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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1904 of 2024

Ramesh (died)

1.R.Valarmathy

2.R.Suseethra

3.R.Karan ... Appellants

.vs.

1.Sathish

2.HDFC ERGO General Insurance Co. Ltd.,
Empaire Arcate No.356/1, 1st Floor,
Opp. New Bus Stand,
Omalur Main Road,
Salem.

3.ICICI Lombard General Insurance Co., Ltd.,
No.84 and 85,
Wall Tax Road,
Chennai – 3. ..Respondents

[R3 amended vided Court dated 02.07.2024 made in CMP No.13120 of 2024 in CMA Sr. No.61896 of 2023]

[Cause title accepted vide Court order dated 21.08.2023 made in CMP No.16408 of 2023 in CMA SR No.61896 of 2023]

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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 12.08.2021 made in MCOP No.2296 of 2016, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court-I, Salem.

For Appellant : Mr.V.Kumaravelan

For Respondents : Mr.N.Somasundar for R2
Ms.R.Sreevidhya for R3

JUDGMENT

The claimants who are the wife and children of the deceased Ramesh, have filed this appeal against the Award passed by the Tribunal in MCOP No.2296 of 2016, dated 12.08.2021, aggrieved by the fact that the Insurance Company was exonerated from paying the compensation and the entire compensation was directed to be paid by the owner of the vehicle who is the 1st respondent herein.

2.The case of the claimants is that on 11.02.2016, the deceased was travelling in a two wheeler at Salem-Veeranam main road and at about 20.00 hours, the offending vehicle which was an Auto came in the opposite direction and it dashed on the vehicle. As a result of which, the deceased was thrown out of the two wheeler. He sustained grievous injuries and he took treatment for nearly 48 days as an inpatient at KMCH Hospital, Coimbatore. Thereafter, he again took treatment as an inpatient for 14 days at SMCH Hospital, Salem. Unfortunately, he succumbed to the injuries. An FIR was also registered against the Driver of the offending vehicle in Crime No.144 of 2016. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle.

4.The Tribunal thereafter went into the issue of the liability of the Insurance Company to pay the compensation. While dealing with the same, the Tribunal found that the Auto was not covered by any subsisting policy and therefore, the 2nd respondent was exonerated from payment of compensation. The 3rd respondent is none other than the insurer of the two wheeler in which the deceased was travelling. Hence, the 3rd respondent was also exonerated from payment of any compensation.

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5.The Tribunal thereafter proceeded to fix the total compensation at Rs.78,41,918/- and directed the 1st respondent to pay the compensation with interest at the rate of 7.5% per annum.

6.The claimants aggrieved by the fact that the Insurance Company was exonerated from payment of compensation, have filed the present appeal before this Court.

7.Heard Mr.V.Kumaravelan, learned counsel appearing on behalf of the appellant, Mr.N.Somasundar, learned counsel appearing on behalf of the 2nd respondent and Ms.R.Sreevidhya, learned counsel appearing on behalf of the 3rd respondent.

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

9.In the considered view of this Court, there was no subsisting insurance policy covering the offending vehicle and therefore, there is no question of directing the 2nd respondent Insurance Company to pay the compensation. The 3rd respondent is none other than the insurer of the two wheeler in which the deceased was travelling. No negligence found against the rider of the two wheeler. Therefore, the Tribunal dismissed the claim petition insofar as the 3rd respondent is concerned.

10.The above finding rendered by the Tribunal does not suffer from any illegality or perversity. Unfortunately, in this case, the compensation was fixed and was directed to be recovered from the 1st respondent who was the owner of the Auto. This finding of the Tribunal is not liable to be interfered by this Court. The compensation amount fixed by the Tribunal can be recovered by the claimants from the 1st respondent.

11.The learned counsel for the appellants submitted that the appellants can be permitted to make their claim under the personal accident cover. This issue has not been raised before the Tribunal and it is raised for the first time before this Court. Insofar as the personal accident cover is concerned, it's a contract between the parties and it will depend upon the terms of the contract. Therefore, if at all the personal accident cover is given to the owner of the vehicle, the claimants are entitled to seek for the same. On such claim being made by the claimants, the insurance company viz., the 3rd respondent shall deal with the same in terms of the insurance policy. This process shall be completed within a period of four weeks from the date of receipt of the request made by the claimants.

12.This civil miscellaneous appeal is disposed of in the above terms. No Costs.

01.08.2024

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

To

The Motor Accident Claims Tribunal, Special Subordinate Court-I, Salem.

CMA No.1904 of 2024