



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29..11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1173 of 2020

The National Insurance Company Ltd.,
Divisional Office,
No.110, JN Street,
Puducherry.

.. Appellant

versus

1. Latha
2. A.P.Sangeshkumar

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act to set aside the award passed in MACT No.384 of 2014, dated 31.08.2018 on the file of the Motor Vehicle Accidents Claims Tribunal, Principal Subordinate Court, Cuddalore.

For appellant : Ms.N.B.Surekha

For Respondents : Served – No appearance

J U D G M E N T

The Insurance Company has come forward with this appeal, as against the award and decree in MACT No.384 of 2014, dated 31.08.2018 on the file of the Motor Vehicle Accidents Claims Tribunal, Principal Subordinate Court, Cuddalore.



2. It is the case of the appellant that on 01.01.2014 at 4.10 pm while the first respondent was travelling as pillion rider in a TVS 50 insured with the appellant driven by the second respondent, who is her son, at that time, a dog suddenly crossed the road, the rider had applied sudden break, due to which, she fell down and sustained injuries. Thereafter admitted in hospital and taken treatment. Thereafter, the first respondent/claimant has filed claim petition for the injuries sustained by her before the Motor Accidents Claims Tribunal. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the claim petition in part and awarded compensation for a sum of Rs.5,07,630/- to the first respondent and the Tribunal has directed the insurance company to pay the award amount and recover the same from the second respondent. Questioning the liability, the present appeal has been filed by the Insurance company.

3. The learned counsel appearing for the appellant Insurance company submitted that at the time of accident, the vehicle had no valid permit to ply on the road and the rider did not hold driving license to drive the same. Without considering the same, the Tribunal awarded huge compensation in favour of the claimant and fastened the entire liability upon the appellant herein, which is wholly erroneous.



4. Heard the learned counsel for the appellant and perused the materials available on record. Though the name of the respondents have printed in the cause list and no one appeared on their behalf. Considering the pendency of the appeal, this Court is inclined to dispose the case based on the available records.

5. The facts of the case are not in dispute. Admittedly, the second respondent's son was riding TVS 50 and the first respondent's father was travelling as pillion rider. It is not in dispute that the second respondent has no driving license at the time of the accident. Without considering the said fact, the Tribunal awarded compensation in favour of the first respondent and directed the insurance company to pay the same to the claimant and recover the amount from the second respondent, who is the son of the claimant, which is logically incorrect. Further knowing well the claimant/first respondent allowed his son/second respondent to drive the two wheeler and the Court indemnifying the insurer to pay compensation is not sustainable.

6. Hence, this Court is inclined to set aside the award in respect of the method 'pay and recovery' and this Court directs the claimant to recover the



award amount from the second respondent, who is rider of the motor cycle

in the manner known to law.

M.DHANDAPANI.,J.

RLI

7. With the above direction, the appeal is allowed. No costs.

29.11.2023

Index : Yes/no

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To

The Motor Vehicle Accidents Claims Tribunal,
Principal Subordinate Court, Cuddalore.

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