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C.M.A.No.905 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.905 of 2014

Yasodha

... Appellant

vs.

1.A.Murugesan
2.The Oriental Insurance Co. Ltd.,
Siva Complex, 2nd Floor,
22C, Saradha College Road, Salem-16.

3.Arumugam (died)

4.Tmt.Vasantha
W/o. Late Arumugam

5.Minor Keerthivasan

6.Minor Krubakaran

(Minors 5 & 6 are represented
through next friend and natural
Guardian and mother 4th respondent) ... Respondents
[RR4 to 6 are impleaded as
party respondents vide Court Order
dated 25.07.2018 made in C.M.P.No.19798/2017
in C.M.A.No.905 of 2014 (SBJ)]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No.343 of 2010, on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Salem, dated



C.M.A.No.905 of 2014

10.09.2012 in respect of fixation of liability.

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For Appellant : Mr.C.Kulanthaivel

For Respondents : Mr.S.Bala Ganesh
for Mr.T.M.Hariharan [R1]
Mr.K.Vinod [R2]
R3 – died (steps taken)
R4, R5, R6 – Served No

Appearance

JUDGMENT

This appeal is focused against the judgment and decree dated 10.09.2012, passed in M.C.O.P.No.343 of 2010 by the Motor Accident Claims Tribunal / Principal Sub-Court, Salem by the claimant questioning the liability.

2. The claim petition was filed under Section 166 of Motor Vehicles Act, r/w. Rule 3 of Tamil Nadu Motor Accident Claims Tribunal Rules, claiming a compensation of Rs.7,50,000/-.

3. The Tribunal after hearing both sides arguments and upon consideration of oral and documentary evidence has passed an order granting compensation of Rs.3,02,250/- fastening liability on the owner of the TVS – Suzuki namely 3rd respondent herein. Against the said order, this appeal is filed.



C.M.A.No.905 of 2014

4. The learned counsel appearing for the appellant / claimant would vehemently argue that the Tribunal has held that the rider had no driving licence at the relevant point of time and hence, fastening the liability only on the owner of the vehicle namely 3rd respondent is incorrect and prayed to order for pay and recovery.

5. Per contra, the learned counsel appearing for the 2nd respondent would strenuously contend that the date of accident is 12.10.2009, that the rider of the two wheeler did not possess valid and effective driving licence at the time of accident, thereby the owner has violated the policy condition. Accepting the said details, the Tribunal ordered to pay compensation as against the owner of the two wheeler alone which is correct and prayed for dismissal of the appeal.

6. Heard the learned counsels on either side and perused all the relevant materials available on record.

7. It is the evidence of PW1 that on 12.10.2009, at about 2.30 p.m., while the petitioner was walking along the Mettupatti Thadhanoor bus stop at Ayothiyapattinam to Arur Main Road on the left side of the road, the rider of TVS Suzuki Motor Cycle bearing Reg.No.TN-27-B-0801 came in a



C.M.A.No.905 of 2014

rash and negligent manner dashed against him from behind. Due to the said impacts, she sustained serious injuries, is not in dispute.

8. On the other hand, the 2nd respondent / Insurance Company refuted the claim by stating that the owner of the motor cycle namely 3rd respondent had allowed another person one Ganesan to ride his motor cycle who has no licence at the relevant point of time and thereby the owner violated the policy condition. Henceforth the Insurance Company is not liable to pay compensation.

9. On behalf of the insurance company, the 1st respondent Murugesan was examined as RW1. From his evidence, it is discernible that the RC book was changed in the name of K.Arumugam on 31.10.2008 and the said RC book is marked as Ex.R1. But, the name of the injured was not changed in the insurance policy. Therefore, the contention of the insurance company that the owner permitted Mr.Ganesan to ride the vehicle is not correct. On the date of accident, Ganesan is the owner of the vehicle and ride the vehicle and the contention of the insurance company is incorrect. As the policy was in force, the insurance company is liable to pay the compensation to the claimant.



C.M.A.No.905 of 2014

10. In this regard, it is relevant to refer to the observations made by the Hon'ble Supreme Court in ***National Insurance Company Ltd., v. Swaran Singh***, reported in **(2004) 3 SCC 297**, wherein it has been held that *onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, "pay and recover" can be ordered in case of third-party risks.* No doubt Swaran Singh case would apply in case of third-party risks.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The compensation awarded by the Tribunal is confirmed and the direction to the 3rd respondent to pay the compensation is set aside.

(iii) The 2nd respondent/Insurance Company is liable to pay compensation at the 1st instance and later recover the same from the owner/3rd respondent. The 2nd respondent / Insurance Company is directed to deposit the compensation awarded by the Tribunal i.e., **Rs.3,02,250/-** (less the amount already deposited if any) together with interest at the rate



C.M.A.No.905 of 2014

of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.343 of 2010, on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law.

31.07.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal-cum-Principal Subordinate Judge, Salem,
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

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C.M.A.No.905 of 2014

C.M.A.No.905 of 2014

31.07.2023