IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

**C.M.A.No.2189 of 2022**
**and**
**C.M.P.No.16972 of 2022**

The Branch Manager
M/s.Reliance General Insurance Co. Ltd.,
Villupuram.

...Appellant

Vs

1.Sarasu
2.Sathiyavani
3.Manikandan
4.Bharathi
5.Gayathri
6.Boobalan
7.Sumathi
8.Valarmathi
9.K.Sankar

... Respondents

**Prayer:**

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgement and decree dated 18.03.2020 made in MCOP.No.142 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Villupuram @ Tindivanam.

For Appellant : Mr.S.Arun Kumar

For Respondent : Mr.S.P.Yuvaraj, for R1 to R8

**JUDGMENT**

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 18.03.2020 in MCOP.No.142 of 2018.

2. The learned counsel for the claimant would submit that on 03.02.2013 when one Poongavanam was riding a bi-cycle at Marakkanam to Tindivanam Road, a Motor Cycle TVS Sport bearing Registration No.TN-16A-1863 came in a rash and negligent manner and dashed against him, due to which he was died at the Hospital on the same day. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

| ***S.No*** | ***Heads*** | ***Compensation (Rs.)*** |
|---|---|---|
| 1 | Loss of Pecuniary Benefits | 7,42,500 |
| 2 | Loss of Consortium | 40,000 |
| 3 | Loss of Estate | 15,000 |
| 4 | Funeral Expenses | 15,000 |
| | Total | 8,12,500 |

3. He would further submit that in the present case, there is no dispute with regard to the occurrence of accident and quantum of compensation awarded by the Tribunal. The only issue that has to be decided in this matter is with regard to the fixation of liability. Further, he would submit that the owner of the vehicle/9th respondent had insured his motorcyle with the appellant, however at the time of accident, 9th respondent was not having any valid driving license. In this regard, a letter has also been sent by the Tribunal to the 9th respondent, however, no reply was received by the appellant. The aforesaid aspects were recorded in the order passed by the Tribunal. Further, in the said order, it has been stated that since no charge has been framed with regard to the non-possession of driving license against the 9th respondent in Ex.P8/Charge Sheet, the Tribunal had failed to consider the contention made by the appellant before the Tribunal. Hence, he would contend that the Tribunal is supposed to decide independently based on the records available and it is not proper for the Tribunal to arrive at a conclusion merely based on the Ex.P8/ charge sheet, wherein the police had failed to include the charge of non-possession of driving license. Thus, insurance company is no way liable to pay the compensation.

That apart, he would submit that the entire award amount has already been deposited by the Tribunal and hence, he requests this Court to order pay and recovery from the 9th respondent.

4. The notice has been served to the 9th respondent and the name of the 9th respondent has also been printed in the cause list. However, in spite of the same, there is no representation on behalf of the 9th respondent. Hence, this Court is inclined to pass the following order without any other option.

5. As far as claimant is concerned, he would submit that any order may be passed by this Court considering the facts and circumstances of the case.

6. Heard the learned counsel for the appellant and the respondents and also perused the documents available on records.

7. Considering the above submissions and on perusal of the award passed by the Tribunal, it appears that the Tribunal had merely accepted the contention of the appellant that the rider/9th respondent had not possessed a valid driving

license and accordingly, sent a letter to the 9th respondent to produce the driving license of the driver. In spite of the same, the 9th respondent had not produced a copy of his driving license either before the Tribunal or before the appellant. Further, the 9th respondent had not even appeared before the Tribunal and deposed any oral evidence to prove that he had possessed a valid driving license. Hence, based on this material evidence, the Tribunal could have come to a conclusion that the 9th respondent had not possessed a valid driving license. However, since no charge, for non-possession of driving license, has been framed by the police in the Ex.P8/charge sheet, the Tribunal had failed to give any weightage to the contention made by the appellant.

8. Normally, the Tribunal has to decide the case independently based on the materials available on record and other evidences, such as oral and documentary evidences, whereas, merely for non-inclusion of the charge by the police officer, the Tribunal had only relied upon the aspect that no charge was framed against the 9th respondent with regard to the non-possession of driving license and fixed liability and negligence. In the present case, based on the material evidences, it is very much clear that all steps have been taken

requesting the 9th respondent to produce his driving license, since a plea was raised on behalf of the Insurance Company that 9th respondent, who drove the vehicle at the time of accident, did not possess any valid driving license. Further, it is clear that a person, who does not possess a valid driving license was not allowed to drive the vehicle since it is a violation of policy conditions. However, the Tribunal had failed to decide the said aspect in proper perspective. The materials available on record are sufficient for any Court, including this Court, to come to a conclusion that the 9th respondent did not possess a valid driving license and hence, there is a violation of policy condition. In such case, generally, the Courts will order pay and recovery, i.e., the Courts will direct the insurance company to pay the entire award amount and thereafter grants liberty to recover the same amount from the owner of the offending vehicle. Since it was submitted by the learned counsel for the appellant that the Insurance company had already deposited the entire award amount, this Court grants liberty to the appellant to recover the same from the 9th respondent/owner of the offending vehicle.

9. With regard to the all the other heads, since the compensation awarded by the Tribunal appears to be just and fair, the same stands confirmed.

10. In the result, this Civil Miscellaneous Appeal is allowed and the appellant is granted liberty to recover the award amount from the 9$^{th}$ respondent without filing any separate application. Further, the Tribunal is directed to transfer the award amount to bank account of the claimants, by way of RTGS, within a period of three weeks from the date of deposit and receipt of the Bank details obtained from the claimants. No costs. Consequently, the connected miscellaneous petition is also closed.

**14.03.2024**

Index: Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
nsa

**KRISHNAN RAMASAMY,J.**

nsa

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