IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3837 of 2019

and

C.M.P.No.21974 of 2019

M/s.IFFCO TOKIO General Insurance Co., Ltd.,
at No.202/24, JH Towers, 2nd floor,
LIC Colony Road Salem – 4. ... Appellant

..Vs..

1.S.Suseela

2.S.Maduvanthi

3.Minor S.Abisekkumar
Rep by his mother S.Suseela

4. Karuppathal

5.V. Sachithanantha Ganesan ....Respondents

.**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 08.12.2017 made in M.C.O.P.No.294 of 2016 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Salem.

For Appellant : :Mr.S.Arunkumar

For Respondents : No appearance for R1 to R4
R5- Unclaimed

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 08.12.2017 made in M.C.O.P.No.294 of 2016 on the file of the Motor Accidents Claims Tribunal/ Special Sub Court, Salem.

2. The case of the appellant is that on 27.09.2015 at 03.15 p.m., while the deceased was riding his motor cycle bearing Regn. No.TN-33-BJ 7022, on the side of the Thaluvampalayam to Nathamedu Road, from West to East, near Amurthi Gounder House, the rider of the motor cycle bearing Regn.No.TN-60-Z-2724 rode it in a rash and negligent manner from the opposite direction to the deceased and dashed against him. Due to the said accident, the deceased was taken to the Government Hospital, Kodumudi, and then he was taken to Erode. The rash and negligent riding of the rider of the said motor cycle was the sole reason for the said accident and there was no negligence on the part of the deceased. The criminal case has been registered against the rider of the said motor cycle by Kodumudi police in Cr.No.379 of 2015 under Sections 279 and 337 of IPC and then altered

u/s.304(A) of IPC and the same has been pending before the Judicial Magistrate, Kodumudi. Claiming a compensation of Rs.35,00,000/-, the claimants have filed a petition in MCOP.No.294 of 2016 before the Tribunal.

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 motor cycle bearing Regn.No.TN-60-Z-2724 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 as an insurer of the 1" respondent is made liable to pay the compensation of Rs.19,78,272/- to the claimants.

4. The learned counsel for the appellant has submitted that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case. He further submitted that it erred in not framing specific issue on liability despite appellant has raised defence on breach committed by the fifth respondent. It failed to note that under Section 149 of

M.V.Act, the appellant is entitled to raise the said issue and seek remedy accordingly. It failed to weigh the evidence marked as Ex.RI and oral testimony let in through RWI is support of the stand taken by the appellant. It ought to have analyzed all the defences taken on the side of the appellant and answered each one of the same to do complete justice. In any event, the Tribunal ought to have followed the principles laid down by the Hon'ble Supreme Court in 2004 ACJ 1 and held that the fifth respondent alone is liable to pay the compensation.

5. Heard the learned counsel for the appellant and perused the entire materials available on record.

6. No representation for the respondents 1 to 4.

7. Before the Tribunal, on the side of the claimants, two witnesses were examined as PW1 and PW2 and twenty documents were marked as Ex.PI to Ex. P20 and eight exhibits were marked as X1 to X8. On the side of the respondents, one witness was examined as RWI and one exhibit was marked as Ex.1.

8. A perusal of the award would reveal that Ex.P1 - copy of the First Information Report was registered against the motor cycle bearing Regn.No.TN-60-Z-2724 stating that the rider of the motor cycle was responsible for the accident, which corroborated with the Ex.P8/charge sheet. At the time of the accident, the driver of the vehicle bearing Regn.No.TN-60-Z-2724 was not holding any valid and effective driving license and he was not qualified for holding or obtaining such driving license and has not satisfied the requirement of the Rule No.3 of the Central Motor Vehicles Rules, 1989 and the first respondent has handed over the possession of the vehicle to the said driver and therefore, has contravened the proviso of the MV Act and the Rules framed there under and have committed the breach of the terms and conditions of the policy.

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 first respondent/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/Insurance Company, 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 first respondent/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.

10. In the result,

(i) This Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. 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.294 of 2016 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.

19.04.2023

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

A.A.NAKKIRAN.,J.

gv

To

1.The Motor Accident Claims Tribunal,
Special Sub Court, Salem.

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

C.M.A.No.3837 of 2019
and
CMP.No.21974 of 2019

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