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Lakshmi, Vs. Mani,

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Court : Chennai

Decided On : Jul-09-2002

Reported in : 2003ACJ1980; (2002)3MLJ133

Judge : M. Karpagavinayagam, J.

Appeal No. : C.M.A. No. 1290 of 2001

Appellant : Lakshmi, ;minor Thangaraj, ;minor Sundaram, ;minor Bama, ;minor Prabhakaran, ;minor Krishnamoorthy,

Respondent : Mani, ;A. Sulochana and the National Insurance Co. Ltd., Trichy Branch I, Trichy Cantonment, Trichy

Advocate for Def. : N.B. Surekha, Adv. for R3

Advocate for Pet/Ap. : N. Manokaran, Adv.

Disposition : Appeal allowed

Judgement :

M. Karpagavinayagam, J.

1. The claimants are the appellants.

2. The claimants filed a claim petition seeking for the award of compensation of Rs.8 lakhs for the death of the husband of the first appellant, since he died in the

road accident when the lorry belonging to the second respondent which was insured with the Insurance Company, the third respondent herein, hit against the deceased.

3. The Tribunal, after enquiry, awarded Rs.2,16,000/- with 12 % interest from the date of petition till realisation, directing the first and second respondents, namely, the driver and owner of the vehicle to pay the said award amount, holding that the Insurance Company, the third respondent herein, is not liable to pay the award amount, as the first respondent/driver was not possessing the driving licence which has been proved by the Insurance Company. Seeking for the enhancement of the award and for modification of the award with reference to the liability of the Insurance Company, the claimants have filed this appeal.

4. I have heard learned counsel for the appellants and the third respondent.

5. Learned counsel for the appellants would mainly urge that in view of the decision of the Supreme Court reported in NEW INDIA ASSURANCE COMPANY VS. KAMLA ((VOL.I), 2001 A.C.C. 346 (S.C.)), the finding by the Tribunal that no liability could be fastened with the Insurance Company, is wrong.

6. Learned counsel appearing for the Insurance Company would not dispute the proposition laid down by the Supreme Court in the above decision to the effect that the Insurance Company cannot escape from its liability to pay the compensation, merely because the driver was not possessing licence. This has been referred to in the judgment of this Court reported in M/S.NATIONAL INSURANCE COMPANY LIMITED VS. SAKTHI , wherein, this Court had followed a decision of the Supreme Court reported in NEW INDIA ASSURANCE CO., SHIMLA Vs . KAMLA AND OTHERS , in which, the Supreme Court held as follows:-

'22......When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.'

7. From the above observations, it is clear that insofar as the third parties are concerned, the insurer, namely, the Insurance Company has to pay and settle the claim on account of the policy of insurance which has been issued in respect of the vehicle and the Insurance Company is entitled to recover such sum from the owner of the vehicle, the insured, if the Insurance Company was not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated in the policy.

8. In the light of what is stated above, the findings with regard to the liability in the award passed by the Tribunal, is modified to the effect that the third respondent/Insurance Company is liable to pay the entire award amount and the Insurance Company is entitled to recover such sum from the insured, namely, the owner of the vehicle, the second respondent herein.

9. With regard to the quantum of compensation awarded by the Tribunal, I do not find any reason to hold that the same is on the lower side.

10. The appeal is allowed to the extent indicated above. No costs.

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