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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03..2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3521 of 2014

The Divisional Manager,
The New India Assurance Co., Ltd.
Divisional Office, Plot No.11/12, Ground Floor,
Aditya Towers, Balaji Colony,
Tirupati, Andhra Pradesh State. ... Appellant/2nd respondent

..Vs..

1.Sumithra
2.Minor Karthik
3.Minor Sandya
4.Narayanamma
5.Narayanappa
6.Anappa Rallappa Soma Sekhar ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 31.07.2013 made in M.A.C.T.O.P.No.62 of 2013 on the file of the (District Judge) (Special Court for Motor Accidents Claims Tribunal), Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.E.Rajadurai for R1 to R4
for Mr.C.Prabakaran
R5 - died

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 31.07.2013 made in M.A.C.T.O.P.No.62 of 2013 on the file of the District Judge, (Special Court for Motor Accidents Claims Tribunal), Krishnagiri.

2.The case of the appellant is that on 22.12.2009 at 7.30 p.m., while the deceased was proceeding on his TVS Super XL moped bearing Regn.No.KA-05-HA-7919 on the left side of the road on Vijalapuram to Ramakuppam road towards to Ramakuppam, at Gangamma Cheruvu, the luggage auto bearing Regn.No.AP-03-X-7740 belonging to the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner, hit against the said moped. Due to the said impact, the deceased sustained fatal injuries on his vital organs. Claiming a compensation of Rs.9,00,000/-, the claimants filed a petition in MCOP.No.62 of 2013 before the District Judge, (Special Court for Motor Accidents Claims Tribunal), Krishnagiri.

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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 auto 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 and the 6th respondent are jointly and severally made liable to pay the compensation of Rs.11,44,200/- to the claimants.

4. The learned counsel for the appellant has submitted that the Judgment and decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case. He further submitted that it ought to have exonerated the appellant and fastened the liability only on the sixth respondent, the owner of the auto rickshaw insured with the appellant as he had committed breach of policy condition by allowing a person who did not possess valid and effective driving license to drive the auto involved in the impugned accident. It has also erred in not properly appreciating the oral evidences of RW1 and RW2 and the documentary evidences Ex.R1 to Ex.R4 to prove that the driver who drove the insured transport vehicle had license

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only to drive LMV and he did not obtain badge and endorsement to drive a transport vehicle. It has overlooked the fact that the appellant took summons through court and examined the official from the RTA and he deposed that the driver was not having the badge to drive the transport vehicle. The depositions of RW2 had deposed that the driver of the auto rickshaw did not have license to drive the public transport vehicle and therefore the owner of the auto rickshaw had violated the policy conditions of the insurance. The evidence of RW2 had admitted that a person having license can obtain endorsement / badge with any of the licensing authority in India. The reasons assigned by the Tribunal for fastening liability on the appellant and 6th respondent are unsustainable both in law and on facts. 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 1 to 4 has 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

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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 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 auto bearing Regn.No.AP-05-X-7740 stating that the driver of the auto was responsible for the accident, which corroborated with the version of claimants. But, at the time of the accident, the driver of the auto did not possess the valid and effective license to drive the auto. However, there was Insurance policy coverage for the said

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auto as seen from the Insurance Policy and driving license which were marked as Ex.R2 and Ex.P4 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.

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10. In the result,

(i) This Appeal is partly allowed. No costs.

(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.62 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 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.

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Index:Yes/No
Speaking/Non-Speaking Order:Yes/No
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A.A.NAKKIRAN, J.
gv

To

1. The (District Judge,Special Court for
   Motor Accidents Claims Tribunal),
   Krishnagiri.

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

C.M.A.No.3521 of 2014

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