IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2419 of 2019

M/s.IFFCO-TOKIO General Insurance Company Limited
Chennai-17 Appellant

Vs

1. Punitha
2. Minor Hariharavasan
3. S.Sakthivel Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 05.12.2017, made in MCOP.No.133 of 2014, by the Principal District Court (MACT) Cuddalore.

For Appellant : Mr.S.Arun Kumar

For Respondents : Ms.S.Sasikala-RR1 and 2
No Appearance-R3

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the Insurance Company, against the judgement and decree, dated, 05.12.2017, made in MCOP.No.133 of 2014, by the Principal District Court (MACT) Cuddalore.
2. The Respondents 1 and 2/claimants, who are wife and son of the deceased, namely, Natarajan, has filed the claim petition before the Tribunal, seeking a compensation of Rs.20,00,000/- on various heads, for the death of the

deceased, who died in a motor road accident, which took place on 07.10.2013. The 3rd Respondent / owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the Appellant Insurance Company, by filing a counter. On the side of the claimants, PW.1 to PW.3 were examined and Ex.P1 to Ex.P10 were marked. On the side of the Insurance Company, RW.1 and RW.2 were examined and Ex.R1 to R7 were marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle, the Tribunal has awarded a total compensation of Rs.7,10,000/- with interest at 8% p.a. from the date of the claim petition till the date of realization, to be payable by the Appellant Insurance Company. Aggrieved by the same, this appeal has been filed by the Insurance Company.

4. This Court heard the learned counsel on either side.

5. Though the learned counsel for the Appellant has raised several arguments, he has confined his argument to the extent that at the time of the accident, the driver was not having valid driving licence and hence, pay and recovery may be ordered.

6. Ex.R1 is the letter sent by the concerned Regional Transport Officer, stating that the driver of the offending vehicle was not issued with any driving licence. Ex.P5, MVI report shows that the driving licence of the driver of the offending vehicle was not produced. Ex.R6 is the notice sent to the driver for production of driving licence and Ex.R5 is the acknowledgement for the said

notice. Ex.R3 is the notice sent to the owner for production of driving licence and Ex.R4 is the acknowledgement. The owner of the offending vehicle was not contesting the claim petition and had remained exparte. In spite of said notices, the driver of the offending vehicle did not produce the driving licence. Hence, to meet the ends of justice, it is justified to pass an order, directing the Insurance Company first to pay the impugned compensation awarded and then recover the same from the owner of the offending vehicle.

7. In fine, this Civil Miscellaneous Appeal is partly allowed, granting pay and recovery rights to the Appellant/ Insurance Company, while confirming the impugned award of compensation and apportionment of the same, as ordered by the Tribunal. The impugned judgement and decree, in so far as the direction to the Appellant Insurance Company to pay the compensation is concerned, is modified to the effect that the Appellant Insurance Company shall deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. After making such deposit, the Appellant/ Insurance Company is at liberty to recover the same from the 3rd Respondent/ owner of the offending vehicle, by following the due procedures contemplated under law. The 1st claimant is entitled to withdraw her respective share with proportionate interest, as ordered and apportioned by the Tribunal, by filing proper application. The share of the minor claimant shall be invested in any

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one of Nationalised Banks, till he attains majority and the 1st claimant is at liberty to withdraw the accrued interest from the share of the minor claimant once in six months. No costs.

24.04.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Principal District Court (MACT) Cuddalore
2. The Record Keeper, VR Section, High Court, Madras

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