

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.526 of 2011

and

M.P.No.1 of 2011

Divisional Manager,
The New India Assurance Company Limited,
No.42, Big Street,
Tiruvannamalai. Appellant /2nd Respondent

Vs.

1.Pachiammal

2.Kanaga

3.Kasi

4.Settu

5.Thanjiammal (Died)
(Deleted as per order
in Memo dated 19.07.2010)Respondent No.1 to 5/Petitioner

6.Pichandi Respondent No.6/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 28.09.2010 made in M.C.O.P.No.431 of 2007, on the file of Motor Accident Claims Tribunal (District Judge) Tiruvannamalai.

For Appellant : Mr.S.Manohar

For Respondents : Mr.J.Rajmohan (for R1 to R4)

Mr.E.Kannadasan (for R6)

R5 - Died

J U D G M E N T

Questioning the quantum of compensation, the appellant / Insurance Company has preferred this appeal under Section 173 of the Motor Vehicle Act, 1988.

2.It is manifested from the records that the respondents 1 to 5 being the wife, children and mother of the deceased Vellai Gounder had moved the Motor Accidents Claims Tribunal, Tiruvannamalai (Principal District Court) with a claim petition in M.C.O.P.No.431 of 2007 claiming a sum of Rs.2,00,000/- for the death of the said Vellai Gounder in road traffic accident said to have been taken place on 03.07.2006 involving a Minidoor Auto bearing Registration No.TN-25-D-4844. The appellant / Insurance Company being the second respondent in the claim petition had alone contested the claim, while the first respondent therein being the owner of the vehicle remained ex-parte. The Tribunal based on the evidence of both oral and documentary available on record had proceeded to pass an award of Rs.1,93,000/- directing the appellant / Insurance Company to pay this amount to the claimants with interest at the rate of 7.5% per annum.

3.Since the appellant / Insurance Company has questioned the quantum of compensation alone, the facts of the case in other aspects need not be traversed in detail.

4.Mr.S.Manohar, learned counsel appearing for the appellant has mainly contended that the driver of the offending vehicle did not have any valid and effective driving licence to drive the vehicle at the relevant point of time. He has also maintained that since the driver was not authorised to drive the class of vehicle at the material time, the owner of the vehicle himself had violated the policy condition and therefore, the appellant / Insurance Company was not at all liable to pay the amount awarded in favour of the claimants by way of indemnifying the loss of the insured.

5.Mr.E.Kannadasan, learned counsel appearing for the sixth respondent (owner of the vehicle) has invited the attention of the Court to the evidence given by RW1. It is revealed from the records that RW1 Mr.Sampathkumar was working as an Assistant in the appellant / Insurance Company. He had fairly admitted in his evidence that in the R.C.Book, it was stated that the vehicle, which was involved in the accident on 03.07.2006 bearing Registration No.TN-25-D-4844 had been described as Light Motor Vehicle. He had also admitted that in order to drive the vehicle, it was sufficient to possess with driving licence for Light Motor Vehicle. He had also admitted that at the time of

accident, the driver of the offending vehicle had possessed with driving licence to drive the class of vehicle and the said driving licence was in force from 2004 to 2024. This Court has also perused the evidence of RW1, who is an assistant of the appellant / Insurance Company and since he himself had admitted that the driver of the offending vehicle was having Light Motor Vehicle licence at the time of the accident. It is for the appellant to confront him, when he was in the box.

6. According to Mr.S.Manohar, RW1, who was examined on behalf of the appellant had totally turned against the contention of the appellant and when such being the case as contemplated under Section 154 of the Indian Evidence Act, the appellant ought to have cross examined him with reference to the non possession of the driving licence by the driver at the time of occurrence to drive the class of vehicle. But having been failed to do so, now it is not open for them to come and say that the driver was not having valid and effective driving licence to drive the class of vehicle at the material point of time and that the appellant is not able to pay any amount towards compensation for the claimants.

