IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.02.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1297 of 2017

The New India Assurance Co.Ltd., TP Hub,
Sethu Krishna Trade Center,
No.133,/ 31-A, 2nd Floor,
Thirchy Main Road, Gugai,
Salem-636 006. ... Appellant

..Vs..

1.Geetha
2.Selvi
3.S. Anandhan ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 13.04.2016 made in M.C.O.P.No.2034 of 2014 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Special Judge for Essential Commodities Act) Salem.

For Appellant : Ms.R.Janani
for Mr.J. Chandran

For Respondents : Mr.S.P.Yuvaraj for R1
No Appearance for R2
R3 Set Exparte before the Tribunal

JUDGMENT

This appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 13.04.2016 made in M.C.O.P.No.2034 of 2014 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Special Judge for Essential Commodities Act) Salem.

2. The facts of the case in brief is as follows:

The accident occurred on 20.03.2014 at 7.30 a.m., at Irumbalai Main Road, near Lakshmi Bakery. When the deceased was walking left side of the road, the rider of Yamaha FZS bearing Regn.No.TN-70- F-5789 came in a rash and negligent manner and hit against the deceased due to which he sustained grievous injuries on the head and left eye and all over the body. He was immediately admitted in the Hospital and he died on 27.03.2014. The Salem TIW Police, registered a case in Crime No.157/2014 under Sections 279 and 304 (A) of IPC. While the deceased was going by foot on the left side of Lakshmi Bakery, the rider of the Yamaha FZS bearing Regn.No.TN-70-F-5789 had dashed against the deceased and thereby, he sustained grievous injuries and later he died. 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 riding of the rider of the offending vehicle and at the time of accident, the rider of the offending vehicle was a minor and did not possess the driving license. Accordingly, the appellant/Insurance Company and the third respondent are jointly and severally made liable to pay the compensation to the claimants.

3. As far as the quantum of compensation is concerned, the learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Tribunal is on the higher side. He further submitted that the Tribunal ought to have held that the accident occurred solely due to the negligent act of the deceased and reduce the compensation u/s.140 of MV Act. The Tribunal considering the discrepancies and contradictions in the FIR, Accident Register entry, the vehicle number not known, the vehicle No.TN-70-F-5789 brought into the report only after the death of deceased Subramani on 27.03.2014 and hence ought have concluded that the vehicle No.TN-70-F-5789 was fraudulently put in this

case. The Tribunal erred in taking income at Rs.6000/- in the absence of proof of employment, income and dependency, deducting 1/3 and applying multiplier of 11 and awarding compensation of Rs.6,38,000/-. The award of the Tribunal of Rs.6,38,000/- is against the pleadings, facts, evidence unrealistic and against the well laid principles of law. Hence, he prays to allow this appeal.

4. The learned counsel appearing on behalf of the first respondent disputed the contention by stating that the Tribunal has granted reasonable compensation under various heads and no modification needs to be granted. At the time of accident, the rider of the offending vehicle did not possess the driving license and he is a minor and hence, the liability fixed on the part of the appellant 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 appellant and the learned counsel for the first respondent and perused the entire materials available on record.

6. Before the Tribunal, on the side of the claimants, two witnesses were examined as PW1 and PW2 and five documents were marked as Ex.P1 to Ex.P5. On the side of the Insurance Company, one witness was examined as RW1 and twelve documents were marked as Ex.R1 to Ex.R12.

7. A perusal of the award would reveal that Ex.P1-First Information Report was registered against the rider of the Yamaha FZS bearing Regn.No.TN-70- F-5789 stating that he was responsible for the accident, which corroborated with the evidences of PW1 and PW2 and Ex.P1 to Ex.P5. But, at the time of the accident, the rider of the offending vehicle was a minor and did not possess the driving license. The rider of the offending vehicle has failed to produce the driving license. All these factors will clearly reveal that the rider of Yamaha FZS bearing Regn.No.TN-70- F-5789 was not possessing a driving license at the time of the accident. However, there was Insurance policy coverage for the said Yamaha FZS bearing Regn.No.TN-70- F-5789 as seen from the insurance policy which was marked as Ex.R1 by the appellant/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 liability on the appellant and the third respondent 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 alone. 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 liability fixed on the appellant and the third respondent, who is the owner of the vehicle, 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.2034 of 2014 within a period of four weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the third respondent, who is 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.

09.02.2023

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

A.A.NAKKIRAN, J.
gv

To

1. The Motor Accident Claims Tribunal
(Additional District Judge,
Special Judge for Essential Commodities Act) Salem.

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

C.M.A.No.1297 of 2017

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