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CMA No.2102 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2102 of 2022

M/s.The New India Assurance Co.Ltd
Divisional Office, Jerome Building
Fort Station Road, Trichy
Having Branch at
Bagavathi Complex
Aswin Sweets, Opp.New Bus Stand
Perambalur.

Now at
Motor Third Party Claims
No.232, Bombay Mutual Building, 6th Floor
NSC Bose Road, Chennai 600 001.

.. Appellant

.Vs.

1.Bindu Chowdry
@ Vuppalappatti Bindu Chowdry

2.Baskar

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order dated 16.11.2021 in M.C.O.P.No.141 of 2014, passed by the Principal District Judge, MACT – Perambalur.



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For Appellant : Mr.P.Sankaranarayanan

For Respondents : Mr.S.P.Yuvaraj [R1]

No Appearance [R2 & R3]

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JUDGMENT

This appeal has been filed by the Insurance Company questioning the award passed by the Principal District Judge (Motor Accident Claims Tribunal, Perambalur) in M.C.O.P.No.141 of 2019, dated 16.11.2021.

2.The claimant is the wife of one Kellari Suman. On 21.8.2016 at about 3.00 am., the husband of the claimant was driving the car in which the claimant and also the 2nd and 3rd respondents who are the appellants were also traveling as passengers. The car was proceeding at Chennai - Kumbakonam Main Road and near Thennavanallur, a cow suddenly crossed the road and in order to avoid collision, the car was turned on the right side and it dashed on the bus stand and as a result, the deceased sustained fatal injuries and died on the spot.

3.Pursuant to the above accident, the appellant gave a complaint before the Meensurutti Police Station, based on which an FIR came to be registered in Crime No.277 of 2018 for offence under Sections 279, 337 and 304A IPC. The wife filed



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the claim petition seeking for payment of compensation under Sections 163A and 166 of the Motor Vehicles Act, 1988 (hereinafter referred as 'the Act').

4.The Tribunal entertained the petition under Section 163A of the Act. On the issue of negligence, the Tribunal gave a categoric finding that the negligence is attributable only on the part of the deceased and that he drove the vehicle in a high speed resulting in ramming the vehicle on a bus stand.

5.Having rendered the above finding, the Tribunal next went into the issue of the availability of valid driving license for the deceased. The Tribunal found that the deceased had a valid driving license issued by the Saudi Arabia Government. Hence, a finding was given to the effect that the said driving license is deemed to be valid in India also. To come to such a conclusion, the Tribunal relied upon the judgment of the Division Bench in **United India Insurance Company, Namakkal vs. Asmabi and Other** reported in **2012 (1) TN MAC 840**.

6.The Tribunal thereafter proceeded to assess the compensation and found that since the deceased was the tortfeasor in this case, the compensation cannot be granted under the II schedule and therefore, the Tribunal fixed the compensation under no fault liability basis by placing reliance upon the Gazette notification dated 22.5.2018 and fixed the compensation at Rs.5,00,000/-. The said amount was directed to be paid along with 7.5.% interest p.a.



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7.The Insurance Company aggrieved by the above award passed by the Tribunal has filed the present appeal before this Court.

8.Heard Mr.P.Sankaranarayanan, learned counsel for the appellant, Mr.S.P.Yuvaraj, learned counsel for the 1st respondent. The names of the respondents 2 & 3 has been printed in the cause list. There is no representation either in person or through counsel.

9.This Court has carefully considered the submissions made on either side and perused the materials available on record. This Court had also carefully gone through the award passed by the Tribunal.

10.In the instant case, the Tribunal has rendered a very categoric finding that the car was driven by the deceased in a rash and negligent manner and as a result, the car had dashed on a bus stand. The negligence was completely attributed as against the deceased in this case.

11.Having rendered such a finding, there is no question of granting compensation under Section 163A since the compensation cannot be given to the legal heir of the tortfeasor. The law on this issue is now too well settled. Useful reference can be made to the judgment of the Apex Court in **Ramkhiladi & Another .vs. The United India Insurance Co., Ltd., & Another** reported in



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2020 (2) SCC 550. This judgment has also followed by this Court in **National Insurance Company .vs. Rani and Others** reported in **2020(2) CTC 703.**

12.The Tribunal has proceeded to direct the Insurance Company to pay the compensation to the claimant under no fault liability basis by relying upon the Gazette Notification dated 22.5.2018. This notification fixes Rs.5,00,000/- payable for fatal accidents. Even to pay compensation under this notification, the driver of the vehicle must possess a valid driving license.

13.In the case in hand, the deceased did not possess any driving license issued in India. The deceased only had a driving license that was issued by the Saudi Arabia Government but the Tribunal presumed that this driving license is valid in India also and hence, came to a conclusion that the deceased had driven the vehicle with a valid license. To substantiate the same, the Tribunal relied upon the judgment in Asmabi case referred supra. The above judgment will not have any application to the facts of the present case. In fact, in the above judgment, it has nowhere been stated that the driving license issued at Saudi Arabia will be valid in India also. This issue is covered by treaties that are entered into between two countries. By virtue of these treaties, the citizen belonging to another country with a valid driving license, is presumed to have a valid driving license to drive a vehicle in India. However, that will not apply in the case of an Indian citizen. Insofar as the



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Indian citizen is concerned, he must have a valid driving license issued in India and he cannot drive a vehicle in India with a driving license issued by a foreign country.

14.In the light of the above discussion, the finding rendered by the Tribunal as if the deceased possessed a valid driving license is unsustainable and is liable to be interfered by this Court. If the claimant wants to make the claim under any policy with the Insurance Company, the precondition is that the driver of the vehicle must have a valid driving license. In the absence of the same, no such claim can be made by the claimant.

15.The upshot of the above discussion is that the award passed by the Principal District Judge (Motor Accident Claims Tribunal-Perambalur) in M.C.O.P.No.141 of 2019, dated 16.11.2021, is liable to be interfered and accordingly, the same is hereby set aside. If the appellant Insurance Company has deposited any amount, it will be left open to the appellant Insurance Company to withdraw the same with accrued interest, if any

16.In the result, this civil miscellaneous petition stands allowed. No costs.

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Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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To

The Principal District Judge,
Motor Accident Claims Tribunal
Perambalur.



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N. ANAND VENKATESH., J
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