IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2432 of 2018
and
CMP.No.18542 of 2018

United India Insurance Co., Ltd.,
No.77, Oriental Complex,
A.A.Street, Salem – 636001. ...Appellant

Vs

1.Lakshmi
2.Palanisamy
3.S.Sathishkumar
4.C.Chinnadurai
5.National Insurance Co.Ltd.,
Branch Office No.1, Post Box No.15,
Mahalakshmi Nivasam
Opp.Krubha Hospital, Kumarasamipatti
Rajaji Road, Salem – 636 007 ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, set aside the judgment and decree dated 07.04.2018 made in M.C.O.P.No.2190 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court) Salem.

For Appellant : Mr.I.Malar

For Respondents : Mr.K. Premnath for R3

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company to set aside the judgment and decree dated 07.04.2018 made in M.C.O.P.No.2190 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court) Salem.

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

On 03.11.2014 at 22.30 hours, the deceased was riding his motor cycle bearing Regn.TN-70-C-6667 on the extreme left side of Tharamangalm to Erumbalai Main Road, proceeding opposite to Alagu Samuthiram Amman Theatre, at that time, a motor cycle bearing Regn.No.TN-30-Z-9078 (Hero Honda), came in the opposite direction driven by its driver, hit against the motor cycle of the deceased, due to which, the deceased fell down on the road, at the same time, one Tarras Lorry bearing Regn.No.TN-30-V-7999 came back side direction of the deceased and its wheel ran over the head of the deceased and caused the accident. Due the said accident, the deceased sustained grievous crush injuries on his head and all over the body and died on the spot. Claiming compensation of Rs.25,00,000/-, the claimants filed a claim petition in MCOP.No.2190 of 2014 before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.7,55,760/- with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit. Questioning the 50% liability fixed on the appellant/Insurance Company, the present appeal came to be filed.

3. The learned counsel for the appellant/Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the Tribunal has erred in fixing the 50% liability on the appellant/Insurance Company. The Tribunal has failed to see the documentary evidence as per Ex.P1 and Ex.C1 as adduced by the claimants to prove the manner and in which the negligence of the rider of the two wheeler. He further submitted that the deceased did not hold the driving license to ride the two wheeler in a public road at the time of accident. It has not considered that the 'No Fault Liability' under the provision of the MV Act and hence, the Tribunal award is unsustainable. He further submitted that there is serious lapse on the part of the parents of the deceased in

allowing their son without license. He further submitted that the deceased rode the vehicle in a rash and negligent manner and over taking lorry dashed against the appellant insured Two wheeler bearing Regn.No.TN-30-Z-9078 at his own fault and hence the award of the Tribunal is unsustainable. Hence, the Insurance Company is not liable to pay even 50% of compensation to the claimants and he prays to allow this appeal.

4. The learned counsel for the third respondent has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and hence, the same does not require any interference in the hands of this Court. Hence, he prays for dismissal of the Appeal.

5. Heard the learned counsel for the appellant and the learned counsel for the third respondent and perused the materials available on record carefully and meticulously.

6. Now the question to be decided is only with regard to the liability fixed on the part of the appellant / Insurance Company by the Tribunal.

7. A perusal of RW2, Ex.R2, Ex.R3 would reveal that the deceased has obtained driving license on 27.01.2015 but the accident occurred on 03.11.2014. The FIR was closed as charge abated since the rider of the motorcycle died on the spot. In the Ex.P1/FIR, it has been stated that he was a mason and hence it is not appropriate to expect document to prove his monthly income and hence it is assumed that he was earning Rs.6000/- before the occurrence of the accident. Further, Ex.P2/Post Mortem Report and Ex.P3/Death certificate would reveal the injuries and death of the deceased. Placing reliance on those materials and evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent act on the part of the drivers of the vehicles belonging to the respondents 3 and 4. Stating so, the Tribunal fixed 50% of the liability on the part of the Appellant/ Insurance Company.

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 claimants 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 50% of the liability on the part of the appellant, 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 50% 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. 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 allowed. Consequently, connected miscellaneous petition is closed.

(ii) 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.2190 of 2014 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.

07.03.2023

Index : Yes/No
Internet : Yes/No
gv

To
1.The Motor Accident Claims Tribunal
(Special District Court) Salem.

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

A.A.NAKKIRAN., J.

gv

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