IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1785 of 2018

1.Ramappa
2.Narayanamma
3.Krishnappa
4.Rajappa
5.Venkataswamy ... Appellants

v.

1.T.Ramakrishna Reddy
2.Divisional Manager,
United India Insurance Company Ltd.,
No.12003-A, Old Bangalore Road,
Hosur Taluk, Krishnagiri District. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.247 of 2007, dated 21.07.2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

For Appellants : Mr.PA.Sudesh Kumar

For Respondents : R1-Notice -Dispense with
No appearance for R2

JUDGMENT

This appeal has been filed as against the Award dated 21.07.2010 made in M.C.O.P.No.247 of 2007 on the file of the Motor Accidents Claims Tribunal /Sub Court, Hosur.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The brief facts of the case are as follows:

The claimants 1 to 5 are the brothers and sister of the deceased Govindappa. On 30.12.2016 at about 10.00 p.m., when the deceased was walking on the left side of Hosur to Mathigiri Road, near Old Mathigiri bus stop, a TVS Victor Motor bike bearing Registration No.TN-24-Y-3369 came from Hosur side, driven by the first respondent in a rash and negligent manner, hit behind the deceased. Due to the said impact, the deceased sustained grievous injuries. Immediately, the deceased was taken to Government Hospital, Hosur for treatment, but he died due to fatal injuries at 10.30 p.m., on the same day. Hence, the claimants claimed a sum Rs.10,00,000/- as compensation.

4. The second respondent/Insurance Company filed their counter affidavit denying the averments and allegations made in the claim petition and prayed for dismissal of the claim petition.

5. To substantiate the case on the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P9 were marked. On the side of the second respondent, R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R5 were marked.

6. The Tribunal, after considering the oral and documentary evidence available on record, held that the accident had occurred only due to rash and negligent driving of the driver-cum-owner of the offending vehicle i.e. the first respondent and awarded a total compensation of Rs.2,77,800/- together with interest at 7.5% per annum from the date of claim petition till the date of realisation and the Tribunal further observed

that the first respondent is liable to pay the compensation to the claimants and directed the first respondent to deposit the entire compensation with interest at 7.5% per annum from the date of claim petition till the date of realisation.

7. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have approached this Court for enhancement of compensation.

8. The learned counsel for the appellants/claimants submitted that the Tribunal held that, due to rash and negligent driving of the driver-cum-owner of the offending vehicle, the deceased sustained grievous injuries and succumbed to death and that liability was fixed only on the first respondent. The second respondent is the insurer of the offending vehicle and there is a violation of policy condition, however, the Tribunal failed to adopt pay and recover method. Neither the owner, nor the insurer of the vehicle filed any appeal or cross objection, challenging the award passed by the Tribunal. He further submitted that the claimants are poor illiterate

people and considering the economical conditions and the pathetic situation of the claimants, this Court as an Appellate Court is empowered to order pay and recover method. He further submitted that the insurer can always satisfy the claimants and pay the amount to the claimants at the first instance to the claimants and recover the said award amount from the owner of the offending vehicle.

9. The learned counsel for the appellants, in support of his arguments placed reliance on the judgments of the Hon'ble Supreme Court in the case of ***Deddappa and Others Vs. Branch Manager, National Insurance Co.Ltd.,*** reported in ***(2008) 2 SCC 595*** and ***Oriental Insurance Company Limited Vs. Zaharulnisha And Others*** reported in ***(2008) 12 SCC 385.***

10. Heard the learned counsel for the appellants and perused the records.

11. Despite service of notice, respondents 1 and 2 have not chosen to enter appearance either through a counsel or in person.

12. The accident is admitted. The offending vehicle involved in the accident is also admitted. The offending vehicle was insured with the second respondent/Insurance Company, which is also not in dispute.

13. The only dispute now raised before this Court is regarding the quantum of compensation awarded by the Tribunal and fixing the liability only on the first respondent.

14. On a perusal of the entire materials available on record, it is seen that the accident had occurred due to rash and negligent driving of the driver-cum-owner of the Motorcycle bearing Registration No.TN-24-Y-3369 and therefore, the negligence was fixed only on the first respondent. The Tribunal also held that since the rider of the offending vehicle did not possess valid driving licence at the time of accident and therefore, insurance company is not liable to pay any compensation to the claimants. The Tribunal, while following the decision of the Hon'ble Supreme Court on the subject held that the Insurance Company is not liable to pay compensation,

as the owner of the offending vehicle is only liable for the negligence and he has to pay compensation.

15. Though the learned counsel for the appellants has not disputed the decision of the Hon’ble Supreme Court referred to in the Award passed by the Tribunal, this Court finds that when the owner of the vehicle has not filed any appeal, since the claimants are poor litigants, the Court can order pay and recover option and that the vehicle is insured with the Insurance Company.

16. In the decision cited supra, the Hon'ble Court held that if there is any violation of policy conditions, the Insurance Company need not pay any compensation, by invoking Article 142 of Constitution of India. However, considering the economical condition of the claimants, especially when the owner of the vehicle has not disputed the liability and he has not filed any appeal challenging the findings of the Tribunal, the Insurance Company can pay first and recover the same from the owner of the offending vehicle.

17. It is settled principle of law that Insurance Company is not liable to compensate the third party for the accident, but the Hon'ble Supreme Court, in exercise of its jurisdiction under Article 142 of Constitution of India, can direct the Insurance Company to compensate the claimants and to recover the amount from the owner of the vehicle. However, the Appellate Court or Tribunal is not having power to invoke Article 142 of Constitution of India. Therefore, this Court is not convinced with the submissions made by the learned counsel for the appellants.

18. This Court, as an Appellate Court, so also, this Court being a fact finding Court, had analysed the issue independently and re-appreciates the entire evidence to render independent findings on the subject.

19. This Court, while re-appreciating the entire evidence finds that the accident had occurred only due to rash and negligent driving of the rider of the offending vehicle. However, at the time of accident, the rider of

the said vehicle did not possess any valid driving licence, therefore, the driver of the said vehicle is liable to pay compensation. The second respondent is the insurer and due to violation of the policy conditions, the second respondent was exonerated from the liability, before the Tribunal. This Court does not find any perversity in the findings of the Tribunal and also the decision relied on by the learned counsel for the appellants, cited supra, are not applicable to the present case.

20. In view of the above, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs in the present appeal.

21. The owner of offending vehicle/first respondent is directed to deposit the above entire award amount along with 7.5% interest and costs as awarded by the Tribunal, from the date of claim petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimants in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561

(The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimants are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs.

01.08.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accident Claims Tribunal,
   Sub Court,
   Hosur.

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

P.VELMURUGAN, J.

ms

C.M.A.No.1785 of 2018

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