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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.313 of 2023
and
C.M.P.No.2561 of 2023

M/s.United India Insurance Company Limited,
No.123-A, TAJ Towers No.2, Road,
Mayiladuthurai – 609 001. .. Appellant

Vs.

1.M.Santhi

2.M.Nethaji Subash Chandra Bose

3.M.Raja

4.Dhanam

5.R.Senthil .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 29.07.2022 passed in M.C.O.P.No.75 of 2016 by the Motor Accidents Claims Tribunal, (In the Special Sub Court – I, to deal with MCOP cases), Small Causes Court at Chennai.

For Appellant : Mr.J.Michael Visuvasam

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JUDGMENT

The Insurance Company has filed the present appeal questioning the award passed by the Motor Accidents Claims Tribunal, (In the Special Sub Court – I, to deal with MCOP cases), Small Causes Court at Chennai, in M.C.O.P.No.75 of 2016 dated 29.07.2022.

2.The claimants are the wife, two sons and mother of the deceased Maran. They filed the claim petition on the ground that the deceased Maran was traveling as a pillion rider on 04.04.2015 along with his friend and they were going at Poompukar – Sirkali road and at about 18.30 hours, the offending vehicle which was also a two wheeler, was driven in a rash and negligent manner and it dashed on the two wheeler in which the deceased was traveling. The deceased was thrown out of the vehicle and he sustained multiple injuries including head injuries. The deceased succumbed to the injuries on 08.04.2015. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had occurred only due to the rash and

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negligent driving on the part of the rider of the offending vehicle. Having reached such a conclusion, the Tribunal proceeded to fix the total compensation at Rs.10,33,500/- under various heads as follows:

1.Total loss of dependency	-	Rs.8,43,453/-
2.Loss of consortium	-	Rs.1,60,000/-
3.Loss of Estate	-	Rs.15,000/-
4.Funeral Expenses	-	Rs.15,000/-
Total compensation is fixed at		Rs.10,33,453/-

Rounded off to Rs.10,33,500/-

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The Insurance Company has approached this Court mainly on the ground that the rider of the offending vehicle did not possess a valid driving license and therefore, the Tribunal ought to have ordered for pay and recovery. The learned counsel also submitted that the deceased was not wearing a head gear and the rider of the two wheeler in which the deceased traveled also did not possess a valid driving license and therefore, the contributory negligence must also be attributed and the

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Insurance Company must be made liable only to incur a part of the liability. The learned counsel also questioned the deduction that was made by the Tribunal on the ground that the respondents 2 & 3 were not dependents and therefore, the Tribunal ought not to have deducted $1/4^{th}$ towards the personal expenditure of the deceased.

6.Heard the learned counsel for the appellant. The respondents have been served with notice and their names have also been printed in the cause list and they do not appear either in person or through counsel.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.This Court has also carefully gone through the award passed by the Tribunal.

9.In the instant case, the copy of the investigation report was marked as Ex.R3 through R.W.1, who was examined on the side of the Insurance Company. This report contains the entire particulars of both the offending vehicle as well as the vehicle in which the deceased had

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traveled. On going through the same, it is seen that the rider of the offending vehicle only had a learner's license valid from 18.11.2014 to 17.05.2015. Rule 3 of the Central Motor Vehicle Rules 1989, specifically provides that a person to whom a learner's license has been issued, he cannot use the motor vehicle unless he has besides him a person duly licensed to drive the vehicle and that apart, the vehicle must also carry 'L' plate both in the front and in the rear side of the vehicle.

10.There is absolutely no material to show that the rider of the offending vehicle had complied with this mandatory requirement. Therefore, it has to be construed that the rider of the offending vehicle did not possess a valid driving license since he was not supposed to drive the motor vehicle without complying with the requirements under Rule 3.

11.The Tribunal has not property taken into consideration Ex.R3 and has come to a conclusion that there is no policy violation. This finding rendered by the Tribunal is liable to be interfered by this Court and it is set aside. This Court holds that there has been a policy violation in this case, since the rider of the offending vehicle did not possess a valid driving license for not having followed the mandate under Rule 3 and

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therefore, the principle of pay and recovery must be applied in this case.

12.In so far as the other grounds that were raised by the learned counsel for the appellant, this Court holds that the Tribunal on considering the facts and circumstances of the case and on appreciation of the evidence, has come to a categoric conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the offending vehicle. In view of the same, there is no question of attributing contributory negligence against the rider of the vehicle in which the deceased had traveled without wearing head gear, without there being any materials to establish that they had contributed to the negligence resulting in the accident.

13.In so far as the deduction made towards personal expenditure, this Court is not inclined to interfere with the finding of the Tribunal.

14.In the light of the above discussion, the quantum of compensation fixed by the Tribunal at Rs.10,33,500/- stands affirmed. The appellant – Insurance Company is directed to deposit the compensation amount along with interest at the rate of 7.5% per annum,

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less the amount already deposited within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant – Insurance Company will be entitled to recover the compensation amount with interest from the 5th respondent / 1st respondent before the Tribunal by applying the principle of pay and recovery. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

15.Accordingly, this Civil Miscellaneous Appeal is partly allowed in the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

26.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

N.ANAND VENKATESH, J.

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To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Special Sub Court No.I,
Small Causes Court, Chennai.

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

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