IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.Nos.459 & 460 of 2018
and
CMP.No.3914 & 3915 of 2018

The Branch Manager,
United India Insurance Co., Ltd.,
342-A, Post Office Street, N.H.Road,
Avinashi. ... Appellant/2nd respondent in both the Appeals

..Vs..

1.K.Pattal R1 in C.M.A.No.459/2018
1. Murugesan R1 in C.M.A.No.460/2018
2.B.Srinivasan R2 in both the Appeals

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 12.09.2015 made in M.C.O.P.Nos.243 & 244 of 2013 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tiruppur.

For Appellant in both the Appeals : Mr.C.Paranthaman

For Respondents in both the Appeals : Mr.Ma.P.Thangavel for R1

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company to set aside the judgment and decree dated 12.09.2015 made in M.C.O.P.Nos.243 & 244 of 2013 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tiruppur.

2.The case of the appellant in both the cases is that on 13.03.2013 at about 18.45 hours when the claimants were going by vehicle bearing Regn.NoTN-37-AS-8134 from South to North in the Avinashi Maliyapalayam Road, Aayeegoundenpalayam bus stop near, Avinashi, a vehicle bearing Regn.No.TN-39-AE-4545 driven by the car driver belonging to the first respondent coming from North to South direction, dashed against the claimants. Due to the said impact, the claimants sustained grievous injuries all over their body. Claiming a compensation of Rs.5,00,000/- and Rs.7,00,000/-, the claimants have filed a petition in MCOP.Nos.243 & 244 of 2013 respectively before the I Additional District Judge/Motor Accidents Claims Tribunal.

3. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal made a clear finding that the accident occurred only due to the rash and negligent driving of the driver of the car and accordingly, the appellant /Insurance Company is made liable to pay the compensation to the claimants.

4. The learned counsel for the appellant has submitted that the Tribunal has erred in concluding that the accident happened due to the negligence of the driver of the car. It has failed to consider that the driver of the insured vehicle does not possess driving license as per the Ex.R3 and for violation of policy condition instead of exonerating the insurance company from the liability but passed award against them. He further submitted that the claimants travelling in the two wheeler do not have insurance policy which is evidenced by Ex.R3. The petition ought to be dismissed for non-joinder of necessary parties. As per the MVI report Ex.R3, the driver has not produced driving license. The driver do not possess valid driving license to drive the car. Hence for policy violations, the Tribunal might have exonerated the Insurance Company from the liability or at least might have

been ordered pay and recovery. The award granted by the Tribunal is against the pleadings, facts, evidence and reality and against the well laid principles of law. The amount awarded under various heads are not reasonable and they are on higher side. It has erred in not adopting the well recognized principle of pay and recovery by the insurer from the policy holder, who violated the terms of the insurance.

5. The learned counsel appearing on behalf of the first respondent disputed the contention by stating that the Tribunal has granted reasonable compensation under various heads. He further submitted that the liability fixed on the part of the Insurance Company is correct. Therefore, it does not call for any interference. Hence the appeal is liable to be dismissed.

6. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the entire materials available on record.

7. Before the Tribunal, on the side of the claimants, two witnesses

were examined as PW1 and PW2 and five documents were marked as Ex.P1 to Ex.P5. On the side of the respondents, two witnesses were examined as RW1 and RW2 and four documents were marked as Ex.R1 to Ex.R4.

8. A perusal of the award would reveal that Ex.P1- copy of the First Information Report was registered against the car bearing Regn.No.TN-39-AE-4545 stating that the driver of the car was responsible for the accident, which corroborated with the version of claimants. But, at the time of the accident, the driver of the car did not possess the valid and effective license to drive the car which is revealed from Ex.R3/MVI report. The owner of the car /second respondent remained exparte before the Tribunal. However, there was Insurance policy coverage for the said car as seen from the Insurance Policy which was marked as Ex.P4 before the Tribunal.

9. It is now settled law that whenever the driver of the insured vehicle was not possessing a driving license at the time of the accident, the Insurance Company will have to pay the compensation amount to the claimant and recover the same from the owner of the vehicle (insured).

However, as seen from the impugned award, without considering the aforesaid settled law, the Tribunal has fixed the entire liability only on the part of the appellant, who is the insurer of the vehicle and failed to award pay and recovery rights to the appellant/Insurance Company. Therefore, this Court is of the opinion that it would be appropriate to fix the liability on the appellant/Insurance Company to pay the compensation to the claimants and thereafter, recover the same from the owner of the vehicle. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of pay and recovery. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

10. In the result,

(i) These Appeals are partly allowed. Consequently, connected miscellaneous petitions are closed.

(ii) The entire liability fixed on the appellant by the Tribunal under the impugned awards are set aside.

(iii) The appellant/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of MCOP.Nos.243 & 244 of 2013 within a period of six weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the second respondent / owner of the vehicle, in accordance with law.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimants through RTGS within a period of two weeks thereafter. No costs.

21.03.2023

Index:Yes/No
Speaking/Non-Speaking Order:Yes/No
gv

To

1. The I Additional District Court, Tiruppur.
/Motor Accidents Claims Tribunal.

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

A.A.NAKKIRAN, J.

gv

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