BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **31.03.2022**
CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKA RAMAN
C.M.A(MD).No.178 of 2011
and M.P(MD).No.1 of 2011

Oriental Insurance Company
Rep.by its Branch Manager,
No.5, G.H.Road,
Theni Town,
Theni District. ... Appellant/2nd respondent

Vs.

1.Krishnaveni
2.Suruli Kannan
3.Ramakrishnan
4.Pommuthai
5.Minor Harikrishnan
6.Minor Hemalatha ... Respondents 1 to 6/claimants
7.Kutpudeen ... 7th respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 23.12.2009, in M.C.O.P.No.125 of 2008 on the file of the Motor Accidents Claims Tribunal Cum Sub Court, Uthamapalaym, Theni District and allow the appeal with costs.

For Appellant : Mr.S.Veerana Samy
For R1 to R6 : Mr.S.Muniyandi

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Oriental Insurance Company Limited, challenging the judgment and decree passed in M.C.O.P.No.125 of 2008, on the file of the Motor Accidents Claims Tribunal Cum Sub Court, Uthamapalayam, Theni District.

2.The claimants, who are the respondents 1 to 6 herein, filed MCOP No.125 of 2008 claiming compensation for the death of one Pappusamy, husband of the first respondent and father of the respondents 2 to 4 and grandfather of the respondents 5 and 6.

3.The Insurance Company has preferred this appeal on the ground of liability, negligence and on the point of quantum.

4.To prove the case, on the side of the claimants, the son of the deceased was examined as P.W.1, and as many as 7 documents were marked. On the side of the respondents, two witness were examined and two documents were marked as R.W.1 and R.W.2.

5.The learned counsel for the appellant/Insurance Company contended that the deceased, namely, Pappusamy has invited the accident by suddenly crossing the road and also contended that the driver of the two wheeler is not responsible for the accident.

6.P.W.1 in his statement stated that after the accident, he came to the occurrence place immediately and he clearly narrates the pleadings and also states that the deceased suddenly crossed the road and at that time, due to the rash and negligent driving of the two wheeler, the deceased had sustained grievous injuries all over the body and died after 18 days from the date of accident.

7.In view of the positive evidence and the statement of P.W.1, the Tribunal has rightly come to the conclusion that the accident took place due to the rash and negligent driving of the rider of the two wheeler, which is insured with the appellant/Insurance Company and hence, the plea of the Insurance Company stands negatived.

8.On the point of quantum of compensation, after considering the age and work, the Tribunal has awarded the compensation under various heads. On perusal of the award passed by the Tribunal, this Court finds that the award is just and reasonable and therefore, the contention of the learned counsel appearing for the Insurance Company that the compensation awarded by the Tribunal is excessive, could not be accepted. In view of the above, the plea raised by the appellant stands negatived. Therefore, the compensation awarded by the Tribunal is hereby confirmed.

9.The learned counsel for the appellant/Insurance Company raised one another point that at the time of accident, the rider of the two wheeler possessed LLR licence only. Hence, the Insurance Company is not liable to pay the compensation to the claimant.

10.The attention of this Court was drawn to the evidence of RW1, an Assistant from RTO office, who has deposed that on the date of the accident, the rider of the two wheeler possessed LLR licence. On behalf of the Insurance Company, an Assistant from the Insurance Company was examined as RW2 and the copy of police was marked as Ex.R2. On perusal of the Ex.R2/Policy, it is seen that the vehicle should be driven by a person who is having full licence not a LLR licence. But in this case, the rider of the two wheeler is having only LLR Licence and the pillion rider is not also possessed full licence. Hence, I find that there is a violation of the policy. Accordingly, the order of the Tribunal exonerating the liability of the Insurance Company is hereby set aside and the Insurance Company is directed to pay the quantum of compensation fixed by the Tribunal and recover the same from the owner of the vehicle.

11.In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Motor Accidents Claims Tribunal Cum Sub Court,
Uthamapalaym, Theni District.

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

+1 CC to M/s.R.MANOHARAN, Advocate (SR-15745[F] dated 31/03/2022)
+1 CC to M/s.S.VEERANA SAMY, Advocate (SR-16406[F] dated 04/04/2022)

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RS (30.05.2022) 3P-6C