BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.481 of 2023
and
C.M.P(MD)No.6114 of 2023

The Oriental Insurance Company Ltd.,
6-A First Floor, A.V.M.Building,
North Cotton Road, Thoothukudi. ...Appellant/2nd Respondent

Vs.

1.S.Mariappan ...Respondent-1/Petitioner-1

2.M.Abinaya ...Respondent-2/Petitioner-2
3.Minor.Anusiya ...Respondent-3/Petitioner-3
4.Minor M.Marimuthu ...Respondent-4/Petitioner-4
(The minor 3rd and 4th respondents are represented through their father and next friend, first respondent herein)

5.G.Loordhu Antony ...Respondent-5/Respondent-1

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment dated 11.07.2022 passed in M.C.O.P.No.331 of 2017 by the Principal District Judge-cum-Motor Vehicle Accidents Claims Tribunal, Thoothukudi.

For Appellant : Mr.E.Chandrasekaran
For R1 to R4 : Mr.T.Selvakumaran

JUDGMENT

Challenging the award passed by the Tribunal, the Insurance Company has come out with the present appeal.

2.The Tribunal has passed the following award:

S.No.	Description	Amount
1.	Loss of income or loss of Dependency	Rs.13,50,000/-
2.	Loss of Estate	Rs. 16,500/-
3.	Loss of spousal consortium to the 1st petitioner	Rs. 44,000/-
4.	Loss of parental consortium to the petitioners 2 to 4(Rs.44,000/-x3)	Rs. 1,32,000/-
5.	Funeral and transportation expenses	Rs. 16,500/-
	Total	Rs.15,59,000/-

3.The only challenge is made in this appeal is that the rider of the motor-cycle did not have a valid license at the time of the accident. Therefore, pay and recovery ordered by the Tribunal is not valid by law. As far as the quantum of compensation is concerned, no dispute is raised by the Insurance Company.

4.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

When the deceased, who was aged about 40 years, standing on the left side of Thoothukudi – Tiruchendur Main road on 02.08.2017, the rider of the first respondent bike bearing Registration No.TN69BB 6160 came from south to north in a high speed, driven his vehicle in a rash and negligent manner and dashed against the deceased. As a result, the deceased succumbed to head injuries. A criminal case was registered in respect of the accident. Hence, the compensation of Rs.50,00,000/- was claimed by the claimants.

5.It is the stand of the Insurance Company that the first respondent's rider was driven the bike in a steady and cautious manner, however, the deceased had suddenly crossed the road and only due to the careless act of the deceased, the accident was occurred. It is the further stand of the Insurance Company that the first respondent's driver was not having valid and effective driving license at the relevant point of time.

6.Before the Tribunal, on the side of the claimants/petitioners, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.18 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.X.1 and Ex.X.2 were marked.

7.The Tribunal, after considering the evidence, found that the accident was occurred only due to the rash and negligent rider riding of the rider of the first respondent vehicle.

8.The only point that was urged before this Court is that the rider of the first respondent's motorcycle did not possess valid driving license at the time of accident. In this regard, R.W.1 and R.W.2 were examined. However, the Tribunal has ordered pay and recovery.

9.I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused the entire materials available on record.

10.Now the only point that arose for consideration is whether the Insurance Company has established the fact that the rider of the motorcycle did not possess valid driving license?

11.On perusal of the entire evidence, it is seen that though R.W.1 and R.W.2 were examined and their evidence only indicate that the driving license was not produced at the time of the inspection. Except that, no other materials whatsoever were brought on record to establish the fact that the rider of the motorcycle did not have any valid driving license at the time of accident. It is relevant to note that mere non-production of the license, it cannot be presumed that there is no valid license at all. If the specific stand of the Insurance Company is that there is no valid driving license, they ought to have issued proper legal notice for the production of the license, despite such notice of license not produced, then it can be said that no license was available. Therefore, merely during inspection the license was not produced before the RTO authorities, it cannot be concluded that there was no valid driving license at all. No attempt whatsoever made by the Insurance Company to bring evidence or calling upon the rider of the vehicle as well as the first respondent to produce the license. Therefore, merely on the basis of the evidence of R.W.2 that the license was not produced during the inspection, it cannot be held that there in no valid driving license at the time of accident.

12. In view of the above, this Court does not find any infirmity in the award passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal stands dismissed and the judgment of the Tribunal is confirmed. The appellant/Insurance

Company is directed to deposit the entire compensation amount with accrued interest at the rate of 7.5% per annum from the date of claim petition till the date of realization, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the major claimants are entitled to withdraw the amount, less the amount any already withdrawn, as apportioned by the Tribunal, by making necessary application before the Tribunal. The share of the minor claimants is directed to be deposited in an interest bearing fixed deposit, initially for a period of three years, renewable thereafter, till the minors attain majority. The first respondent/father, guardian of the minors, is permitted to get interest from the fixed deposits, once in three months, directly from the bank and utilize the same for the welfare of the children. No costs. Consequently, connected miscellaneous petition is closed.

02.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accidents Claims Tribunal/
Special District Court,
Thoothukudi.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.

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