IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1681 of 2020
and
C.M.P.Nos.12363 of 2020 & 446 of 2021

The New India Assurance Company Limited,
Divisional Office,
No.179, Mochi Building, 2nd Floor,
J.N.Street, Puducherry. ... Appellant/2nd Respondent

Vs.

1.Rajeswari

2.Annadurai

3.Arulveeramanikandan ... 1 and 2 Respondents/
1 and 2 Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.02.2019 made in M.C.O.P.No.44 of 2018 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi.

For Appellant : Mr.S.Dhakshnamoorthy

For RR 1 & 2 : Mr.N.Manokaran

J U D G M E N T

(The matter is heard through “Video Conferencing/Hybrid mode”.)

This Civil Miscellaneous Appeal has been filed to set aside the award dated 04.02.2019 made in M.C.O.P.No.44 of 2018 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi.

2.The appellant is the 2nd respondent in M.C.O.P.No.44 of 2018 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi. The respondents 1 & 2 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of their son viz., Vignesh, who died in the accident that took place on 24.08.2017.

3.According to respondents 1 & 2, on 24.08.2017 at about 07.00 hours, while the deceased Vignesh was riding the motorcycle bearing Registration No.PY 01 CP 2151 from Chennai to Tirukoilur on the Madapattu - Tirukoilur Road near Hytharapakkam Pudur Village, due to unexpected Speed Breaker, he lost control of the motorcycle, fell down and sustained grievous injuries all over his body. After the accident, he was taken to the Government Hospital, Tirukoilur, where he died. Therefore, the respondents 1 & 2, being the parents of the deceased Vignesh, filed the said claim petition against the 3rd respondent and appellant-Insurance Company, being the owner and insurer of the motorcycle respectively.

4.The 3rd respondent-owner of the motorcycle remained exparte before the Tribunal.

5.The appellant-Insurance Company, insurer of the motorcycle filed counter statement and denied all the averments made by the respondents 1 to 2. The appellant submitted that the claim petition is not maintainable under Section 166(1) of the Motor Vehicles Act, as the accident has occurred only due to the negligence of the deceased, who drove the motorcycle in a rash and negligent manner without noticing the speed breaker, fell down, sustained injuries and died. The appellant denied that the 3rd respondent's motorcycle was insured with them on the date of accident. The motorcycle belonging to 3rd respondent was not having valid Registration Certificate and valid Insurance Policy on the date of accident. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 & 2 are highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 2nd respondent examined himself as P.W.1 and 8 documents were marked as Exs.P1 to P8. The appellant-Insurance Company examined one Kavitha as R.W.1 and marked 2 documents as Exs.R1 & R2.

7.The Tribunal, considering the pleadings, oral and documentary evidence, fixed 35% negligence on the part of the deceased, awarded a sum of Rs.9,43,080/- and directed the appellant to pay a sum of Rs.6,13,000/-, being 65% of the award amount as compensation to the respondents 1 & 2.

8.To set aside the said award dated 04.02.2019 made in M.C.O.P.No.44 of 2018, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the deceased was a tortfeasor and the claim petition made for the death of tortfeasor is unsustainable under the law. The deceased could not be treated as 'Third Party' as he steps into the shoes of the owner of the vehicle when he drives the vehicle as a borrower. The Tribunal failed to appreciate that a tortfeasor or his legal representatives cannot file a claim petition for the compensation of his own tortious act resulting in injury or death. He mainly contended that at the time of accident, the deceased was not possessing valid driving license to drive the motorcycle. The Tribunal considering the same, erroneously directed the appellant-Insurance Company to pay the compensation to the respondents 1 & 2, which is erroneous and prayed for setting aside the award passed by the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 & 2 contended that the deceased drove the motorcycle at a moderate speed and the accident has occurred due to unexpected speed breaker. The Tribunal considering the fact that the accident has occurred due to the negligence on the part of the deceased-rider of the motorcycle, rightly directed the appellant-Insurance Company, being the insurer of the motorcycle to pay the compensation to the respondents 1 & 2. The Tribunal erroneously fixed 35% negligence on the part of the deceased and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 & 2 and perused the entire materials on record.

12.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 liability. At the time of arguments, the learned counsel appearing for the appellant mainly contended that deceased-rider of the motorcycle, who is the son of the respondents 1 & 2 did not possess driving license at the time of accident. The appellant proved the same by examining official one Kavitha as R.W.1 and marking Ex.R2. The Tribunal having held that the deceased-rider of the motorcycle did not possess driving license, erroneously fastened the liability on the appellant and fixed 20% contributory negligence on the part of the deceased following the Division Bench judgment of this Court reported in 2018 (2) TNMAC 168 (DB), [National Insurance Company Limited and others

Vs. Thangadurai and others] and 15% negligence on the part of the deceased following the judgment of this Court reported in 2017 (1) TNMAC 718, [Oriental Insurance Company Limited Vs. Indirani and others] for not wearing helmet at the time of accident.

13.From the materials on record, it is seen that R.W.1 has admitted in her chief examination that the deceased did not possess driving license to ride the motorcycle and marked Ex.R2/Form AIR to that effect. The respondents 1 & 2 failed to disprove the evidence of R.W.1 by marking the driving license of the deceased. Considering the admission of R.W.1 as well as Ex.R2, the Tribunal held that the deceased 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 3rd respondent-owner of motorcycle is liable to pay the compensation to respondents 1 & 2.

14. In the result, this Civil Miscellaneous Appeal is allowed and a sum of Rs.9,43,080/- awarded by the Tribunal as compensation to the respondents 1 & 2, along with interest and costs is confirmed. The 3rd respondent-owner of the motorcycle is directed to deposit 65% of the award amount, i.e., Rs.6,13,000/- 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.44 of 2018 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi. on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi. 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 entitled to recover the

same. The appellant-Insurance Company is permitted to withdraw the award amount, if any deposited to the credit of M.C.O.P.No.44 of 2018 before the Tribunal. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk
To

The III Additional District Judge,
Motor Accidents Claims Tribunal,
Kallakurichi.

+1cc to Mr.N.Manokaran, Advocate Sr.29922

C.M.A.No.1681 of 2020

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