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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2449 of 2019
and
C.M.P.No.11258 of 2019

The Manager,
Reliance General Insurance Company Limited,
Sri Lakshmi Complex, 1st floor, Barathi Street,
Omalur Main Road, Swarnapuri,
Salem – 4. .. Appellant/2nd Respondent

Vs.

1.A.Chinraj
2.C.Mari Naidu
3.Vadivel ..Respondents 1 to 3 / Claimants

4.Nagarani .. 4th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.07.2018 made in M.C.O.P.No.2116 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Special Court for Essential Commodities Law, Salem.

For Appellant : Ms.C.Bhuvanasundari

For Respondents : No appearance

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 24.07.2018 made in M.C.O.P.No.2116 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional

District Judge, Special Court for Essential Commodities Law, Salem.

3.The appellant is the 2nd respondent in M.C.O.P.No.2116 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Special Court for Essential Commodities Law, Salem. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Suseela, who died in the accident that took place on 29.09.2014.

4.According to respondents 1 to 3, on 29.09.2014 at about 17.00 hours, while the deceased Suseela was riding as a pillion rider in the motorcycle bearing Registration No.TN 30 AL 9928 ridden by the rider of the motorcycle at a great speed without minding any traffic rules and regulations on Omalur – Dharmapuri NH Road, opposite to R.C.Chettypatty Petrol Bunk, an old man suddenly crossed the road from one side to another side. To avoid the accident, the rider of the motorcycle applied sudden brake and due to the said impact, the said Suseela fell down from the motorcycle on the road and thus the accident occurred. In the accident the said Suseela sustained multiple grievous injuries all over her body and immediately after the accident, she was taken to the Government Hospital, Omalur for first aid treatment. Thereafter she was shifted to MKMC Hospital, Salem. Inspite of treatment, the said Suseela succumbed to injuries on 30.09.2014. Therefore, the respondents 1 to 3 filed the said claim petition against the 4th respondent and appellant-Insurance Company, being the owner and insurer of the motorcycle respectively.

5.The 4th respondent-owner of the motorcycle remained exparte before the Tribunal.

6.The appellant-Insurance Company, insurer of the motorcycle filed counter statement and denied all the averments made by the respondents 1 to 3. The appellant denied the manner of accident as alleged by the respondents 1 to 3. The said Suseela did not die due to the injuries sustained by her in the accident that took place on 29.09.2014, whereas, she died only due to her old age. As per the postmortem certificate, the age of the deceased is 70 years at the time of accident, whereas the respondents 1 to 3 in the claim petition claimed that the deceased was aged 65 years. The concerned Police Station failed

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to forward all the relevant documents to the concerned insurer within 30 days from the date of information of the accident and not complied with the statutory demand. The respondents 1 to 3 have to prove that they are the only legal heirs of the deceased by producing valid documents. The rider of the motorcycle, the 3rd respondent herein is the son of the deceased and he would not be riding the motorcycle in a rash and negligent manner and caused the accident. The accident has occurred only when an old man suddenly crossed the road. Hence, the respondents 1 to 3 are entitled to compensation only under the provisions of No Fault Liability. The rider of the motorcycle was not possessing valid and effective driving license on the date of accident in violation of Policy conditions and Motor Vehicles Act. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 3. Only the 4th respondent-owner of the motorcycle alone is liable to pay the compensation to the respondents 1 to 3. In any event, the quantum of compensation claimed by the respondents 1 to 3 are highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1 and one Govindaraj was examined as P.W.2 and 3 documents were marked as Exs.P1 to P3. The appellant-Insurance Company examined one Dinesh, Legal Advisor as R.W.1 and marked 4 documents as Exs.R1 to R4.

8.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to 4th respondent and directed the appellant to pay a sum of Rs.1,32,000/- as compensation to the respondents 1 & 2 and dismissed the claim petition against the 3rd respondent.

