IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1427 of 2018
and
Crl.M.P.No.11394 of 2018

United India Insurance Co. Ltd.
No.64, Armenium Street
Chennai -1 ... Appellant

Vs.

1. R.Jagannathan
2. J.Magesh
3. J.Venkatesan (Minor-14 years)
   Petitioner 3 Minor rep by f. & n.g. 1st petitioner

4. Tmt. Selvi
5.Tmt.Gandhimathi ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 6th January, 2018, passed in M.C.O.P.No.4524 of 2013, on the file of Motor Accidents Claims Tribunal (Chief Judge-Court of Small Causes), Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.R.Girirajan for R1 to R3
Mr.S.Michael for R5
R4- set exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company to set aside the award dated 06.01.2018, passed by the learned Chief, Motor Accidents Claims Tribunal, Chennai, in M.C.O.P.No.4524 of 2013.

2. The 1st respondent herein is the husband and the respondents 2 and 3 herein are the sons of the deceased namely Rukmani. The respondents 4 and 5 herein are the owners of the offending vehicle. The appellant is the insurer of the offending vehicle.

3. The case of P.W.1/the husband of the deceased is that on 10.10.2006 at about 1.00 noon, when his wife Rukmani was returning to home after shopping, through Kolathur Main Road, a two wheeler bearing Regn. No.TN-22-AR-9169 which came in a rash and negligent manner from Sunnambu Kolathur towards Kovilambakkam, hit against her due to which she sustained grievous injuries and subsequently, she succumbed to the injuries in the hospital on 13.10.2006.

4. The claimants had filed a claim petition before the Tribunal claiming compensation of Rs.10,00,000/- for the death of the said Rukmani.

5. In order to substantiate the case before the Tribunal, on the side of claimants, two witnesses were examined as P.W.1 and P.W.2 and 12 documents were marked as Ex.P.1 to Ex.P.12 and no material object was exhibited. On the side of the respondents, one witness was examined as R.W.1 and three were documents were marked as Ex.R.1 to Ex.R.3

6. The respondents 4 and 5 herein/the owners of the offending vehicle remained exparte before the Tribunal.

7. The Tribunal, after hearing the arguments on the side of claimants and the appellant herein/Insurance Company and upon considering the oral and documentary evidence put forth, has granted compensation of Rs.6,58,060/- with interest at 7.5% per annum from the date of claim petition i.e. 06.06.2013 till the date of realisation.

8. Challenging the award passed by the Tribunal, the Insurance Company has filed the present Appeal before this Court.

9. The learned counsel for the the appellant/Insurance company submitted that, at the time of accident, the rider of the offending motor cycle was not possessing any valid licence. The driving licence of the rider of the offending motorcycle was marked as Ex.R1, which clearly shows that the licence was obtained only on 09.07.2007, whereas, the accident took place on 10.10.2006. Therefore, it is clear that, on the date of accident, the rider of the offending vehicle was not possessing any valid licence, which is a clear violation of policy condition. Since the owners of the vehicle violated the conditions imposed in the policy, they have to adequately indemnified, whereas, the Tribunal has not discussed anything about the validity of the licence. Since the vehicle involved in the accident was insured with the appellant/Insurance Company, the Tribunal fixed the liability on the appellant/Insurance Company and ordered to pay the compensation. No doubt that the claimants are third parties. The insurance is also covered. The appellant/Insurance Company is not disputing the same. The only dispute is that the rider of the offending vehicle was not having valid licence at the time

of accident and that the driving licence which was marked as Ex.R1, dated 09.07.2007, was obtained subsequent to the date of accident and therefore, the appellant/Insurance Company is not liable to pay any compensation. However, the learned counsel for the appellant/Insurance Company would submit that the appellant/Insurance Company has no objection for paying the compensation amount as awarded by the Tribunal, provided, the appellant/Insurance Company is permitted to recover the amount from the owners of the offending vehicle.

10. The learned counsel for the respondents 1 to 3/claimants submitted that, at the time of accident, the offending vehicle was covered under insurance policy and therefore, the appellant/Insurance Company is liable to pay the award amount. However, he submitted that he has no objection in the Court giving direction to recover the said amount from the owners of the offending vehicle.

11. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 and 5 and perused the materials available on record.

12. The respondents 4 and 5 herein are the owners of the offending vehicle. The said vehicle was involved in the accident that took place on 10.10.2006 and due to the accident, one Rukmani sustained injuries and succumbed to the injuries on 13.10.2006, which is not in dispute. The employment, avocation, income and other award amount passed by the Tribunal are not in dispute. Admittedly, the offending vehicle is insured with the appellant/Insurance Company, which is also not disputed.

13. The only contention of the learned counsel for the appellant/Insurance Company is that, since the rider of the offending motorcycle was not possessing valid licence at the time of accident, they are not liable to pay any amount to the claimants. However, they can pay the amount and recover the same from the owners of the offending vehicle.

14. As stated above, the offending vehicle is insured with the appellant/Insurance Company. However, since the rider of the offending vehicle was not possessing valid licence to ride the vehicle at the time of alleged accident, the appellant/Insurance Company is directed to pay the

compensation amount as awarded by the Tribunal, to the claimants/respondents 1 to 3 herein and the appellant/Insurance Company is permitted to recover the said amount from the owners of the offending vehicle, namely the respondents 4 and 5 herein.

15. With the above directions, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

19.07.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Chief Judge
Motor Accidents Claims Tribunal, Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

P.VELMURUGAN. J.

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C.M.A. No.1427 of 2018

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