IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1545 of 2014

1.K.Marayammal @ Pappathy
2.K.Poongodi
3.P. Vasuki
4.P. Santhi ... Appellants

..Vs..

1.S.Senthilkumar
2.P.Periya Karuppan
3.The Branch Manager,
National Insurance Company Limited
78, Thiruvenkadasamy Chetti Street,
Erode – 11. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside and re-fix the liability on the insurer/1st respondent/Insurance Company awarded in the judgment and decree dated 22.11.2012 made in M.C.O.P.No.222 of 2011 on the file of the Motor Accidents Claims Tribunal/I Additional District Court, Erode.

For Appellant : Mr.M.Guruprasad

For Respondents : Ms.R.Sreevidhya for R3

JUDGMENT

This appeal has been filed by the appellants/claimants seeking enhancement of compensation under the impugned award dated 22.11.2012 passed by the Motor Accident Claims Tribunal/ I Additional District Court, Erode, in MCOP.No.222 of 2011.

2. On 17.01.2011 at 01.15 hours, when the husband of the first appellant and the father of the appellants 2 to 4 namely Kumarasamy was riding a TVS Moped bearing Regn.No.TN-33-C-2051 along the Nethaji street, near Babu Hospital, Marapalam from east to west direction, at that time, a Eicher Mini Lorry bearing Regn.No.TN-67-1557, driven by the first respondent in the same direction in a rash and negligent manner, dashed behind the TVS 50 Moped. Due to the sudden impact, the said Kumarasamy was thrown away from the vehcile and he sustained injuries in his head, chest and got simple injuries all over his body. Immediately he was admitted in the Government Hospital, Erode and died on the same day itself. Thereafter, the claim petition has been filed. 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 act of the first respondent. Accordingly, the second respondent, owner of the vehicle, is made liable to pay a compensation to the appellants/claimants.

3. As far as the quantum of compensation is concerned, the learned counsel appearing on behalf of the appellants mainly contended that the compensation awarded by the Tribunal is inadequate and on the lesser side. The deceased sustained fatal injuries and therefore, the Tribunal ought to have granted more compensation under various heads. The Tribunal has erred in concluding that there is no valid license for the first respondent since he had not given any reply notice to the notice issued by the third respondent. The Tribunal had come to the said conclusion not on any legally acceptable evidence or proof and the same had been based on the surmises and conjectures. The finding of the Tribunal in respect of the pay and recover is indefensible in the eye of law since there is a statutory

obligation on the part of the insurer to pay compensation to the victims who is a third party to the contract. The reasons adduced by the Tribunal for fixing the liability on the part of the first respondent does not sounds good in law and the same is unsustainable in law.

4. The learned counsel appearing on behalf of the third respondent/ Insurance Company disputed the contention by stating that the Tribunal has granted reasonable compensation under various heads and no enhancement needs to be granted. At the time of accident, the driver of the offending vehicle did not possess the driving license and had no experience to drive the mini lorry on the date of accident. He further submitted that the deceased was solely responsible for the accident and hence the third respondent is not liable to pay any compensation. The second respondent allowed the first respondent to drive the vehicle without driving license and committed violation of policy conditions and hence, the liability fixed on the part of the second respondent is correct. Therefore, the Tribunal is right in granting the compensation under various heads and it does not call for any interference. Hence the appeal is liable to be dismissed.

5. Heard the learned counsel for the appellants/claimants and the learned counsel for the third respondent and perused the entire materials available on record.

6. Before the Tribunal, on the side of the Appellants/claimants, two witnesses were examined as PW1 and PW2 and nine documents were marked as Ex.P1 to Ex.P9. On the side of the Insurance Company, one witness was examined as RW1 and five documents were marked as Ex.R1 to Ex.R5.

7. A perusal of the award would reveal that Ex.P1 is the Copy of the First Information Report registered by the police and RW1 deposed that the first respondent had no valid and effective driving license on the date of accident. Even after issuing notice to the first and second respondent to produce the driving license of the first respondent, they have not produced the same. In respect of the same, Ex.R2 to Ex.R5 were marked. It is also noticed that the driver of the mini lorry had no valid driving license at the

time of accident. From the evidence of RW1, it reveals that Ex.R3, lawyer's notice and Ex.R4 and Ex.R5 returned postal covers were marked by the 3rd respondent /Insurance company. Even after receipt of the same, he did not produce the driving license. All these factors will clearly reveal that the driver of the moped was not possessing a driving license at the time of the accident. However, there was Insurance policy coverage for the said Moped as seen from the Insurance policy which was marked as Ex.R2 by the third respondent/Insurance Company before the Tribunal.

8. 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 2nd respondent, who is the owner of the vehicle and failed to award pay and recovery rights to the third respondent/Insurance Company**.** Therefore, this Court is of the opinion that it would be appropriate to fix the

liability on the second respondent to pay the compensation to the appellants/ claimants and thereafter, recover the same from the third respondent /Insurance Company. 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.

9. In the result,

(i) This Appeal is partly allowed.

(ii) The entire liability fixed on the second respondent, who is the owner of the vehicle, by the Tribunal under the impugned award is set aside.

(iii) The second respondent/owner of the vehicle 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.222 of 2011 within a period of six weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the third respondent/Insurance Company, in accordance with law.

A.A.NAKKIRAN, J.
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(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 appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

28.03.2023

Index:Yes/No
Speaking/Non-Speaking Order:Yes/No
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To
1. The I Additional District Court, Erode.

(Motor Accidents Claims Tribunal),

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

C.M.A.No.1545 of 2014