(2018) 02 MAD CK 0294

In the Madras High Court

Case No : 2218 of 2016

Cholamandalam MS General Insurance Co. Ltd. APPELLANT

Vs

Murugesan & Ors. RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

Citation : (2018) 02 MAD CK 0294

Hon'ble Judges : S.Baskaran

Bench : Single Bench

Advocate : N.Vijayaraghavan, R.Kamala Rani

Final Decision : Partly Allowed

Judgement

1. This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 29.03.2016 made in MCOP.No.299 of 2014 on the file of the

Motor Accident Claims Tribunal/District Court, Nagapattinam.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 07.04.2014, the deceased Muthamizh Selvi was going along with her relative as pillion rider in the bicycle,

in North Street, Vedharaniyam from East to West and at that time, the Lorry bearing Registration No.TN-31-BY-9825 belonging to the first

respondent and insured with the second respondent, came at high speed in the opposite direction and dashed against the above bicycle in which

the deceased was travelling. Consequently, the deceased Muthamizh Selvi fell down and the wheel of the lorry crushed her head. Consequently,

she died on the spot itself. This petitioners, who are the husband and sons of the deceased claims that the accident occurred only due to the negligent driving of the driver of the first respondent''s lorry. At the time of accident, the deceased was aged about 28 years and she earned a sum

of Rs.10,000/- per month by doing cooli work and also growing goats. Due to her sudden demise, the first petitioner lost his conjugal rights and all

the three petitioners lost the love and affection of their mother. Hence, the petitioners seeks a sum of Rs.20,00,000/- as compensation from the

respondents, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent Insurance Company contends that the driver of the lorry was not having

valid driving license and valid R.C. Book and fitness certificate was also not available. Thus, the second respondent Insurance company is not

liable to pay any compensation. The bicycle in which the deceased was travelling as a pillion rider met with the accident only because of the rider

of the bicycle, namely, Subramaniam drove the bicycle carelessly without noticing the on coming vehicle. The claim of the petitioners is excessive.

Hence, the second respondent sought for dismissal of the petition.

5. Before the Tribunal, the first petitioner examined himself as P.W.1 and eye witness to the occurrence was examined as P.W.2, petitioner

produced documents Ex.P1 to Ex.P7 to substantiate their claim. On the side of the respondents R.W.1 and R.W.2 were examined and produced

Ex.R1 to Ex.R4 were marked to prove their case.

6. On the basis of available material before it, the Tribunal passed an award granting Rs.7,33,000/- with 7.5% interest to the petitioners.

Aggrieved over the said finding of the Tribunal, the second respondent Insurance Company has come forward with this appeal.

7. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3 and perused the

materials available on record.

8. The learned counsel appearing for the second respondent Insurance Company contends that as the first respondent allowed a person without

valid license to drive the vehicle, the entire liability cannot be fixed on the second respondent herein. Further, the Tribunal failed to consider that

there is no driving license for the first respondent''s driver, the driver of the offending vehicle committed violation of policy condition. However, the

first respondent owner alone is liable to pay the compensation and the second respondent/Insurance Company has to be exonerated. Thus, the

second respondent seeks to entertain the appeal and to set aside the impunged award passed by the Tribunal.

9. Per contra, the learned counsel for the petitioners/claimants contends that the fact of alleged accident and negligence on the part of the first

respondent''s driver is not disputed in the appeal. Further as the only contention of the second respondent is that the policy condition has been

violated, the second respondent insurance company cannot avoid its liability. At best it can only seek for payment to recover the award amount

from the first respondent after effecting payment to the petitioners/claimants. Hence, the petitioners/claimants sought for dismissal of the appeal.

10. Admittedly, the finding of the Tribunal that the negligence of the first respondent driver alone is responsible for the accident as well as the

conclusion arrived at about the age, avocation and income of the deceased Muthamizh Selvi is not agitated by the second respondent insurance

company. Hence, the award of the Tribunal giving Rs.7,33,000/- as compensation to the petitioners is to be confirmed. The petitioners has not

come forward any appeal or cross appeal.

11. The only contention of the second respondent insurance company is that there is a violation of policy condition and hence they are entitled to

recover the award amount from the owner of the vehicle who is the first respondent herein. Admittedly, the Tribunal found, on the basis of

evidence of P.W.1 and P.W.2 and also on the basis of Ex.R2 to R4 documents, that the driver of the first respondent lorry was not having valid

license at the time of the accident. The staff of RTO Office, Nagapattinam who deposed as R.W.1 and Assistant Manager of the second

respondent Insurance Company as R.W.2 have clearly stated about policy condition violation, the Tribunal after analising the evidences of R.W.1

and R.W.2 found that the driver of the first respondent lorry was not having valid license. The said fact is not contradicted and disputed by the first

respondent, who remained exparte. In such circumstances, it is contended by the second respondent relying upon Ex.R4 Policy Certificate terms

that the first respondent by permitting a person without valid license to drive the lorry committed violation of police condition. The said contention

is just and proper and the same is to be accepted. As the owner of the vehicle/

the first respondent herein committed violation of policy condition,

the second respondent insurance company is entitled to recover the amount paid by them, as per the award passed by the Tribunal from the owner

of the vehicle who is the first respondent herein. In such circumstances, as the quantum of compensation awarded by the Tribunal is just and

proper, the same needs no interference. However, as there is a violation of condition policy, the second respondent insurance company is entitled

to recover the award amount paid by them from the first respondent/owner of the vehicle. The point is answered accordingly.

12. In the result, this civil miscellaneous appeal is partly allowed. The compensation awarded by the Tribunal is confirmed. However, the second

respondent Insurance Company is directed to pay the entire compensation award amount to the petitioners/claimants and thereafter recover the

same from the first respondent/the owner of the vehicle. No costs.