IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

CORAM:

THE HON'BLE MRS. JUSTICE N.MALA

C.M.A.No.1377 of 2020
and
C.M.P.No.10143 of 2020

M/S.National Insurance Company Limited,
2nd Floor, L.R.N. Colony,
Saradha College Main Road,
Hasthampatti, Salem – 7. ... Appellant

Vs

1.Varadharaj
2.Saradha
3.Uma Maheswari
4.Minor Gowtham Khadhiri Perumal
5.Minor Deepak Kumar
6.Ellappan ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in MACT.O.P.No.1550 of 2015 dated 22.12.2017 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Salem.

For Appellant : Mr.N.B.Surekha

For Respondents : Mr.M.R.Thangavel, for RR1 to 5
No Appearance for R6

J U D G M E N T

This Civil Miscellaneous Appeal is filed to set aside the decree and judgment passed in MACT.O.P.No.1550 of 2015 dated 22.12.2017 on the file of the Motor Accident Claims Tribunal, 1st Additional District Court, Salem.

2. The Insurance Company is the appellant herein. The appeal is filed questioning the liability as well as the quantum of compensation awarded by the claims tribunal.

3. The brief facts necessary for the consideration of the appeal are as follows:-

On 05.05.2015, when the deceased Mohanraj was walking on the left side of the Omalur to Dharmapuri Service Road, at that time a Hero Splendor Pro Motor Bike bearing Registration No.TN-30-BZ-7732 driven by its driver in a rash and negligent manner came in the same direction and hit the deceased-Mohanraj. Due to the impact, the deceased sustained multiple grievous injuries and he was immediately rushed to the Omalur Government Hospital. Later, he was shifted to Nimans Hospital, Bangalore and was further treated at Neuro foundation Hospital, Salem. The deceased, later succumbed to injuries on 06.06.2015. The deceased was aged about 35 years at the time of accident and was working as a Handloom Pure Silk Designer and earning a sum of Rs.35,000/- per month. The claim petition was filed by the parents, wife and the children of the deceased claiming compensation of a sum of Rs.30,00,000/-.

4. The first respondent, the owner of the offending vehicle remained exparte.

5. The second respondent / Insurance Company filed a counter, denying all the averments made in the claim petition. It was specifically pleaded that the driver of the first respondent vehicle did not possess a valid and effective driving license at the time of the accident and hence, the second respondent was not liable to pay the compensation. The second respondent further submitted that the income claimed and also the claims under the various heads were exorbitant and imaginary. On all these grounds, the second respondent prayed for the dismissal of the claim petition.

6. Before the Tribunal, P.W.1 to P.W.3 were examined and Exs.P1 to P18 were marked on the side of the claimants. On the side of the respondent / Insurance Company, R.W.1 and R.W.2 were examined and Exs.R1 to R7 were marked.

7. The claims tribunal, on assessment of entire evidence on record, allowed the claim petition and awarded a compensation of Rs.16,83,188/- along with 7.5% interest. Aggrieved by the judgment and decree of the claims tribunal, the second respondent / Insurance Company has filed this civil miscellaneous appeal.

8. Learned counsel for the appellant / Insurance Company raised two grounds at the time of arguments. Firstly, the counsel submitted that on the date of accident, the driver of the offending vehicle did not possess a valid driving license and the same was proved by the Insurance Company by examining R.W.1, the official of the RTO Office and Ex.R1 was marked to show that driving license was issued to the driver much later to the date of the accident. In the absence of any contra evidence, it is clear

that the driver did not possess valid license at the time of the accident. Therefore, the tribunal went wrong in not directing the appellant to pay and recover from the insurer / owner.

9. The learned counsel further submitted that as far as the compensation towards medical expenses was concerned, the tribunal failed to note that there was replication of the medical bills to the tune of Rs.22,310/- and therefore, the tribunal ought to have deducted a sum of Rs.22,310/-. The counsel therefore, submitted that the judgment of the tribunal had to be interfered by this Court.

10. Learned counsel for the respondents fairly conceded that on perusal of the medical bills, it is seen that there is a replication of the bills to the tune of Rs.22,310/-.

11. Heard both the learned counsel and perused the materials on record.

12. It is seen that the accident occurred on 05.05.2015 at about 8.30 hours. It is seen that the driving license was issued to the driver of the offending vehicle on 14.05.2015 which is 10 days after the date of the accident. It is further to be noted that the official of the RTO was examined as R.W.1 and he has spoken about Ex.R1. Therefore, from the evidence on record, it is clear that on the date of the accident, the driver of the offending vehicle did not possess a valid driving license and as such, the tribunal ought to have directed pay and recover to the appellant.

13. Therefore, I am of the view that the appellant is entitled to recover the compensation amount from the owner of the vehicle after paying the same to the claimants. As far as the replication of medical bills to the tune of Rs.22,310/- is concerned, it is conceded by the respondents counsel that on perusal of the medical bills, it is seen that there is a replication to the tune of Rs.22,310/-. Therefore, the award of the tribunal with regard to medical bills of Rs.2,57,188/- is modified to Rs.2,34,878/- (2,57,188 – 22,310/-). It is therefore, held that the claimants shall be entitled to a sum of Rs.16,60,878/- towards compensation along with 7.5% interest. As regards the apportionment of compensation, the same shall be

done in the manner directed by the tribunal. It is further submitted by the learned counsel for the appellant / Insurance Company that 50% of the award amount was deposited to the credit of MACT.O.P.No.1550 of 2015 vide order of this Court dated 21.09.2020 in C.M.P.No.10143/2020. The appellant / Insurance Company is therefore directed to deposit the balance amount along with 7.5% interest, within a period of six weeks from the date of receipt of copy of this order. The Insurance Company is permitted to pay and recover the same from the owner of the offending vehicle.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

27.03.2023

Index: Yes/No
Neutral Citation: Yes/No

AT

N.MALA, J.

AT

To
1.The Motor Accidents Claims Tribunal,
1st Additional District Court, Salem.

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

C.M.A.No.1377 of 2020 and
C.M.P.No.10143 of 2020

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