7. In so far as this case is concerned, the deceased was travelling in the said Minidoor Tempo as a coolie. His age was determined by the Tribunal at 70 years. Considering the age, avocation and place of the deceased, a consolidate amount of Rs.1,50,000/- was awarded by the Tribunal. Apart from this, towards loss of love and affection a sum of Rs.10,000/- was awarded. Besides this, a sum of Rs.2,000/- towards funeral expenses and another sum of Rs.500/- towards transportation and another sum of Rs.500/- towards damages to clothes and other articles have been awarded. Totally a sum of Rs.1,93,000/- was awarded, directing the appellant / Insurance Company to pay this amount in favour of the respondents 1 to 5 / claimants with interest at the rate of 7.5%.

8. In view of the above fact, having regard to all the facts and circumstances, this Court is of considered view that the award passed by the Tribunal does not require interference of this Court and hence the appeal is liable to be dismissed.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed, the award dated 28.09.2010 passed by the Tribunal in M.C.O.P.No.431 of 2007, is confirmed and the appellant is directed to deposit the amount along with accrued interest and costs, if not deposited earlier, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 5 / claimants are entitled to withdraw and apportion the said amount as per the ratio allotted by the Tribunal.

10.In the result, the above appeal is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

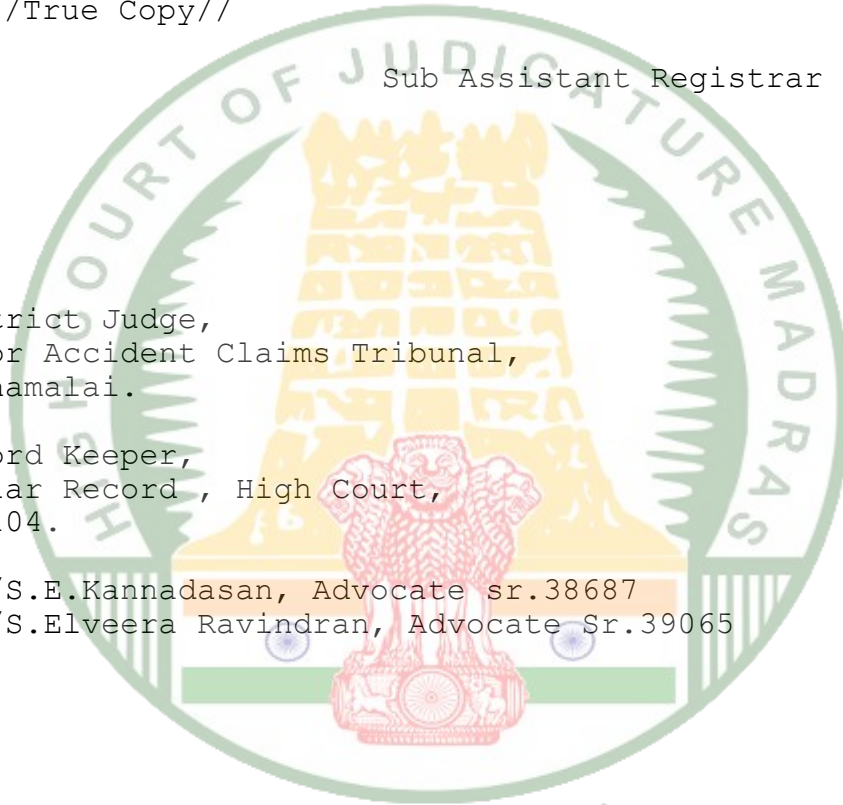
To

1.The District Judge,
The Motor Accident Claims Tribunal,
Tiruvannamalai.

2.The Record Keeper,
Vernacular Record , High Court,
Madras-104.

+1cc to M/S.E.Kannadasan, Advocate sr.38687

+1cc to M/S.Elveera Ravindran, Advocate Sr.39065



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