BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1251 of 2015

1. Vallithai
2. Minor Mariselvam
3. Minor Marisekar
4. Yovan
5. Malai ... Appellants/Petitioners 1 to 5

(Minor Appellants 2 and 3 are represented by their mother and natural guardian 1st appellant herein)

-vs-

1. Zahkir Hussain

2. The New India Assurance Company,
Door No.2488, Rekha Towers,
Kamarajar Salai,
Madurai – 625 009.
Represented by its Branch Manager ... Respondents /Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 01.07.2011 in M.C.O.P.No.898 of 2009 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, (Incharge), Tirunelveli and to set aside the judgment and decree.

For Appellants : Mr.V.Sasikumar

For R2 : Mr.D.Sivaraman
For R1 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants as against the order passed in M.C.O.P.No.898 of 2009 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, (Incharge), Tirunelveli, wherein, the appellants have filed petition claiming compensation.

2. The Tribunal has awarded a sum of Rs.6,83,000/- (Rupees Six Lakhs and Eighty Three Thousand only) along with interest at the rate of 7.5% p.a., towards compensation by directing the first respondent owner of the vehicle to pay this amount. As against the award passed by the Tribunal, the present appeal has been preferred by the appellants/ petitioners.

3. The brief facts of the averments made in the petition before the

Tribunal are as follows:

On 16.03.2009, at about 08.15 a.m, one Kalamurthy, was travelling in a lorry bearing Registration No. TN-57-J-9829 along with a cutter machine and when the vehicle came near Alangulam Maranthai BSNL Tower, in Tenkasi to Tirunelveli main road it was driven by its driver in a rash and negligent manner and hit at a tree on the side of the road and by this impact the deceased sustained various injuries and died due to the accident. The petitioners are the legal heirs of the deceased. The deceased was aged about 38 years and he was earning a sum of Rs.6,000/- (Rupees Six Thousand only) per month. The first respondent's vehicle was insured with the second respondent on the date of accident. Hence, they claimed compensation as against the respondents.

4. The gist of the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or on facts. The petition is liable to be dismissed. The first respondent vehicle was insured with the second respondent on the date of accident. The second respondent denied the age, income and occupation of the deceased and the accident occurred only due to the negligence on the part of the deceased and not on the part of the driver of the first respondent. The driver of the first respondent had no valid driving licence on the date of accident, thereby, the second respondent is liable to pay the compensation to the petitioners.

5. Before the Tribunal, on the side of the petitioners, P.W.1 and P.W.2 were examined and Exhibits P.1 to Ex.P.3 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and documents Ex.R1 to Ex.R.8 were marked.

6. The Tribunal after hearing both sides and perusing the records has awarded a sum of Rs.6,83,000/- (Rupees Six Lakhs and Eighty Three Thousand only) along with interest at the rate of 7.5% p.a., towards compensation by directing the first respondent owner of the vehicle to pay the entire amount and exonerated the Insurance Company. As against the order passed by the Tribunal, the present appeal has been preferred by the appellants/ petitioners on various grounds.

7. The learned counsel appearing for the appellants would contend that

the accident took place due to the negligence on the part of the driver of the first respondent. The first respondent's vehicle was insured with the second respondent. Though the driver of the first respondent had no valid driving license on the date of accident, as far as the petitioners are concerned they are third parties to the Insurance Company and thereby the Tribunal ought to have awarded pay and recovery. But the Tribunal has exonerated the Insurance Company from paying the compensation and directed the first respondent to pay the compensation. Therefore, the order passed by the Tribunal is liable to be set aside.

8. In support of his contention, the learned counsel appearing for the appellants has relied upon the judgment of the Hon'ble Supreme Court ***in (2018) 9 SCC 650 (Shamanna and another Vs. The Divisional Manager, Oriental Insurance Company and others.***

9. The learned counsel appearing for the second respondent would contend that the driver of the first respondent had no valid driving licence on the date of accident and thereby there is violation of policy conditions and in order to prove the same, on the side of the second respondent R.W.1 and R.W.

2 were examined and documents Ex.R1 to Ex.R8 were marked.

10. The Tribunal after considering the evidences adduced by both the parties fairly come to a conclusion that the first respondent alone is liable to pay compensation to the petitioners. Since the driver of the first respondent had no valid driving licence, the Tribunal has correctly exonerated the Insurance Company/second respondent. Therefore the order passed by the Tribunal is in order and the present appeal is liable to be dismissed.

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

"Whether the appeal is liable to be allowed or not?

12. In this case, there is no dispute in respect of the accident and the negligence on the part of the driver of the first respondent. The appeal is preferred by the appellants/petitioners on the ground of liability. According to the appellants, the first respondent's vehicle was insured with the second respondent on the date of accident and the same was also admitted by the second respondent, but the driver of the first respondent had no valid driving

license on the date of accident and thereby the second respondent is not liable to pay any compensation to the petitioners. To prove their contention in this case, the Insurance Company have examined R.W.1 and R.W2 and Exhibits R1 to R8 were marked. The above said evidences clearly show that the driver of the first respondent had no valid driving licence on the date of accident. Though the driver of the first respondent had no valid driving license on the date of accident, as far as the petitioners are concerned they are only third party in the Insurance Company and thereby the Insurance Company can satisfy the amount to the petitioners and the Insurance Company can recover the same from the owner of the vehicle by following the principle to pay and recovery.

13. In support of his contention, the learned counsel for the appellants has relied upon the judgment ***in (2018) 9 SCC 650 (Shamanna and another Vs. The Divisional Manager, Oriental Insurance Company and others)*** in Paragraph Nos 13 and 14 held as follows:-

> "13. *Since the reference to the larger bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case*

followed in Laxmi Narain Dhut and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.

14. So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan and others where this Court held that:

> *"8.... For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between*

the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."

14. On a careful perusal of the above said judgment, it is seen that since the driver of the first respondent's vehicle had no valid driving license on the date of accident, the Insurance Company was directed to satisfy the amount to the petitioners and thereafter, the Insurance Company was permitted to recover the amount from the owner of the vehicle under the pay and recovery. In the case on hand also, the second respondent is that the driver of the first respondent no valid driving license. Therefore, in view of the above said judgment and considering the facts and circumstances of the case, it is appropriate to direct the second respondent to pay the award amount and thereafter to recover the same from the first respondent/owner of the vehicle. In this case, there is no dispute with regard to the quantum of the amount. The appellants also preferred the appeal only on the ground of liability. Therefore, the order passed by the Tribunal in respect of the liability, fixing the amount as against the first respondent is liable to be set aside.

15. In the result, this Civil Miscellaneous Appeal stands allowed . The order passed by the Motor Accident Claims Tribunal/II Additional District Court, Tirunelveli, in M.C.O.PNo.898 of 2009, dated 01.07.2011, is modified to the effect that the petitioners are entitled to a sum of Rs.6,83,000/- (Rupees Six Lakhs and Eighty Three Thousand only) towards compensation along with interest at the rate of 7.5% p.a from the date of filing petition till the date of realization of payment. The second respondent is directed to pay the award amount as awarded by the Tribunal along with interest to the petitioners within a period of two months from the date of this order and the second respondent after satisfying amount can recover the same from the first respondent. There shall be no order as to costs.

26.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
   II Additional District Judge, (Incharge),
   Tirunelveli.

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

P.DHANABAL,J.

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