0BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 26.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.693 of 2023

Branch Manager,
United India Insurance Company Ltd.,
Kandan Complex, Opp. to New Bus Stand,
Valliyoor, Radhapuram Taluk,
Tirunelveli – 627 117. ... Appellant/2nd Respondent

Vs.

1.Shunmugam

2.S.Ganesan ... 1st & 2nd Respondents/Petitioners

3.R.Dhanapaul ... 3rd Respondent /1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 03.08.2022 passed in M.C.O.P.No.863 of 2018 on the file of the Motor Accidents Claims Tribunal (I Additional District Court), Tirunelveli.

For Appellant : Mr.I.Robert Chandrakumar

For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the award dated 03.08.2022 passed in M.C.O.P.No.863 of 2018 by the Motor Accident Claims Tribunal/I Additional District Court, Tirunelveli.

2. The 2nd respondent in M.C.O.P.No.863 of 2018 is the appellant herein. The petitioners/claimants are the 1st and 2nd respondents herein.

3. The petitioners/claimants filed the claim petition in M.C.O.P.No. 863 of 2018.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 863 of 2018 is adopted hereunder.

5. **The brief facts of the case:**

On 24.03.2018 at about 12.30 hours the deceased Samuthiravel was travelling in a two wheeler bearing registration number TN 72 BZ 5198 as pillion rider. The two wheeler was riding by one Shumugavel, near Karuvelankulam road east of Nayithankulam Pillaiyarkulam Koil from west to east on extreme left, at that time the mini bus belonged to the first respondent bearing registration number TN 72 BY 3895 in a rash and negligent manner from the opposite direction and dashed against the two wheeler. Due to impact, the deceased Samuthiravel sustained multiple grievous injuries and was taken to Tirunelveli Medical College hospital but died in the said hospital. The deceased was working as a tailor and earning Rs.18,000/- p.m. The petitioners being dependents of the deceased filed the claim petition seeking compensation of Rs.30,00,000/-.

6. The 2nd respondent/Insurance Company objected the claim petition by contending that the driver of the mini bus TN 72 BY 3895 was not holding driving license, moreover, the first respondent had no route permit and fitness certificate. The first respondent violated the policy condition. Further, the rider of the motor cycle was also not having valid driving licence and the vehicle was not insured with any insurance company. The deceased and the rider of the vehicle did not wear helmet at the time of accident. Therefore, the petitioners are not entitled any claim from the 2nd respondent/Insurance Company.

7. Before the Tribunal both side adduced oral and documentary evidence. On the side of the petitioners, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.6 were marked. On the side of 2nd respondent, R.W.1 and R.W.2 were examined and Ex.R.1 to Ex.R.5 were marked.

8. After hearing both and after considering the evidence, the Tribunal has held that the accident took place due to the rash and negligent driving of the driver of the first respondent's mini bus and awarded compensation directing the 2nd respondent to pay the compensation of Rs.8,44,444/-.

9. Aggrieved by the said award, the appellant/2nd respondent has preferred this Civil Miscellaneous Appeal.

10. Heard the learned counsel for the appellant/Insurance Company and perused the records in this Civil Miscellaneous Appeal.

11. The learned counsel appearing for the appellant/2nd respondent/Insurance Company has mainly argued that though the accident occurred due to the driver of the first respondent, but he was not possessing valid driving licence and the mini bus had no valid route permit, thereby violated the policy condition. In the same accident, the rider/injured Shunmugavel filed the claim petition in M.C.O.P.NO.1084 of 2018 before the Tribunal and the Tribunal ordered for pay and recovery. The learned counsel for the appellant/Insurance Company has further argued that the rider of the two wheeler also was not holding valid driving licence and that the rider and the deceased/pillion rider had not worn helmet. So, there is

contributory negligence on the pard of the rider and pillion rider of the two wheeler. Therefore, the Insurance Company prayed to modify the order as pay and recovery as ordered in M.C.O.P.NO.1084 of 2018, contending though the award copy was marked the Tribunal failed to appreciate the same. In support of his argument the learned counsel for the appellant/Insurance Company relied on the order of the Madras High Court passed in C.M.A.No.4847 of 2019 dated 06.01.2020, wherein it is held in paragraph No.12 as follows:

> *"12. ....The Tribunal considering the fact that the deceased was not wearing helmet at the time of accident, fixed 15% contributory negligence on the part of the deceased. This is inconsonance with the judgments rendered by this Court in a number of cases. There is no error......."*

12. On perusal of records, it is clear that the accident took place upon the rash and negligent driving of the mini bus TN 72 BY 3895, which belonged to the first respondent. The second respondent's main contention is that the driver of the offending vehicle had not possessed any valid driving licence and the mini bus has no route permit at the occurrence place. On perusal of award, the Tribunal has discussed about the evidence of R.W.1, who is a Junior Assistant of the RTO office, who deposed that the

driver of the vehicle was permitted to ply the bus in changed route by police as there was demonstration and road work was going on. There is no contra evidence placed by the insurance company. So, the Tribunal correctly held that the mini bus was plying in the permitted route.

