IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.NO.245 OF 2016
AND
C.M.P.NO.1974 OF 2016

The Divisional Manager,
The United India Insurance Co. Ltd.,
No.46-51, T.K.M.Complex,
Katpadi Road, Vellore,
through
United India Insurance Co. Ltd.,
Motor Third Party Service Hub.,
AR Plaza, 35-37, 45 ft Road Extn,
Balaji Nagar, Saram,
Puducherry – 605 011. ...Appellant / 2nd Respondent

..Vs..

1.Rani

2.Surrendar

3.Saravanan

4.Minor Sangeetha
(Minor represented by her mother and next friend, the first respondent)

5.Pattammal ...Respondents 1 to 5 / Petitioners 1 to 5

6.Aravindan ...6th Respondents / 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 29.04.2015 in M.A.C.T.No.175 of 2012 on the file of the I-Additional District and Sessions Judge, (Motor Accidents Claims Tribunal) Vellore.

For Appellant	:	Mr.P.Sankaranarayanan
For Respondents 1 to 5	:	Mr.M.Sivakumar
For Respondent 6	:	No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Award dated 29.04.2015 passed by the Motor Accident Claims Tribunal (I-Additional District and Sessions Judge), Vellore passed in MCOP.No.175 of 2012.

2. The Appellant Insurance company has challenged the impugned award primarily on the ground that they have not been granted pay and recovery rights, despite the fact that the rider of the Motor Cycle who caused the accident was not possessing a driving license in violation of the policy condition. However, the Appellant has not challenged the quantum of compensation awarded by the Tribunal to the claimants/ respondents 1 to 5.

3. Heard Mr.P.Sankaranarayanan, learned counsel for the Appellant and Mr.M.Sivakumar, learned counsel for the claimants/respondents 1 to 5. There is no representation on the side of the sixth respondent.

4. Before the Tribunal, the claimants have filed five documents which were marked as Ex.P1 to Ex.P5 which did not include the driving license of the rider who caused the accident which resulted in the death of Sundaram. On the side of the Appellant Insurance Company, seven documents were filed which were marked as Ex.R1 to Ex.R7. Two witnesses were examined on the side of the claimants namely, the wife of the deceased, PW1 and an eye-witness to the accident, PW2 and three witnesses were examined on the side of the Appellant, Insurance Company namely Loganathan-RW1, the official of the Appellant Insurance Company, Govindasamy-RW2, the investigator of the Appellant Insurance Company and Jagaboopalarayan-RW3, the RTO official.

5. The Tribunal under the impugned award has recorded the deposition of RW3, the RTO official who has deposed that the rider of the Motor Cycle, Farook, son of Majid who caused the accident was not possessing driving license at the time of the accident. Despite the same, erroneously, the Tribunal has not granted pay and recovery rights to the Appellant Insurance company in accordance with settled law. Non-possession of the driving license is a policy violation and hence, the Appellant-Insurance company is entitled for pay and recovery rights i.e., pay the claimants and recover the same from the (insured) owner of the motor cycle. Therefore this Court is of the considered view that the Tribunal by total non application of mind to the settled position of law has erroneously failed to grant pay and recovery rights to the Appellant Insurance company.

6. For the foregoing reasons, the impugned award dated 29.04.2015 passed by the Motor Accident Claims Tribunal (I-Additional District and Sessions Judge), Vellore in MCOP.No.174 of 2012 is modified by granting pay and recovery rights to the

Appellant Insurance company which was not granted by the Tribunal. Excepting for this modification, the quantum of compensation awarded by the Tribunal to the claimants remains unaltered.

Conclusion:

7. Accordingly, this appeal shall stand partly allowed. The Appellant Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited to the credit of MCOP.No.175 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the sixth respondent, the owner of the motor cycle (insured). On such deposit being made, the Tribunal is directed to transfer the respective shares of the award amount lying to the credit of MCOP.No.175 of 2012 to the bank account of the respondents 1 to 3 and 5 through RTGS as per the ratio apportioned by the Tribunal within a period of two weeks thereafter. Since the fourth respondent is a minor, her respective share of the award amount shall be deposited in fixed deposit in any one of the Nationalised Banks, till she attains majority and the first respondent who is the mother for the minor is permitted to withdraw the interest once in six months for the welfare of the minor. If the minor has attained the age of majority, it is open for her to file a formal petition to declare her as major. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

The I-Additional District and Sessions Judge,
Vellore.

Copy To

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

+1cc to M/s.P.Sankaranarayanan, Advocate SR.No.22267
+1cc to M/s.C.Prabakaran, Advocate SR.No.22221

C.M.A.No.245 of 2016

RSI(CO)
RVM(28/09/2021)