



C.M.A.No.207 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.207 of 2012
and M.P.No.1 of 2012

The Branch Manager,
National Insurance Co.Ltd.,
Branch Office, IIIrd Floor,
Anuradha Complex,
Opposite to Raja Theatre,
Bangalore Road,
Krishnagiri-635 001.

... Appellant
/ 2nd Respondent

Vs

1.Pandurangan
2.Pounammal

... Respondents I & II
/ Petitioners

3.R.Johny Rajesh

... Respondent-III
/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.07.2011 made in M.C.O.P.No.183 of 2009 on the file of Motor Accidents Claims Tribunal, Additional District Judge, Krishnagiri.



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For Appellant ... Mr.S.Arun Kumar
For Respondents ... Mr.Mukund R.Pandian [R1 & R2]
... No Appearance [R3].

JUDGEMENT

Challenging the impugned award dated 19.07.2011 passed by the Motor Accidents Claims Tribunal, Additional District Judge, Krishnagiri in M.C.O.P.No.183 of 2009, the Appellant-Insurance Company has filed the present appeal.

2. It is the case of the claimants that on 18.2.2011, when the deceased was riding the Motorcycle bearing Reg.No. TN 29 R 2972, on seeing the lorry coming in the opposite direction, the deceased lost control of his vehicle and hit the electric transformer and sustained head injuries and died on the spot. Therefore, the claimants filed a claim petition against the insurer of the Motorcycle claiming compensation.

3. Before the Tribunal, the 1st claimant examined himself as P.W.1, and



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marked Ex.P-1 to Ex.P-3. On the side of the respondents, R.W.1 was examined and marked Ex.R-1 to Ex-R-4. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.4,83,800/- under various heads and fastened the liability against the Insurance Company. Aggrieved by the said award, the Appellant-Insurance Company has filed the present Appeal.

4. Learned counsel appearing for the Appellant-Insurance Company that even according to the claimants, the deceased had hit the electric post and had sustained head injury and died. However, the deceased is the tortfeasor and therefore he is not entitled for compensation. It is the further submission of the learned counsel that the deceased was not in possession of a valid driving license and therefore, as per the terms of the policy, the Insurance Policy is not liable to pay the compensation. It is further submitted that even in respect of comprehensive policy which covers the vehicle in the absence of a valid driving license held by the deceased, he cannot step into the shoes of the owner to claim the compensation even under Section 163A of the Motor Vehicles Act. However, the said facts have been lost sight of by the Tribunal and has



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erroneously awarded compensation which cannot be sustained.

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5. Per Contra, learned counsel appearing for the Claimants submitted that the vehicle was covered under comprehensive policy and therefore the deceased being a third party would be entitled to claim compensation from the insurer. It is the further submission of the claimant that all the aforesaid aspects have been properly considered by the Tribunal and compensation has been awarded which does not require any interference.

6. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing for the Appellant-Insurance Company as well as the respondents-claimants and perused the materials available on record.

7. The factum of the accident is not disputed and also the nature of the policy which cover the vehicle being in comprehensive nature is also not disputed. There is a clear finding recorded by the Tribunal that the deceased had driven the vehicle and had dashed against the electric post to avoid



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collision with the lorry and therefore the cause of the accident is nobody else but the deceased. It is the specific case of the appellant that the deceased was not having a valid driving licence and therefore the Insurance Company is not liable to pay any compensation. Though such a stand has been taken by the Insurance Company, the said fact has not been disputed by the claimants. In fact the driving license having held by the deceased had not been marked by the claimants. Therefore, the stand of the appellant that the deceased was not in possession of a valid driving license deserves acceptance. Once the deceased was not in possession of the valid driving license, necessarily the liability of the Insurance Company to pay the compensation under the terms of the policy gets diluted. The Insurance Company is not liable to pay compensation as there is a clear violation of the policy conditions. Furthermore, the copy of the Insurance Policy has been marked though comprehensive in nature and also provides for personal accident cover by the rider of the vehicle to the extent as specified in the said policy. However, in view of the finding of this Court that the deceased was in possession of a valid driving license necessarily the personal accident insurance cover given under the policy cannot be enforced by the claimants against the insurance company and the appellant cannot be



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directed to pay even the compensation as has been accepted for under the terms of the policy. Without appreciating all the aforesaid materials, the Tribunal has passed the order directing the payment of compensation in favour of the claimants which is erroneous and necessary the said order requires to be set aside. Accordingly, the impugned order is set aside.

8. The Civil Miscellaneous appeal is allowed. There shall be no order as to costs in this Appeal. Consequently, the connected Miscellaneous Petition stands closed.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
NHS

To

1.The Motor Accident Claims Tribunal,
Additional District Judge,
Krishnagiri.

2.The Section Officer,
V.R. Section,
High Court, Madras.



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