BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.02.2021
CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A(MD) No.1175 of 2011
and
M.P.(MD)No.1 of 2011

Branch Manager,
Bajaj Allianz Insurance Company Ltd.,
Palani. .. Appellant/2nd Respondent

vs.

1.Chitra
2.Minor Archana
3.Jeyaraman @ Ramasamy
4.Kothaiammal
5.Minor Arunkumar ..Respondents No 1 to 5/Petitioners
(Minors 2nd & 5th respondents are represented by their guardian and mother the 1st Respondent)
6.Rasu @ Raja ..6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree in M.C.O.P.No.272 of 2006, dated 13.06.2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Palani .

For Appellant : Mr.J.S.Murali
For R1 to R5 : Mr.J.Lawrance

J U D G M E N T

This appeal arises out of the award passed by the Motor Accident Claims Tribunal, Subordinate Court, Palani in M.C.O.P.No.272 of 2006, dated 13.06.2011.

2. The respondents 1 to 5 herein are the legal heirs of the deceased Vijay @ Vijayan. According to them, on 04.02.2006 he along with his brother-in-law were travelling in a two-wheeler from Madathukulam to Kuppampalayam and they stopped the vehicle near Sivaraj Thottam to attend the natures call. At that time, the deceased was standing near the two-wheeler, the vehicle owned by the 6th respondent herein bearing Registration No.TN-57-V5127 was driven by its driver in a rash and negligent manner and hit against the deceased and he died on the spot.

3. In the counter, the appellant has stated that the accident has happened only due to the mistake of the deceased and hence, owner of the two-wheeler has to be impleaded as respondent. A specific stand was taken that the rider of the offending vehicle did not have valid and effective driving licence on the date of accident and hence, no liability can be fixed on the Insurance Company.

4. During trial, the appellant herein examined one Sathish Jeyachandran as R.W.1-Assistant in the Regional Transport Office. An employee of the appellant was examined as R.W.2. Ex.R2 shows that the Insurance Company sent a letter to the owner seeking particulars of the driving licence of the rider of the motorcycle. Ex.R3 is the acknowledgement card. According to the appellant, they have taken all the necessary steps to prove that the driver of the offending vehicle did not have any valid licence, but the Tribunal overlooking the evidence, fixed the liability on the Insurance Company.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. In the matter on hand, it is not disputed that the claimants are the legal heirs of the deceased Vijay @ Vijayan and he died in the accident that happened on 04.02.2006. P.W.2, who witnessed the accident, deposed that the accident occurred due to the negligence of the driver of the offending vehicle. To corroborate the evidence of P.W.2, FIR was filed. Based on the evidence, the Tribunal rightly came to the conclusion that the accident occurred due to the negligence of the offending vehicle.

7. It is seen that the deceased was 27 years old and it has been proved through Ex.P2. Though the claimants have stated that the deceased was earning Rs.6,000/- per month, but it could not be proved. So, the Tribunal has taken the income at Rs.3,000/- and after deducting 1/3rd for his personal expenses, awarded a sum of Rs.4,32,000/- towards loss of income and another Rs.20,000/- was awarded for loss of consortium, Rs.10,000/- for loss of love and affection, Rs.2,000/- for funeral expenses, Rs.5,000/- for transportation.

8. Considering the age of the deceased and the claimants, in my view that the award of the Tribunal is reasonable and it cannot be set to be exorbitant. Insofar as the liability is concerned, in the counter itself, a specific stand was taken by the appellant that the vehicle was driven by a driver, who was not possessing valid driving licence. To substantiate the contention, they examined R.W.1 who is an Assistant from the Regional Transport Office. Ex.R2 and Ex.R3 shows that the appellant issued notice to the owner, but there was no response. The owner remained ex-parte before the Tribunal as well as this Court and he has not come forward to prove that the driver infact had valid licence at that relevant time. In the above fact situation, this Court has to come to the conclusion that the vehicle was driven by a person, who had no valid and effective licence and it is a violation of the policy condition.

9. It is settled position of law that in the case of claim made by the third party, even if there is any violation of the policy conditions, the Insurance Company has to pay the award amount to the

claimant and thereafter, recover the same from the owner of the vehicle.

10. In ***"Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC),*** the Supreme Court directed pay and recovery and further in paragraph 7 held as follows:-

> "(7) ....For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured."

11. In the result, the quantum of the tribunal is confirmed and the appellant is directed to pay the award amount to the claimants at the first instance and thereafter, recover the same from the owner of the vehicle as per the mode incorporated in ***Shri Nanjappan's case*** referred to above.

12. This Civil Miscellaneous Appeal is accordingly disposed of. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw the award amount as per the apportionment made by the Tribunal by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal,
Subordinate Court, Palani.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.LAWRANCE, Advocate (SR-4178[F] dated 10/02/2021)

+1 CC to M/s.J.S.MURALI, Advocate (SR-4204[F] dated 10/02/2021)

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TP(CO)
KB(04.03.2021) 4P 6C