13. On perusal of F.I.R. - Ex.P.1, it is clear that the case was registered against the driver of the mini bus. It is the main contention of the appellant/Insurance Company that the driver of the mini bus was not holding a valid driving licence and hence, the Tribunal ought to have passed award pay and recovery order. It is further stated that the injured/rider of the two wheeler has filed M.C.O.P.No.1084 of 2018 in which the Tribunal/ Special Sub Judge for MCOP Cases, Tirunelveli passed award dated 18.11.2021 directing the Insurance Company to pay the compensation and to recover the same from the first respondent, which is marked as Ex.R.5. On perusal of Ex.R.5, the Tribunal/ Special Sub Judge for MCOP Cases, Tirunelveli discussed the case and held that the mini bus was plying on the accident spot without route permit, the Tribunal/Special Sub Judge for MCOP Cases, Tirunelveli had not held that the driver of the first respondent's mini bus was not holding driving license. But in the case on hand, the Tribunal clearly held on the basis of evidence of R.W.1 that the bus was directed to ply on the accident road by police due to demonstration and the Insurance Company failed to prove that the driver of the first

respondent mini bus was not holding a valid driving license. Hence, the contention of pay and recovery is negatived.

14. The next contention is that the deceased was not wearing helmet and therefore, contributory negligence of 15% has to be held on the part of the deceased. In the relied on decision, the rider of the two wheeler was not wearing helmet. In this case, the deceased was sitting as a pillion rider. Further on perusal of Ex.R.5, the rider of the two wheeler was held 10% negligence. The citation relied on by the Insurance Company is not applicable to the facts of the case as it related to rider of the two wheeler, who did not wear helmet and hence, the order is not applicable to the facts of this case.

15. In the counter, the Insurance Company stated that the deceased travelled in the two wheeler with the knowledge that the rider of the two wheeler was not holding driving licence, except this contention there is no other contention raised against the deceased. Already stated supra, in Ex.R.5 order, the Tribunal/Sub Judge for MCOP Cases, held contributory negligence at 10% and against the award the Insurance Company has not preferred appeal to enhance the contributory negligence. So, in this case also the Tribunal has not considered this aspect though Ex.R.5 marked. Hence, this Court holds that 10% contributory negligence on the part of the

deceased who was ridden as a pillion rider has to be deducted for not wearing helmet.

16. There is no dispute that the accident took place due to the offending vehicle, which was driven by its driver in a rash and negligent manner at the time of accident. There is also no dispute regarding the deceased who died in the accident and also the age and avocation of the deceased. There is no dispute regarding the income and multiplier fixed by the Tribunal. In the above circumstances, the award of the Tribunal is modified to the effect that 10% of the award has to be deducted towards contributory negligence and there is no need to interfere with other aspects.

17. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is reduced from Rs.8,44,444/- to Rs.7,60,000/- (Rupees Seven lakhs and Sixty Thousand only).

(ii) The first petitioner/1st respondent herein is entitled to receive a sum of Rs.5,00,000/-, the 2nd petitioner/2nd respondent herein is entitled to receive a sum of Rs.2,60,000/- with proportionate interests and costs.

(iii) The appellant/Insurance Company is directed to deposit the said amount, less the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with cost to the credit of M.C.O.P.No.863 of 2018 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tirunelveli within a period of six weeks from the date of receipt of a copy of this order. The excess amount, if any, already deposited by the appellant/Insurance Company shall be refunded to the appellant;

(vi) On such deposit being made by the appellant/2nd respondent Insurance Company, the claimants/respondents 1 and 2 herein are permitted to withdraw their entire share amount as apportioned by this Court with proportionate interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. No costs.

26.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1.The Motor Accidents Claims Tribunal
/ I Additional District Court,
Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
C.M.A.(MD)No.693 of 2023

26.03.2024