IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3433 of 2014

Mariammal .. Appellant/Claimant

Vs.

1.Jagannathan

2.M/s.United India Insurance Company Ltd.,
DO-II, 1st floor,
104-A, Peramanur Main Road,
Salem.
3.Sekar
4.Sigamani
5.Murugesan .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.08.2014 made in M.C.O.P.No.1 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Harur.

For Appellant : Mr.K.Thiruvengadam

For Respondents : Mr.S.Arunkumar for R2

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant challenging the portion of the award dated 14.08.2014 made in M.C.O.P.No.1 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Harur, exonerating the 2nd respondent/Insurance Company from its liability.

2.The appellant is claimant in M.C.O.P.No.1 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Harur. She filed the said claim petition claiming a sum of Rs.9,00,000/- as compensation for the death of her husband viz., Muniyan, who died in the accident that took place on 15.08.2009. The Tribunal after considering the oral and documentary evidence, held that the accident has occurred only due to rash and negligent riding by the 3rd respondent, rider of the motorcycle belonging to the 1st respondent. Though the Tribunal arrived at a sum of Rs.7,48,000/- as compensation, directed the respondents 1 and 3 to pay only a sum of Rs.6,48,000/- as compensation to the appellant and respondents 4 and 5, who are sons of the deceased and exonerated the 2nd respondent/Insurance Company, insurer of the said motorcycle from its liability, on the ground that driver of the motorcycle did not possess valid driving license at the time of accident. The appellant has come out with the present appeal challenging the portion of the award exonerating the 2nd respondent/Insurance Company from its liability.

3.The learned counsel appearing for the appellant/claimant contended that the Tribunal failed to follow the various judgments of the Hon'ble Apex Court as well as this Court wherein time and again it has been held that the benefit of the awards should not be avoided to the victims of the road accident on technicalities and the Tribunal must be liberal in compensating the victims and if there is any violation of policy condition, it is always open to the Insurance Company to pay the compensation to the victims at the first instance and recover the same from the owner of the vehicle. The Tribunal failed to note that on the date of accident, the vehicle involved in the accident was insured with the 2nd respondent. The Tribunal having found that the accident has occurred due to rash and negligent riding by the 3rd respondent, rider of the motorcycle, ought to have directed the 2nd respondent/Insurance Company to pay the award amount at the first instance and recover the same from the owner of the vehicle. The Tribunal ought to have considered the plight of the appellant who is made to run from pillar to post to realize the award amount in the claim petition against the 2nd respondent/Insurance Company. The Tribunal ought to have ordered pay and recovery and prayed for setting aside the portion of the award exonerating the 2nd respondent/Insurance Company from its liability.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the offending vehicle was insured with the 2nd respondent at the time of accident. The 3rd respondent/rider of the motorcycle did not possess valid driving license at the time of accident. In view of the same, the Insurance Company cannot be directed to pay compensation. The Tribunal has rightly exonerated the 2nd respondent/Insurance Company from its liability and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as 2nd respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the Tribunal has exonerated the 2nd respondent/Insurance Company from its liability only on the ground that the driver of the vehicle did not possess valid driving license at the time of accident. The said reasoning of the Tribunal is erroneous. It is well settled that if the rider of the two wheeler or driver of the four wheeler, the offending vehicle did not posses driving licence, the Insurance Company must satisfy the award at the first instance and recover the same from the owner of the vehicle. In the judgment reported in 2004 ACJ 1 SC [National Insurance Co. Ltd., Vs. Swaran Singh and others], the Hon'ble Apex Court has held that if the driver of the vehicle did not possess valid driving licence at the time of accident, the Insurance Company can be directed to pay the amount to the claimant at the first instance and then recover the same from the owner of the offending vehicle. In the judgment reported in 2012 1 TN MAC 226 [ICICI Lombard General Insurance Co. Ltd., Vs. Annakkili], it has been held that the Insurance Company cannot be exonerated from the liability to pay the compensation to the 3rd party claim for the reason that the driver had no licence or badge and the Insurance Company after paying the amount to claimant can recover the same from the owner of the vehicle. Similar finding has been reiterated in another judgment reported in 2012 1 TN MAC 536 [National Insurance Co. Ltd., Vs. T.Mathiazhagan].

7.By applying the above said principle of law to the present case, the portion of the award exonerating the 2nd respondent/Insurance Company from its liability, on the ground that the 3rd respondent, rider of the motorcycle belonging to the 1st respondent did not possess valid driving licence, is set aside and the 2nd respondent/Insurance Company is directed to pay the compensation amount of Rs.6,48,000/- to the appellant as well as the respondents 4 and 5 at the first instance and recover the same from the 1st respondent, owner of the vehicle.

8. In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is hereby modified setting aside the portion of award exonerating the 2nd respondent / Insurance Company from its liability and the compensation awarded by the Tribunal is confirmed. The 2nd respondent/Insurance Company is directed to deposit the entire amount awarded by the Tribunal

along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent, owner of the motorcycle. On such deposit, the appellant and the respondents 4 & 5 are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, as per the apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

vkr

To
1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Harur.

+1cc to Mr.S.Arunkumar, Advocate SR.No.63618
+1cc to Mr.K.Thiruvengadam, Advocate SR.No.62900

C.M.A.No.3433 of 2014

SRA(CO)
CB(11/01/2022)