IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.967 of 2018

1. Anandavalli
2. Tamil Selvi
3. Tamilarasan
4. Kalai Selvi
5. Anbarasan
6. Kalaiarasi ... Appellants/Petitioners

versus

1. Haja Mohideen

2. The Branch Manager,
New India Assurance Corporation Ltd.,
Karaikal & Post

3. Ramamoorthy ... Respondents/Respondents

Prayer : This Appeal filed under Section 173 (1) of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 12.11.1998 made in M.C.O.P.No.343 of 1997 on the file of the Motor Accident Claims Tribunal (District Court), Nagapattinam.

For Appellants : Mr.UM.Ravichandran

For Respondents : Mr.S.Manohar for R-2

JUDGMENT

Claimants 1 to 6, aged 45, 25, 22, 23, 20 and 19 years respectively, filed a claim petition for compensation in respect of death of one Ilanthirayan. The deceased aged 48 years, doing agricultural work, succumbed to the injuries sustained in the accident that took place on 07.01.1997. The claim was resisted by the 1st respondent as the owner, the 2nd respondent as the insurer of the vehicle and 3rd respondent as driver of the vehicle.

2. This is a case, where, the Insurance Company itself

admits that the vehicle is involved in the accident and is covered by the valid policy of the insurance, but the driver of the vehicle was not possessed of a valid driving licence and, therefore, it is contended that the Insurance Company is not liable to pay the compensation.

3. The 3rd respondent, who was the driver of the vehicle filed a counter saying that he was in possession of valid driving licence. But, neither he has chosen to examine any witnesses nor has chosen to produce the driving licence. But, the Tribunal, without looking into the said aspect, held that the driver and the owner are jointly and severally liable to pay the compensation and not the Insurance Company. Aggrieved against the same, the claimants have filed this appeal contending that when the Insurance Company admitted the fact that the only impediment being lack of proof on account of the valid driving licence, but did not prove the same, the Tribunal ought not to have exonerated the Insurance Company from the payment of liability.

4. The Insurance Company has come on record at the request made by the Court (there was a fault on the part of the claimants in not taking notice).

5. The learned counsel appearing for the Insurance Company submits that even though there is a valid policy of insurance, the Tribunal, while awarding compensation should have ordered the insurance company to pay the amount and granted liberty to the insurance company to recover the same from the owner of the vehicle.

6. Under normal circumstances, it is for the Insurance Company to show that the driver was not in possession of a valid driving licence and that there had been a breach of policy condition and, therefore, the insurance company is not liable to pay the compensation. However, the driver of the vehicle filed a counter that he was in possession of valid driving licence. But, the driver did not produce the valid driving licence. Therefore, the logical inference is that had the driver been in possession of a valid driving licence, the driver or owner would have produced the same and, thereafter, would not have been made liable to pay compensation. The non production of driving licence definitely has an adverse impact on the stand taken by the driver as to the holding of a valid driving licence. When the driver was not in possession of a valid driving licence, the Insurance Company should have been made liable to pay compensation with liberty to recover the compensation amount from the owner of the vehicle for having violated the terms and conditions of the policy.

7. In such circumstances, the award passed as against the owner and driver, exonerating the insurance company, is liable to be set aside. Accordingly, this Court directs the insurance company to pay the compensation awarded by the Tribunal to the claimants and liberty is granted to the insurance company to recover the same from first respondent in the claim petition, namely, the owner of the vehicle in accordance with law.

8. Learned counsel appearing for the Insurance Company submits that the claimants have filed this appeal along with a petition to condone the delay of 819 days in filing the appeal. Therefore, the Insurance Company cannot be made liable to pay interest for the default period to the extent of 819 days.

9. There is fault on the part of the claimants in not taking notice to the insurance company. But, the claimants have filed this appeal along with the petition to condone the delay of 819 days in filing the appeal. When the delay is attributable to the claimants themselves, this Court is of the view that the Insurance Company cannot be made responsible for payment of interest for the default period of 819 days.

10. For the aforesaid reason, this Civil Miscellaneous Appeal is allowed in the SR stage itself. No costs. Consequently, connected miscellaneous petition is disposed of in the above terms.

11. The Insurance Company shall deposit the award amount together with interest at 12% p.a. from the date of petition till the date of deposit (less interest for the default period of 819 days), to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. The claimants are entitled to compensation as per the ratio of the apportionment made by the Tribunal. On such deposit being made, the Tribunal shall transfer the amount directly to the bank account of the respective claimants as per the ratio of apportionment ordered by the Tribunal, through RTGS, within two weeks thereafter.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

ogy/GLN

To
The Motor Accident Claims Tribunal,
(District Court), Nagapattinam.

C.M.A.No.967 of 2018

GP(CO)
GMY(11/12/2018)