IN THE HIGH OF JUDICATURE AT MADRAS
DATED : 12.02.2024
Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2583 of 2022
and
C.M.P.No.20052 of 2022

The Manager,
Divisional Office,
The Oriental Insurance Co. Ltd.,
Third Floor, Builtech Foundations,
Chittur Road, Palakkad, Kerala. ... Appellant

Vs.

1. Unnamalai
2. Sathya
3. Sasikumar ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.01.2022 made in M.C.O.P.No.124 of 2015, on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Attur.

For Appellant	:	Mr.M.Krishnamoorthy
Respondents 1 & 2	:	Mr.E.Kannadasan
For Respondent-3	:	No appearance

JUDGEMENT

The second respondent/Insurer before the Tribunal is the appellant herein. The present Civil Miscellaneous Appeal is filed against the Doctrine of Pay and Recover applied by fastening the liability on the Insurance Company to pay the compensation amount to the claimants with liberty given to the Insurance Company to recover the same from the owner of the offending Vehicle and also against the award of compensation.

2. On 10.07.2015, at 01.00 p.m., when the deceased Velu was riding a two-wheeler, viz., Super Splendour, bearing Regn.No.TN-77-C-5161 along with friend Gangan as pillion rider at Sarvoi Main Road, Maniviyuthan Vadakupudur, a Lorry, viz., Ashok Leyland, bearing Regn.No.KL-09-AA-6368 loaded with Harvesting Machine, came from west to east, i.e. in the opposite direction in a rash and negligent manner and dashed against the Two wheeler, due to which, the said Velu was thrown out from the two wheeler and died on the spot.

3. At the time of accident, the deceased Velu was aged about 27years, that doing self business, (Paddy Harvester, Driver and Agriculturist and Milk vendor) and was earning a sum of Rs.30,000/- per month. The claimants are his mother and wife. Though, the claimants made a claim for Rs.30,45,000/-, they have restricted their claim to Rs.30,00,000/-.

4. In the counter statement, the insurer has denied the manner of the accident and contended that the deceased alone was responsible for the accident as he drove the two-wheeler in a rash and negligent manner. Further, it is contended that the deceased was not having any valid driving license. Similarly, the driver of the Lorry also did not possess valid driving licence and fitness certificate at the time of the accident, hence, Insurance Company is not liable to pay the compensation since the owner of the Lorry has violated the policy conditions. Without prejudice to the above, they also disputed age, income, occupation of the deceased and quantum of compensation claimed under various heads.

5. Before the tribunal, P.Ws.1 & 2 were examined and Exs.P.1 to P. 5 were marked on the side of the claimants and two witnesses have been examined on the side of the respondent/Insurer and six documents have been marked on their side as Exs.R.1 to R.6.

6. On evaluation of pleadings and evidence, the Tribunal held that the accident occurred only due to the negligence of the driver of the Lorry, and having regard to the evidence, fastened the liability on the driver of the Insurer; that ordered for pay and recovery from the owner of the offending vehicle, for having violated the policy conditions and quantified the compensation at Rs.15,04,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

7. Mr.M.Krishnamoorthy, the learned counsel appearing for the appellant/Insurance Company would submit that the driver of the offending vehicle did not possess valid licence and permit at the time of the accident, and therefore, the owner of the Lorry has violated the policy conditions and the Tribunal having rightly found all these aspects, ought not to have fastened the liability on the appellant/Insurer and applied Pay and Recovery theory.

7.1 Further, in so far as the quantum of compensation, assessed by the Tribunal is concerned, learned counsel submitted that the award of the compensation under the Loss of Dependency is exorbitant and on the higher side.

8. Mr.E.Kannadasan, learned counsel appearing for respondents 1 and 2, claimants would submit that the findings of the Tribunal with regard to both Liability and Quantum does not suffer from any perversity warranting interference of this Court. Heard the learned counsel for the appellant and perused the materials available on record.

9. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the respondents 1 and 2/claimants and perused the materials available on record.

10. This Court does not find any merit in the contention of the learned counsel appearing for the appellant/Insurance Company, inasmuch as, on perusal of the award of the Tribunal, it could be seen that the Tribunal after due analysis of oral and documentary evidence, rightly applied the doctrine of pay and recovery; that, it is a settled principle of law that in respect of tortious liability, the test regarding the negligence is based on the principle of preponderance of probability, and in the present case, the Tribunal found that due to negligence on the part of the driver of the Lorry, the accident had occurred, held that the Insurer of the offending Vehicle is liable to pay compensation; that since owner of the offending Vehicle has violated the policy conditions, fastened the liability against the insurer/appellant and applied the pay and recovery theory as against the owner of the offending Vehicle. Therefore, this Court is of the view that no perversity can be attributed against the findings rendered by the Tribunal. As far as quantum of compensation is concerned, this Court on going through the award, finds the same to be just and reasonable.

11. For the above said reasons, this Court finds that there is no merit in the Appeal to interfere with the award passed by the tribunal and consequently the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. Consequently, the interim stay granted by this Court in C.M.P.No.20052 of 2022 vide order dated 28.11.2022 is vacated and the said Stay Petition stands closed. The appellant/Insurance Company is directed to deposit the entire award passed by the Claims Tribunal with proportionate interest and costs to the credit of M.C.O.P.No.124 of 2015, on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Attur, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the amount directly to the claimants' respective bank account through RTGS within a period of three weeks thereon, upon which, the claimants are entitled to withdraw their respective shares as apportioned by the Claims Tribunal with proportionate interest and costs by making necessary application before the Tribunal.

12. In the result, the Civil Miscellaneous Appeal stands dismissed as already stated supra. No costs.

12.02.2024

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Index : Yes/no

To

The Subordinate Judge,
Motor Accident Claims Tribunal, Attur.

Krishnan Ramasamy,J.,

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