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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.04.2021

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1860 of 2020
and
C.M.P.No.13762 of 2020

The Divisional Manager,
HDFC Ergo General Insurance Company Ltd.,
(formerly L & T General Insurance Company Limited),
having its office at RR Tower II, 2nd Floor,
94/95, T.V.K.Industrial Estate,
Guindy, Chennai-600 032.

.. Appellant/2nd Respondent

Vs.

1. G.Kala, W/o R.Gunalan
2.R.Gunalan, S/o Ramachandran

.. 1st & 2nd Respondents/Petitioners

3.Rajeev Sharma, S/o Shyam Sundar Sharma

.. 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal (CMA) filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 19.09.2019 in M.C.O.P.No.112 of 2015 on the file of the Motor Accidents Claims Tribunal (I Additional District and Sessions Court), Vellore.

For appellant : Mr.N.Somasundaar
For respondents : Mr.C.Prabakaran for RR-1 & 2
Mr.S.Balasubramanian for R-3

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This appeal has been filed by the Insurance Company as against the Award dated 19.09.2019 made in M.C.O.P.No.112 of 2015 on the file of the Motor Accidents Claims Tribunal/I Additional District and Sessions Court, Vellore.

2. The brief facts which are necessary to decide the issue involved in this appeal are as follows:



(a) The respondents 1 and 2 in this appeal are the claimants before the Tribunal. The third respondent herein is the owner of the vehicle (car) bearing Registration No.TN-09-BS-3402, which had caused the accident. The respondents 1 and 2 herein are the mother and father of the deceased Ramesh, their son, who was aged about 29 years at the time of accident.

(b) On 29.09.2014 at about 9.50 a.m., when the deceased was riding a motor-cycle bearing Registration No.TN-23-BD-8266 on Pat Road, Palwalse Road junction, near Sivan Temple, the said car belonging to the third respondent, came in a rash and negligent manner and dashed against the two-wheeler which the deceased was riding and thus, caused the accident, in which, the deceased sustained grievous injuries all over the body and died on the way to hospital.

(c) At the time of accident, the deceased was working in ISG Nova Soft Technologies Limited as a Software Engineer and earning Rs.30,000/- p.m. Hence, the parents of the deceased made a claim for a sum of Rs.60 lakhs as compensation.

3. The claim petition filed by the parents of the deceased, was resisted by the Insurance Company disputing the age, occupation and income of the deceased. Further, on the date of accident, the driver of the car belonging to the third respondent herein did not have a valid driving licence.

4. On an analysis of the evidence available on record, both oral and documentary, the Tribunal passed an Award for a sum of Rs.36,07,500/-, with interest @ 7.5% per annum from the date of claim petition till the date of deposit.

5. The only submission made by the learned counsel appearing for the appellant/Insurance Company is that it was established before the Tribunal that the driver of the offending car did not possess valid driving licence on the date of accident, and this was established by examining two witnesses on the side of the Insurance Company and marking Exs.R-1 and R-2, apart from Exs.R-3 and R-4. The driver was in possession of international driving licence. On the date of accident, he has not renewed the licence and only after two days from the date of accident, namely on 01.10.2014, the licence was renewed. In spite of the same, the Tribunal has passed an Award for a sum of Rs.36,07,500/- and directed the appellant/Insurance Company to pay the compensation. Hence, the Insurance Company may be exonerated from paying the compensation amount.

6. Per contra, the learned counsel for the respondents 1 and 2 made submissions supporting the Award passed by the Tribunal.



7. This Court also heard the submissions made by the learned counsel appearing on behalf of the third respondent.

8. Heard both sides and perused the materials available on record.

9. In the present appeal, the challenge is only on the ground that on the date of accident, the driver of the car did not have a valid driving licence and therefore, the Insurance Company has to be exonerated from its liability to pay the compensation.

10. The learned counsel appearing for the appellant/Insurance Company has not urged any other ground and hence, it is not necessary for this Court to traverse into the other aspects of the Award passed by the Tribunal.

11. So far as the possession of the driving licence by the driver of the offending car is concerned, it is no doubt that the Insurance Company has established its defence that on the date of accident, the driver of the car, did not have valid driving licence. Originally, he was holding international driving licence and after expiry of the licence, he had not renewed it. At the same time, it has to be seen that he was not disqualified from driving the vehicle. In such circumstances, this Court is of the opinion that the appellant/Insurance Company cannot be exonerated in paying the compensation in toto. On the other hand, it is appropriate to permit the Insurance Company to recover the compensation from the owner of the vehicle, after paying the same to the respondents 1 and 2/claimants.

12. Accordingly, in the first instance, the appellant/Insurance Company is directed to pay the compensation as quantified by the Tribunal, to the respondents 1 and 2/claimants, within a period of six weeks from the date of receipt of a copy of this judgment and thereafter, the Insurance Company is at liberty to recover the compensation from the owner of the vehicle, namely the third respondent herein.

13. On such deposit by the appellant/Insurance Company, the respondents 1 and 2/claimants are permitted to withdraw their respective shares of compensation before the Tribunal in accordance with law.



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14. With the above direction, this appeal is disposed of. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Motor Accidents Claims Tribunal
(I Additional District and Sessions Court), Vellore.
2. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.N.Somasundaar, Advocate, S.R.No.24062
+1cc to Mr.V.Manisekaran, Advocate, S.R.No.24590
+1cc to M/s.C.Prabakaran, Advocate, S.R.No.23967

C.M.A.No.1860 of 2020

CA(CO)
B.VC(11/10/2021)