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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.1760 OF 2018

AND

CMP NO.13622 OF 2018

National Insurance Co. Ltd.,
Kancheepuram.

...Appellant/1st Respondent

Vs

1.Mahalakshmi
2.Minor Sujimitha
3.Minor Gokul

... Respondents 1 to 3/Petitioners

(Minors Respondents 2 & 3
represented by guardian mother
and next friend 1st Respondent)

4.Sasikumar
5.Kannammal

...Respondents 4 & 5/Respondents 2 & 3

(Amended as per order in I.A.No.1170/14 dated 17.7.2014)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.08.2017 made in M.C.O.P.No.212 of 2010 on the file of the Motor Accidents Claims Tribunal, Gingee.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.V.Sakthivel for R1 to R3

R4 and R5 Served : No Appearance

J U D G M E N T

Heard the learned counsel for the appellant and the respondents.

2.This is a case, where the deceased was travelling on pillion of the two wheeler driven by 15 years old boy, who had no valid driving license. The accident occurred on 05.12.2009



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at about 03.30 p.m., when the deceased Anbazhagan was travelling in the Bajaj Boxer two wheeler bearing Registration No.TN02 J 5098 driven by Vigneswaran, aged 15. The said two wheeler dashed against another two wheeler Appachi bearing Registration No.TN25 S 7673, driven by one Saravanan, son of Rajendra Gounder. In the said accident, Anbazhagan, the pillion rider in Bajaj Boxer bearing Registration No.TN-02-J-5098 fell down and sustained grievous injury. He was taken to the hospital and treated for 16 days. On 28.12.2009, he succumbed to the injury. The claim petition was filed seeking Rs.15,00,000/- compensation by the wife and minor children of the deceased Anbazhagan against the owner of the Appachi motor cycle and its insurer.

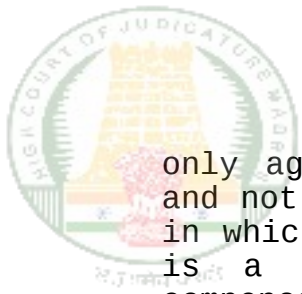
3.The Insurance Company resisted the claim petition on the ground that the deceased knowingly travelled in a two wheeler Bajaj Boxer driven by a minor boy, who had no valid driving license and the other vehicle involved also driven by the rider without valid license. Therefore, there is no liability on the part of the Insurance Company to compensate the legal heirs of the deceased Anbazhagan.

4.Before the Tribunal, the claimant filed 8 exhibits and examined two witnesses. The Insurance Company examined three witnesses and marked three exhibits.

5.The Tribunal after considering the complaint and other evidence held that the accident occurred due to the negligence of both the vehicle drivers and held the second respondent Insurance Company to pay 50% of the compensation i.e. Rs.3,24,000/-. Aggrieved by the said liability fixed on the Insurance Company, the appeal is filed on the ground that the Insurance Company is not liable to pay any compensation, since there is grave violation of policy condition and the accident occurred solely due to the negligence of the rider of the motor cycle bearing Registration No.TN 02J 5098 in which, the deceased Anbazhagan was travelling on the pillion.

6.Learned counsel for the respondents submitted that the claimants are the third party and the Insurance Company cannot abdicate its responsibility to indemnify the vehicle owner, even if there is a policy violation.

7.The law on this issue is now well settled by the Apex Court in National Insurance Company Ltd. Vs Swaran Singh reported in (2004) 3 SCC 297 . If there is a policy violation which is not known to the victim, then the Insurance Company is liable to pay the compensation and then recover the same from the vehicle owner. This principle of pay and recovery is applicable in case of third party claimants. The Tribunal has held that there is a contributory negligence on the part of both the vehicle riders and the claimant has filed claim petition



only against the insurer and owner of the Appachi motor cycle and not against the owner and insurer of the Bajaj Boxer vehicle in which the deceased was travelling. It has rightly held this is a contributory negligence and ordered payment of 50% compensation by the owner of the Appachi motor cycle which shall be indemnified by the appellant insurance Company. However, since there is a violation of the policy condition, the amount shall be payable by the second respondent on behalf of the first respondent and entitled to recover the same from the owner of the vehicle, the first respondent, which the Tribunal has failed to permit.

8. Therefore, on considering the evidence, this Court modifies the award of the Tribunal to the extent of permitting the Insurance Company to pay the award amount to the claimants and recover the same from the vehicle owner following Shri Nanjappan case reported in (2004 (2) CTC 464(SC)). Accordingly, the claim petition is partly allowed.

9. Learned counsel for the appellant submitted that the entire award amount has already been deposited along with accrued interest. In such case, the respondents/claimants are permitted to withdraw the same as per the proportion fixed by the Tribunal on appropriate application.

10. As a result, the Civil Miscellaneous Appeal is partly allowed with modification. No order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Audit)

// True Copy //

Sub Assistant Registrar

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To
The Subordinate Judge,
Motor Accident Claims Tribunal,
Gingee.

Copy To
The Section Officer,
V.R. Section,
High Court, Madras.
+1cc to Mr.S.Vadivel, Advocate, S.R.No.18843

CMA NO.1760 of 2018

GJ(CO)
RLP(28/10/2021)