



C.M.A.(MD) No.167 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.167 of 2010

and

M.P.(MD) No.2 of 2010

United India Insurance Company Ltd.,
Represented by its Branch Manager,
Marthandam, Nalloor Village,
Vilavancode Taluk,
Kanyakumari District.

... Appellant

Vs.

1.Sobia Grace
W/o.Tahanislas

2.Minor.Shybi
D/o.Late.Thanislas

3.Minor.Shyju
S/o.Late.Thanislas

(Minor R2 and R3 are represented
by their guardian, mother, R1)

4.Justin
S/o.Selvaraj

5.Masanam
S/o.Sridharan



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6.Chellaswamy
S/o.Siluvaimuthu

... Respondents

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[R4 and R5 remained *ex parte* before the Tribunal]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 22.12.2008 made in M.C.O.P.No.6 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Court) at Kuzhithurai.

For Appellant : Mr.N.Murugesan

For R1 to R3 : Mr.T.Jeen Joseph

For R5 & R6 : No appearance

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the Tribunal's finding on liability.

2. The first to third respondents filed a claim petition before the Tribunal, stating that the deceased was employed under the sixth respondent herein, and on 16.10.2003, at 03:00 hours, while the deceased was travelling in a Tempo bearing registration No.TCZ 3778 insured with the appellant, the driver drove the vehicle in a rash and negligent manner,



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as a result of which the deceased was thrown out of the vehicle and sustained fatal injuries.

3. The driver and the owner of the vehicle, the fourth and fifth respondents herein, remained *ex parte* before the Tribunal.

4. The appellant filed a counter stating that the accident did not take place in the manner stated in the claim petition and that in any event, the driver of the insured vehicle did not have a valid driving licence, and therefore, they are not liable to pay any compensation.

5. The sixth respondent, who is the owner of the goods transported in the insured vehicle, filed a counter stating that he hired the vehicle from the fifth respondent, which was driven by the fourth respondent for transporting goods, and that he engaged the deceased for unloading the goods at the house of his customer, and during the travel, the accident took place; and that the deceased was his agent, and therefore he is not liable to pay any compensation.



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6. Before the Tribunal, the claimants examined P.W.1 and marked Exs.A1 to A8, and the respondents therein, i.e., the appellant and the fourth respondent herein, examined R.W.1 to R.W.3 and marked Exs.B1 and B2.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the negligence of the driver of the vehicle and directed the appellant to pay a compensation of Rs.4,10,000/- to the claimants.

8. The learned counsel for the appellant submitted that the appellant had examined R.W.1 and produced the driving licence of the driver, the fourth respondent herein, to show that the driver had applied for licence only on 25.03.2004 after the accident took place on 16.10.2003; however, the Tribunal had erroneously held that the appellant failed to establish that the driver did not have a valid driving licence at the time of the accident and that in view of the violation of policy conditions, the Tribunal ought to have granted liberty to the appellant to recover the compensation from the owner of the vehicle, the fifth respondent herein.



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WEB COPY 9. The learned counsel for the first to third respondents/claimants submitted that the award of the Tribunal is just and reasonable, and therefore, no interference is called for.

10. Though notice was served on the fifth and sixth respondents and their names are printed in the cause list, none has entered appearance.

11. The only point for consideration in the instant appeal is whether the appellant had established that there was a violation of policy conditions by the insured, the fifth respondent herein, and the appellant can be directed to pay and recover the compensation from the fifth respondent.

12. The learned counsel for the appellant is unable to point out any infirmity in the quantum of compensation. The appellant had examined R.W.1, the Regional Transport Officer, who had produced Ex.P2, the Driving Licence of the driver, to show that the driver of the insured vehicle had applied for the licence only on 25.03.2004. However, the Tribunal had assumed that the driver could have obtained the Learner's



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License Registration [LLR] even before that, and therefore, the insurer had not violated the policy conditions.

13. This Court is of the view that the Tribunal's finding is erroneous, as neither the driver nor the owner of the insured vehicle has dislodged the evidence let in by the appellant through R.W.1 and by the production of Ex.P2/license which was issued on 25.03.2004. There cannot be a presumption in law that the driver could not have obtained an LLR or that he would have had a valid LLR at the time of the accident. Even before this Court, the driver and the owner of the insured vehicle remained *ex parte*. Hence, this Court is of the view that the appellant had established that there was a violation of policy conditions, as the driver did not have a valid driving licence at the time of the accident, and therefore, the appellant can be directed to satisfy the award at the first instance and recover the same from the fifth respondent, the owner of the insured vehicle, in the manner known to law.

14. The learned counsel for the appellant submitted that they have deposited the entire compensation awarded by the Tribunal together with interest and costs.



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15. The first respondent is permitted to withdraw her share along with proportionate interest and costs, less the amount already withdrawn, if any, by filing suitable application before the Tribunal.

16. As far as the second and third respondents are concerned, they were minors at the time of filing of the claim petition in the year 2005. Since they would have now attained majority, they are permitted to file suitable application before the Tribunal to record their majority and withdraw their shares along with proportionate interest and costs.

17. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.10.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Kuzhithurai,
Kanyakumari District.



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2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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