IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03..2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.613 of 2018
and
CMP.No.5416 of 2018 and
CMP.Nos.11176 & 11177 of 2018

M/s.United India Insurance Co., Ltd.,
235, Gandhi Market Road, Arni,
Thiruvannamalai – 632 301
Branch Office No.19, Andiappa Gramani st,
Royapuram, Chennai – 13. ... Appellant/1st respondent

..Vs..

1.J. Perumal
2.P. Thiagarajan
3.P. Dhanasekaran
4.P. Prabhakaran
5. A.Dharani ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 26.10.2017 made in M.C.O.P.No.1188 of 2014 on the file of the II Small Causes Judge/Motor Accidents Claims Tribunal.

For Appellant : Mr.B.Satish Babu
For M/s.R.Rathna Thara
For Respondents : Mr.M.A.Aruneshe
for Mr.A.V.Arun for R1 to R4
R5- set ex parte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 26.10.2017 made in M.C.O.P.No.1188 of 2014 on the file of the II Small Causes Judge/Motor Accidents Claims Tribunal.

2.The case of the appellant is that on 03.09.2013 while the deceased was standing in the corner of the road, the driver of the car bearing Regn.NoTN-22-CZ-4506, hit the deceased on the left corner of the road and thereby, the deceased sustained grievous injuries. Claiming a compensation of Rs.15,00,000/-, the claimants filed a petition in MCOP.No.1188 of 2014 before the II Small Causes 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 fifth respondent's vehicle and at the time of accident, the said vehicle is covered by an Insurance Policy which is not in dispute. 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 awarding an excessive compensation of Rs.11,92,000/- to the respondents. The Tribunal erred in saddling the liability on the appellant when the driver of the insured had only learners license to drive the alleged car which is a violation of policy condition. The Tribunal ought to have exempted the appellant from liability when violation of Rule 3 of CMV Rules was proved. It ought to have fixed the entire liability on the second respondent for her breach in her statutory duty in entrusting the vehicle to the drive without a duly qualified person beside him on the date of accident. He further submitted that it has erred in fixing the age of the deceased as 45 when the age is 48 as per Post Mortem Report and Death report filed as Ex.P3 and Ex.P4 in the court. 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 respondents 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 respondents 1 to 4 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 eight documents were marked as Ex.P1 to Ex.P8. On the side of the respondents, two witnesses were examined as RW1 and RW2 and three documents were marked as Ex.R1 to Ex.R3.

8. A perusal of the award would reveal that Ex.P1- copy of the First Information Report was registered against the car bearing Regn.NoTN-22-

CZ-4506 stating that the driver of the vehicle 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. The 5th respondent/owner of the car remained exparte without filing counter. However, there was Insurance policy coverage for the said car as seen from the Insurance Policy and driving license which were marked as Ex.P6 and Ex.R2 respectively 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) This Appeal is partly allowed. Consequently, connected miscellaneous petitions are closed.

(ii) The entire liability fixed on the appellant by the Tribunal under the impugned award is 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.No.1188 of 2014 within a period of six weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the 5th 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 respondents 1 to 4/claimants through RTGS within a period of two weeks thereafter. No costs.

07.03.2023

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

To

1. The II Small Causes Judge
/Motor Accidents Claims Tribunal.

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

A.A.NAKKIRAN, J.

gv

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