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C.M.A(MD)Nos.1051 and 1052 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.04.2024

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THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

C.M.A(MD)Nos.1051 and 1052 of 2021

and

C.M.P(MD)Nos.10048 and 10050 of 2021

C.M.A(MD)No.1051 of 2021

Reliance General Insurance Company Ltd.,
No.10/4/4, Thaga Plaza, 2nd Floor,
South Bypass Road, Vannarapettai,
Tirunelveli-627 003.

... Appellant / Respondent No.2

Vs.

1.M.Sivakumar

2.M.Meenakumari

.. 1 and 2 Respondents / Petitioners

3.S.Anthony Ganidurai

... 3rd respondent / 1st respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the award and decree dated 18.02.2021 passed in M.C.O.P.No.134 of 2018 on the file of the Motor Accident Claims Tribunal / I Additional District Judge of Thoothukudi in so far as liability to pay compensation and the quantum of compensation awarded are concerned.



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C.M.A(MD)No.1052 of 2021

Reliance General Insurance Company Ltd.,
No.10/4/4, Thaga Plaza, 2nd Floor,
South Bypass Road, Vannarapettai,
Tirunelveli-627 003.

... Appellant / Respondent No.2

Vs.

1.P.Shanmugam

2.P.Eswara Arumugam

.. 1 and 2 Respondents / Petitioners

3.S.Anthony Ganidurai

4.P.Sankaragomathi

... 3 and 4 respondents / 1 and 2 respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree dated 18.02.2021 passed in M.C.O.P.No.142 of 2018 on the file of the Motor Accident Claims Tribunal/ I Additional District Judge of Thuthukudi.

For Appellant : Mr.V.Sakthivel

For R1 and R2 : Mr.I.Robert Chandrakumar
for Mr.S.Senthil Sankaranatha Kumar

For R3 : No appearance
(in both CMAs)



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JUDGMENT

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This appeal is filed against the award and decree dated 18.02.2021 passed in M.C.O.P.No.134 of 2018 on the file of the Motor Accident Claims Tribunal / I Additional District Judge of Thoothukudi in so far as liability to pay compensation and the quantum of compensation awarded are concerned.

2.Brief substance of the claim petition is as follows:

On 26.03.2018 at about 4.30 p.m., the deceased Vinoth Kumar was riding his motor bike bearing Reg.No.TN 69 BC 7425 along with one Petchiappan who was the pillion rider in the said bike, when they were going on their left side of the Thoothukudi-Tharuvaikulam main road from North to South, nearing Arun salt, the driver of the 1st respondent's Force Jeep bearing Reg.No.TN69 BB 5040 drove the said jeep on the wrong side of the said road in the opposite direction with high speed, without control, without observing the traffic rules in a rash and negligent manner and dashed against the deceased bike. As a result the deceased and the pillion rider fell down from the bike and the deceased sustained multiple grievous injuries all over the body and died on the spot. Immediately he was taken to the Thoothukudi Government Medical College Hospital, where post-mortem was conducted on



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the next day. Claiming compensation amount, the dependants of the deceased Petchiappan filed M.C.O.P.No.142 of 2018 before the Tribunal. Similarly, M.C.O.P.No.139 of 2018 was also filed by the dependant of the deceased Vinoth Kumar who is the rider of the two wheeler bearing registration No. TN 69 BC 7425. He died on the spot. Claiming compensation, the above said petition was filed.

3. Both the petitions were resisted by the insurance company stating that the rider of the two wheeler to avoid the pit holes in the road, drove the vehicle in a rash and negligent manner and hit against the vehicle which is coming in the opposite direction. Moreover, it was also contended that the vehicle driver was not having any badge to drive the commercial vehicle. Against the policy conditions, one Thangaraju was driving the vehicle. One Sankara Gomathi was impleaded as third respondent and stated in her counter that she is also entitled for a share in the compensation if awarded by the Tribunal.

4. The Tribunal is at the conclusion of the trial, on the basis of the evidence produced, found that the occurrence took place because of the rash and negligent driving on the part of the first respondent vehicle driver.



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Regarding the compensation amount, in M.C.O.P.No.134 of 2018, fixed Rs.18,15,000/- and in M.C.O.P.No.142 of 2018, is concerned, compensation is fixed at Rs.5,50,000/- and apportionment was also ordered as noted in the order. Against which, the insurance company has filed this appeal.

5. Only liability point was raised by the appellant counsel and regarding the negligence as well as the fixation of compensation, no grievance was expressed by the appellant. So that portion of the order is confirmed. Regarding the liability, it is seen that the Tribunal found that it is not established on the side of the insurance company that the driver of the first respondent vehicle was not having any proper license. Similarly, with regard to the badge also there was no proof.

6. The Tribunal recorded a finding that the insurance company did not establish that the first respondent / third respondent herein, vehicle driver did not own badge for driving the commercial vehicle. The first respondent before the Tribunal is the third respondent herein who did not appear before the Tribunal inspite of receipt of notice. The Tribunal recorded a finding that it is not established on the side of the insurance company by sending proper notice to the third respondent herein to produce the driving licence of the



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driver. In the absence of any such steps, on the basis of evidence of R.W.1 and R.W.2 it cannot be found that the third respondent vehicle driver did not own proper driving licence.

7. The correctness of the finding is disputed now. Since it is the duty of the third respondent herein to cooperate with the Tribunal, to find out the correct facts, he not only failed before the Tribunal but also failed before this Court to appear. Eventhough, he received notice, failed to appear before this Court also. In the absence of any such proper evidence on the side of the insured, the possible steps has to be taken by the appellant herein to establish that the third respondent vehicle driver did not own proper badge for driving the commercial vehicle. So adverse inference must be drawn. Had it been so that the third respondent vehicle driver was owning proper driving licence, the third respondent would have appeared before the Tribunal and produced the same. Due to his absence adverse inference is drawn and therefore, the award passed by the Tribunal is liable to be modified. As mentioned above, since no issue was raised by the appellant with regard to the quantum fixed by the Tribunal, no interference is called for in that regard.



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8. (i) Accordingly, these Civil Miscellaneous Petitions are partly allowed and the award dated 18.02.2021 passed in M.C.O.P.Nos.134 and 142 of 2018 on the file of the Motor Accident Claims Tribunal / I Additional District Judge of Thoothukudi, is modified to the effect that the appellant is directed to deposit the award amount in both the claim petitions, as ordered by the Tribunal and liberty is granted to the appellant herein to recover the amount from the third respondent after depositing the award amount by following proper procedure.

(ii) On such deposit being made, the respondents / claimants in both these appeal, are at liberty to withdraw the award amount as directed by the Tribunal, after following the due process of law, less any amount already received by them. Consequently, connected miscellaneous petitions are closed. No costs.

16.04.2024

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

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G.ILANGOVA, J.

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To

- 1.The Motor Accident Claims Tribunal / I Additional District Judge,
Thoothukudi
- 2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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and
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