9.Against the said award dated 24.07.2018 made in M.C.O.P.No.2116 of 2014, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erroneously held that the accident has occurred only due to negligence on the part of the rider of the motorcycle belonging to 4th respondent in the absence of any charge sheet. The rider of the motorcycle, the 3rd respondent herein is the son of the deceased and he would not

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have ridden the motorcycle in a rash and negligent manner with her mother as pillion rider, whereas, the deceased who was aged 70 years at the time of accident was sitting sideways in the motorcycle as pillion rider would have herself lost her balance and fell down. At the time of accident, the rider of the motorcycle did not possess driving license in violation of policy conditions and Motor Vehicles Act. Hence, the Tribunal ought to have exonerated the appellant from its liability as per the judgment of the High Court of Karnataka in The Oriental Insurance Company Limited Vs. Annemma, W/o. Late Iranna Javalgi & others. The Tribunal erred in relying on the Postmortem certificate for fixing the age of the deceased. The compensation awarded by the Tribunal at Rs.1,32,000/- is highly excessive. The rate of interest granted by the Tribunal at 7.5% per annum is on the higher side and prayed for setting aside the award passed by the Tribunal.

11.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them, either in person or through counsel.

12.Heard the learned counsel appearing for the appellant and perused the entire materials on record.

13.The present appeal is filed against the award of the Tribunal directing the appellant to pay the compensation. The appellant has raised various grounds with regard to negligence, quantum and liability. At the time of arguments, the learned counsel appearing for the appellant mainly contended that 3rd respondent-rider of the motorcycle, who is the son of the deceased did not possess driving license. The appellant proved the same by marking Exs.R1 to R3. The Tribunal having held that 3rd respondent-rider of the motorcycle did not possess driving license, erroneously fastened the liability on the appellant only on the ground that the motorcycle belonging to 4th respondent was insured with the appellant and policy was in force at the time of accident.

14.From the materials on record, it is seen that the 1st respondent, who is the father of the 3rd respondent and husband of deceased has admitted in cross examination that his son, 3rd respondent herein did not possess driving license to ride the

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motorcycle. Exs.R1 to R3/notices sent to respondents 3 & 4 and acknowledgment card issued by the respondents 3 & 4 were produced by the appellant to show that notices were received by the respondents 3 & 4. Considering the admission of P.W.1 as well as Exs.R1 to R3, the Tribunal held that 3rd respondent did not possess driving license at the time of accident. Having held so, the Tribunal erroneously directed the appellant to pay the compensation. The said finding of the Tribunal is erroneous. The Hon'ble Apex Court in the judgment reported in AIR 2020 SC 4453, [Beli Ram Vs. Rajinder Kumar], has held that when the rider/driver of the offending vehicle did not possess driving license to drive the vehicle or failed to renew the driving license, the Insurance Company is not liable to pay compensation to the claimants. The ratio in the judgment of the Hon'ble Apex Court referred to above is squarely applicable to the facts of the present case. In view of the same, the award of the Tribunal fastening liability on the appellant is liable to be set aside and it is hereby set aside. Only the 4th respondent-owner of motorcycle is liable to pay the compensation to respondents 1 and 2.

15.As far as quantum of compensation is concerned, the Tribunal considering the entire materials on record, has awarded a sum of Rs.1,32,000/- as compensation to the respondents 1 & 2, which is not excessive and hence the same is confirmed.

16. In the result, this Civil Miscellaneous Appeal is allowed and a sum of Rs.1,32,000/- awarded by the Tribunal as compensation to the respondents 1 & 2, along with interest and costs is confirmed. The 4th respondent-owner of the motorcycle is directed to deposit the award amount along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2116 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Special Court for Essential Commodities Law, Salem. On such deposit, the respondents 1 & 2 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. It is made clear that if any amount is deposited by the appellant-Insurance Company and the same was withdrawn by the respondents 1 & 2, the appellant is not

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entitled to recover the same. The appellant-Insurance Company is permitted to withdraw the amount, if any deposited to the credit of M.C.O.P.No.2116 of 2014 before the Tribunal. This appeal is dismissed as against the 3rd respondent. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

krk

To

The Motor Accidents Claims Tribunal,
The III Additional District Judge,
Special Court for Essential Commodities Law,
Salem.

Copy To:

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

C.M.A.No.2449 of 2019

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