. In fine,

(i) The civil miscellaneous appeal is dismissed. No costs. Connected miscellaneous petition is closed.

(ii) The appellant is directed to deposit the compensation amount, as awarded by the Tribunal, with interest, from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The First Additional Subordinate Judge
Motor Accident Claims Tribunal,
Cuddalore.

Copy To:

The Section Officer
V.R.Section, High court
Madras.

+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.10113

CMA. No.367 of 2013 and
M.P.No.1 of 2013

SRA(CO)
SB(14/09/2021)