BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.149 of 2012

The General Manager,
Royal Sundaram Alliance Insurance
Company Ltd.,
46, Whites Road,
Chennai – 600 014. .....Appellant

-vs-

1.Kamatchi
2.Minor Manikandan
3.Minor Aswin Kumar
(Minor R2 and R3 are represented by
their mother Tmt.Kamatch, the 1st respondent)

4.Thiru Avudai Muthu .... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the fair and decretal order dated 05.09.2011 mad in M.C.O.P.No.153 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge/Fast Track Court), Pudukkottai.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.R.Paranjothi for
M/s KBS Law Associates
for R1 to R3

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the order passed in M.C.O.P.No.153 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge/Fast Track Court), Pudukkottai, wherein, the respondents 1 to 3 have filed the petition claiming compensation for the death of one Palaniappan, who died in a road accident.

2. The Tribunal has awarded a sum of Rs.1,00,000/- (Rupees One Lakh only) under the personal accident coverage policy. As against the award passed by the Tribunal, the first respondent has filed the present appeal on the ground that the deceased had no license to ride the vehicle on the date of accident.

3. Averments of the claim petition before the Tribunal are as follows:

The deceased Palaniappan was working as Postman and also LIC Agent and was earning a sum of Rs.7,280/- per month and he was aged about 30 years at the time of accident. The petitioners are the legal heirs of the deceased. On 14.12.2004 at about 09.30 p.m, the deceased was travelled in a motorcycle bearing Reg.No.TN-55-J-8640, which was ridden by the second respondent. When they were nearing Odaipillayar Temple at Arimalam, the second respondent rode the vehicle in a rash and negligent manner. In the impact, the deceased fell down from the motorcycle and sustained head injury and thereafter, he died on 21.12.2004 at Hospital. The deceased was the owner of the motorcycle. Therefore, the petitioners claimed compensation as against the first respondent/Insurance Company.

4. Averments of the counter filed by the first respondent/Insurance Company before the Tribunal are as follows:-

The petition is not maintainable in law and on facts and it is liable to be dismissed in limine. The first respondent denied all the allegations in the claim petition and save those that are specifically admitted therein. The first respondent denied the age, occupation and income of the deceased. The accident did not take place as alleged in the petition. The deceased only rode the two wheeler and he himself invited the accident due to his own negligence. Therefore, the petitioners are not entitled to any compensation. The deceased had no license at the time of accident and therefore, the first respondent is not liable to pay any compensation to the petitioners. Hence, the claim petition is liable to be dismissed.

5. Before the Tribunal, in order to prove the case of the petitioners, the petitioners have examined P.W.1 and P.W.2 and marked Exs.P.1 to P.8. On the side of the respondents, R.W.1 to R.W3 were examined and Exs.R1 and R2 were marked. That apart, Exs.X1 to X4 have also been marked.

6. The Tribunal, after considering the evidence adduced on either side, awarded compensation of Rs.1,00,000/- under the personal accident coverage policy. As against the award passed by the Tribunal, the first respondent/Insurance Company has preferred this appeal by disputing the liability on the ground that the rider of the vehicle had no license on the date of accident.

7. The learned counsel for the appellant/first respondent would contend that the deceased was the owner of the vehicle, which was involved in the accident and he had no valid license on the date of accident and thereby, the appellant/first respondent is not liable to pay compensation to the petitioners. Before the Tribunal, the appellant/first respondent have examined R.W.1 to R.W.3 and marked Exs.R1 and R2. As per the said evidences, the rider of the vehicle had no license to ride the motorcycle, however, the Tribunal has failed to consider the above said evidences and thereby, the award passed by the Tribunal is liable to be set aside.

8. The learned counsel appearing for the respondents 1 to 3/petitioners would contend that the deceased was the owner of the vehicle and the said vehicle was insured with the appellant/Insurance Company. While the deceased was riding as pillion rider, he died in the accident. Therefore, the appellant/first respondent is liable to pay compensation. However, the Tribunal has only awarded a sum of Rs.1,00,000/- under the personal accident coverage policy. Since the policy was in force on the date of accident, the appellant/first respondent is liable to pay compensation. The appellant/first respondent has preferred this appeal on the ground that the deceased had no

license, but they have not taken any steps to examine the transport official and thereby, they failed to prove their contention. Therefore, the Tribunal, after taking into consideration the evidences adduced on either side, correctly awarded compensation and fixed the liability on the appellant/first respondent. Therefore, the present appeal is liable to be dismissed.

9. This Court after hearing learned counsels appearing on either side and perusing the documents including the order of the Tribunal frames the following point for determination in this appeal:

i. Whether the appellant/Insurance Company has proved that the rider of motorcycle had no driving license on the date of the accident? and

ii. Whether the appeal has to be allowed or not?

Points:

10. In this case, there is no dispute that the deceased was the owner of the vehicle and the said vehicle was insured with the appellant/first respondent on the date of the accident and the deceased died due to the accident.

11. According to the respondents 1 to 3/petitioners, the vehicle was insured with the appellant/first respondent and thereby, the appellant/Insurance Company is liable to pay the award amount. The appellant/Insurance Company has also admitted the said fact that the vehicle was insured with them. The only contention is that the rider of the motorcycle had no valid license on the date of accident. In order to prove the same, the appellant/Insurance Company has not taken any steps to examine the transport official. Though they examined three witnesses and marked two documents, failed to examine the RTO official. Since they had taken specific stand that the rider of the vehicle had no license, it is their duty to prove the same, but they have not examined any witnesses in this aspect. In the absence of any evidence in respect of the license, the contention of the appellant/Insurance Company that the rider of the two wheeler had no license, is not acceptable.

12. There is no dispute in respect of the quantum of compensation. Already, the Tribunal had awarded a sum of Rs.1,00,000/- under the personal accident coverage policy. The petitioners have also not preferred any appeal

or cross objection as against the order passed by the Tribunal in respect of the quantum of compensation amount. The appellant/first respondent has also not denied the existence of the policy for personal accident coverage and thereby, the order passed by the Tribunal is in order and no perversity and infirmity in the order of the Tribunal and warrants no interference.

13. In view of the above said discussion, this Court is of the opinion that this appeal has no merit and deserves to be dismissed. The points are answered accordingly.

14. In result, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The award passed in M.C.O.P.No.153 of 2005 dated 05.09.2011 by the Motor Accident Claims Tribunal (Additional District and Sessions Judge/Fast Track Court), Pudukkottai is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest at 7.5% per annum and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimant is permitted to withdraw the award amount as apportioned by the Tribunal, less the amount already withdrawn, if any,

together with proportionate interest and costs. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalised banks, as fixed deposit till the minors attain the age of majors or three years whichever is earlier, and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants on attaining majority are permitted to withdraw their share. No costs.

06.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
skn

To
1. The Motor Accident Claims Tribunal
(Additional District and Sessions Judge/Fast Track Court),
Pudukkottai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL,J.

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