IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.06.2023

Coram:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No. 1531 of 2019

V.M.Munusamy
1. Dakshinamoorthy
2. Kaveri
3. Vasuki
4. Murali ...Appellants

Vs.

1. S.Baby

2. United India Insurance Com. Ltd
   Rep by Branch Manager,
   Arni.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree passed in M.C.O.P.No.50 of 2004 dated 13.01.2015 by the learned Motor Accident Claims Tribunal, Aarani.

For Appellant	:	Mrs.P.Satheesh Kumar
For Respondents	:	Mr.M.J.Vijayaraghavan for R2

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JUDGMENT

This civil miscellaneous appeal is filed by the claimant challenging the Judgment and Decree passed in M.C.O.P.No.50 of 2004 dated 13.01.2015 by the learned Motor Accident Claims Tribunal, Aarani.

2 The appellants/claimants filed claim petition before the learned Motor Accident Claims Tribunal, Aarani, seeking a sum of Rs.2.00 lakhs as compensation for the injuries suffered by the deceased at the time of accident that occurred on 11.05.2003. The claimants/appellants are the legal heirs of the deceased, who sustained injuries in the accident and subsequently died on 08.04.2008.

3 The claim petition was not contested by the first respondent owner of the offending vehicle and she remained ex-parte before the Tribunal. The second respondent/Insurance company filed detailed counter denying all the allegations apart from the disputing the negligence and liability.

4 Before the claims Tribunal, on the side of the appellants/claimants P.Ws.1 to 3 were examined and Exs.P1 to P7 were marked. On the side of the second respondent/Insurance Company R.Ws.1 & 2 were examined and Exs.R1 to 3 were marked.

5 The claims Tribunal, on an assessment of the entire evidence on record, awarded a sum of Rs.80,000/- as compensation along with 7.5% interest. The Tribunal by fixing the liability on the first respondent owner of the vehicle, directed her to pay the award and further exonerated the second respondent/Insurance Company. Not being satisfied with the compensation ordered by the claims Tribunal, the claimant have filed the above appeal.

6 The learned counsel for the appellants/claimants would submit that the injured died only due to the injuries suffered by him in the accident and hence the Tribunal ought to have awarded compensation for the death claim, but the Tribunal awarded only a sum of Rs.80,000/-, which is very meager.

7 Further the learned counsel contended that the Tribunal erred in fixing the liability on the first respondent, owner of the vehicle. The Hon'ble Supreme Court and this Court time and again held that when the vehicle has valid policy, then the Insurance Company is liable to pay the compensation and if any breach of policy, it can recover the same from the owner of the offending vehicle. Therefore, the second respondent has to pay the compensation and it can very well recover the same from the first respondent owner of the vehicle.

8 The learned counsel for the second respondent, on the other hand submitted that the Award of the Tribunal is just, fair and reasonable. Further the Tribunal rightly fixed the liability on the first respondent and there is no ground to interfere with the same and the appeal is liable to be dismissed.

9 I have heard both the learned counsels and perused the materials available on record.

10 The only issue to be decided in this appeal is whether the Tribunal was right in fixing the liability on the first respondent/owner of the vehicle or not.

11 It is seen that since on the date of accident, the driver of the vehicle did not possess valid driving license, the Tribunal fixed the liability on the first respondent/owner of the vehicle. The Hon'ble Supreme Court in the case of *National Insurance Co. Ltd vs Swaran Singh & Others reported in 2004 3 SCC 297*, held that even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving license is so fundamental as are found to have contributed to the cause of the accident.

12 In the present case, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the first respondent vehicle. Hence as per the above decision of the Hon'ble Supreme Court, this Court comes to the conclusion that the second respondent/Insurance Company is liable to pay the compensation awarded by the Tribunal along with interest @ 7.5% and the same can be recovered from the first respondent/owner of the vehicle.

13 Accordingly, the second respondent is directed to deposit the compensation along with 7.5% interest within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants/claimants shall be entitled to their respective share as ordered by the Tribunal by making proper application before the Tribunal. The second respondent is entitled to recover the amount from the first respondent. Accordingly the appeal is allowed. There shall be no order as to costs.

23.06.2023

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Index: Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

To

1. The Motor Accident Claims Tribunal, Aarani.
2. The Section Officer, V.R.Section, High Court, Madras.

A.A.NAKKIRAN, J.

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