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CMA.No.901 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.901 of 2023

M/s.United India Insurance Company Limited,
Regional office at No.178, Dr.Nanjappa Road,
Opposite to Chidambaram Park,
Coimbatore - 641 018.

... Appellant

vs.

1. S.Saroja

K.S.Velusamy (died)

2. Uma Maheswari

3. Minor.V.Rajavel

4. Minor.V.Vetrivel

(Minor respondents 2 & 4 are rep. by
their guardian mother / next friend
Uma Maheswari)

5. S.Loganathan

6. V.Kayalvani

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 07.12.2022 in M.C.O.P.120/2017 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Coimbatore.



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For Appellant : Mr.D.Baskaran

For Respondents : Mr.Ma.Pa.Thangavel

J U D G M E N T

Questioning the liability to pay compensation awarded by the Motor Accident Claims Tribunal, Coimbatore in M.C.O.P.120/2017, the present appeal is filed by the appellant, the United India Insurance Company Limited, Coimbatore.

2. The respondents 1 to 4 filed the claim petition under Section 166(1)(a) of Motor Vehicles Act, 1988, in M.C.O.P.120/2017 before the Motor Accident Claims Tribunal, III Additional District Court, Coimbatore, seeking compensation of Rs.20,00,000/- for the death of one L.P.Kothandapani (husband of first claimant, father-in-law of the second claimant and grandfather of the claimants 3 and 4) in a road accident that occurred on 16.10.2016.

3. The brief case of the claimants is as follows :

On 16.10.2016, L.P.Kothandapani (deceased) was walking along Kovai-Maruthamalai main road and at about 7.10 p.m., when he



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was nearing Thiruvalluvar Nagar, a speeding two wheeler bearing Registration number TN 37 AW 7075 came in the opposite direction and hit him, as a result of which, L.P.Kothandapani fell down and sustained injuries all over his body. He was immediately rushed to Government Hospital, Coimbatore. However, he succumbed to injuries on 19.10.2016.

4. According to the claimants, the rash and negligent driving of the driver of the two wheeler bearing Registration number TN 37 AW 7075 was the cause of the accident and that since the owner of the two wheeler had insured his vehicle with the appellant, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the owner of the two wheeler remained absent and was set *ex parte*. The appellant, Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.



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6. The Tribunal after analysing the evidence on record, fastened negligence on the part of the rider of the two wheeler bearing Registration Number TN 37 AW 7075 and directed the appellant Insurance Company to pay compensation of Rs.5,21,020/- to the claimants together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 07.12.2022. The Tribunal also held that the liability of the owner and the insurer is joint and several.

7. Questioning the liability to pay compensation awarded awarded by the Tribunal, the present appeal is filed by the appellant / the United India Insurance Company Limited under Section 173 of the Motor Vehicles Act.

8. Heard Mr.D.Baskaran, learned counsel for the appellant, Insurance Company and Mr.Ma.Pa.Thangavel, learned counsel for the respondents 1 to 4, claimants.

9. Though notice was served on the respondents 4 and 5 and their names are also printed in the cause list, there is no representation on their behalf.



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10. Mr.D.Baskaran, learned counsel for the appellant, Insurance

Company raised the following grounds:

- i. The rider of the two wheeler did not possess a valid driving licence on the date of accident.
- ii. The Insurance Company sent a notice (Ex.R4) to the owner of the two wheeler to produce the driving licence. However, he did not comply with the same eventhough he was in receipt of notice (Ex.R4) as is evidenced by the postal acknowledgment card (Ex.R5).
- iii. The driving licence produced by the owner of the vehicle at the time of inspection by the Motor Vehicles Inspector was found to be a fake document.
- iv. As per the various decisions of the Hon'ble Supreme Court, the Tribunal ought to have ordered for Pay & Recover.

11. It is seen from the records that the Insurance Company had issued legal notice (Ex.R4) to the owner of the two wheeler to produce the driving licence. This notice was actually served on him as is seen from the acknowledgment card (Ex.R5). Despite the same, the owner of the two



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wheeler did not produce the driving licence. However, at the time of Inspection by the Motor Vehicles Inspector, a fake driving licence was produced. Since the Motor Vehicles Inspector did not give Police complaint against the owner of the two wheeler, the Tribunal had held that the report of the Motor vehicles Inspector cannot be accepted. A bare perusal of the driving licence (Ex.R2) shows that it is not a genuine document and therefore, it has to be held that the owner of the two wheeler was not possessing a valid driving licence on the date of accident. Therefore, the Insurance Company is directed to pay the award amount in the first instance and then recover the same from the owner of the two wheeler (Pay & Recover).

12. There is no dispute with regard to the quantum of compensation awarded by the Tribunal.

13. In the result,

- i. The Civil Miscellaneous Appeal is allowed. No costs.
- ii. The quantum of compensation awarded by the Tribunal, is upheld.
- iii. The appellant / the United India Insurance Company Limited is



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directed to deposit the compensation amount of Rs.5,21,020/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.120/2017 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Coimbatore in the first instance and then recover the same from the owner of the two wheeler (Pay & Recover) on the same cause of action.

iv. On such deposit being made the respondents, claimants are permitted to withdraw the same with accrued interest and costs, after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

14.10.2024

Index : Yes/No

Speaking/Non-speaking order

Neutral citation : Yes / No

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To

- 1.The Motor Accident Claims Tribunal,
III Additional District Court,
Coimbatore.
2. The Section Officer, VR Section,
Madras High Court, Chennai.



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R.HEMALATHA, J.

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