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CMA No.942 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.942 of 2022

and

C.M.P. No.7021 of 2022

The Branch Manager,
National Insurance Company Limited,
D.O.IV, Second Floor,
No.169, Anna Salai,
Chennai – 600 002.

... Appellant

Vs.

1.Sumathi

2.Sathish (Minor)

3.Prasanth (Minor)

[Minors 2 & 3 are rep., by their mother/1st respondent herein]

4.R. Ramu

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.11.2018 in MCOP.No.98 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Gingee.



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For Appellant : Mrs. R. Sree Vidhya

For Respondents : Mr. M. Santhana Raman, for RR1 to 3
No Appearance for R4

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award dated 15.11.2018 passed by the Motor Accident Claims Tribunal (Subordinate Judge), Gingee in MCOP.No.98 of 2009.

2. The appellant / Insurance Company is the second respondent in MCOP.No.98 of 2009, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Gingee.

3. The respondents 1 to 3 herein filed a claim petition before the Tribunal stating that on 04.06.2008 at about 4.30 pm when the deceased was walking on a public road, the driver of the offending Auto insured with the appellant came in a rash and negligent manner and dashed against the deceased, as a result of which, the deceased sustained fatal injuries.

4. The fourth respondent, the owner of the Auto remained ex parte



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before the Tribunal.

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5. The appellant filed a counter stating that the accident did not take place due to the negligence of the driver of the offending vehicle insured with the appellant; that the driver of the offending vehicle did not have valid license; and that in any case, the compensation claimed was excessive and prayed for allowing this appeal.

6. The respondents 1 to 3 examined PW1 and PW2 and marked Ex.P1 to P3. The appellant examined RW1 and marked Ex.R1 and Ex.R2.

7. The Tribunal, after considering the oral and documentary evidence filed on either side, held that the accident took place due to the negligence of the driver of the offending vehicle and directed the appellant and the fourth respondent to pay a compensation of Rs.12,79,600/- to the respondents 1 to 3.

8. The learned counsel for the appellant submitted that the appellant



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had established before the Tribunal that the driver of the insured vehicle did not have a valid license; that they had examined their officer RW1 and also marked Ex.R2 to show that inspite of notice sent to the owner, the driving license was not produced and hence, the appellant is not liable to pay compensation. In any event, the Tribunal ought to have given liberty to the appellant to recover the compensation payable from the first respondent in view of the violation of policy conditions.

9. Though notice was served on the fourth respondent, none has entered appearance.

10. The learned counsel for the respondents 1 to 3 per contra submitted that the award of the Tribunal is just and reasonable and no interference is called for and prayed for dismissal of the appeal.

11. On hearing the counsel on either side that there is no dispute with regard to quantum of compensation awarded by the Tribunal. The learned counsel for the appellant was also unable to point out any error in the finding



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of the Tribunal fixing the negligence on the driver of the offending vehicle insured with the appellant. However, it is seen from the records that the owner of the vehicle / fourth respondent herein remained ex parte before the Tribunal. He had not produced the driving license inspite of notice sent by the appellant. This issue, however, was not gone into by the Tribunal. Therefore, in the facts, this Court is of the view that it would be just and reasonable to direct the appellant to deposit the compensation amount and thereafter, recover it from the fourth respondent, if they are able to establish that the fourth respondent had violated the policy condition.

12. With the above observation, this Civil Miscellaneous Appeal is disposed of. The appellant / Insurance Company is directed to deposit the compensation amount of Rs.12,79,600/- along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the first respondent, who is the wife of the deceased is entitled to Rs.6 lakhs and permitted to withdraw her share of the award amount along with interest and costs, less the amount if any, already withdrawn and the balance sum shall be



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divided equally to the respondents 2 and 3. The share of the minor respondents 2 and 3 is directed to be deposited in any one of the Nationalised Bank till the minor respondents 2 and 3 attains majority. However, the 1st appellant, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest once in three months. Consequently, connected miscellaneous petition is closed. No costs.

13.09.2023

Index: Yes/No

Neutral Citation: Yes / No

AT

To

1.The Motor Accident Claims Tribunal (Subordinate Judge)
Gingee.

2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

AT

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