

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.04.2016

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. No.3390 of 2009

and M.P.No.1 of 2009

The New India Assurance Co. Ltd.,
11-19, 20, Government Arts College Road,
Coimbatore-18. .. Appellant/2nd Respondent

Vs.

1.A.Sundaram
2.N.Latha
3.S.Nallathambi .. Respondents 1 to 3/
Petitioners 1 to 3
4.M.Kokila .. 4th Respondent/1st
Respondent

(4th respondent exparte in Lower Court
and hence, notice may be dispensed with)

Prayer: Appeal under Section 173 of Motor Vehicles Act, 1988,
against the order and decretal order passed by the Motor
Accidents Claims Tribunal (Sub Judge), Dharapuram made in MCOP
No.240 of 2008 dated 15.07.2009.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.Ma.Pa.Thangavel for R1 to R3

JUDGMENT

The Insurance Company has come up with this appeal
challenging the quantum of compensation awarded by the Tribunal.

2. On 10.07.2007 at about 6.30 p.m., when the first
respondent/husband of the deceased riding his vehicle TVS XL
Super bearing Reg.No.TN 38 T 4225 along with his wife, deceased
Saroja as pillion rider, from West to East on the northern edge
of Coimbatore to Sathy Main Road near Athipalayam Division, one
Murugesan drove the Minidoor Pickup Auto bearing Reg. No.TN 39
X 7150 in a rash and negligent manner, from West to East with a
high speed. Due to high speed, the driver lost the control, the
vehicle came to the same direction and dashed behind the first

respondent's vehicle with great force. Due to this impact, both the first respondent and the pillion rider were thrown off and sustained grievous injuries all over their body. Immediately, she was taken to Ellen Hospital at Coimbatore for treatment, however, she died on the same day. The Claim Petition has been filed by her husband, daughter and son, before the Tribunal, seeking a sum of Rs. 10,00,000/- as compensation. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.90,000/- as compensation, under the following heads:

Sl.No.	Heads	Amount
1	Loss of Income	Rs. 3,12,000.00
2	Transport Expenses	Rs. 5,000.00
3	Loss of Love and Affection	Rs. 5,000.00
4	Funeral Expenses	Rs. 5,000.00
5	Consortium	Rs. 5,000.00
	Total	Rs.3,32,000.00

3. Learned counsel appearing for the appellant/Insurance Company only contended on the ground that more particularly there is no satisfactory proof furnished before the Tribunal as the driver did not possess driving license at the time of accident and hence, the Tribunal ought not have foisted the liability on the Insurance Company. Hence, the Insurance Company has filed this Appeal.

4. On the other hand, learned counsel appearing for the respondents/claimants would submit that at the time of accident, the deceased Saroja was doing vegetables and flower business and was earning a sum of Rs.7,000/- per month. Having considered the mental agony and irreparable loss due to the death of the deceased, the Tribunal has rightly awarded the compensation and hence, he prays for dismissal of the appeal.

5. A perusal of the records would show that the driver did not possess the valid driving license at the time of accident. Without examining any witness on the side of the appellant/Insurance Company, the Tribunal has come to the conclusion that the appellant/Insurance Company is liable to pay the entire award amount less 10% due to dispossession of driving license. However, this Court makes it very clear that insofar as the observation of the Tribunal that from the Compensation of Rs.3,32,000/-, 10% of the compensation has to be deducted and the balance amount could be granted to the claimants on account of the fact that the driver did not possess a valid driving license, such observation is hereby set aside. Hence, this Court is not inclined to interfere with the compensation awarded by the Tribunal.

6. This Court is of the view that the finding of the Tribunal that the burden is on the Insurance Company to prove that the driver of the vehicle had no valid license at the time of accident, cannot be accepted. Hence, this Court makes it very clear that the appellant/ Insurance Company is entitled to recover the compensation awarded to the claimants, from the 4th respondent/owner of the vehicle.

7. In fine, the Civil Miscellaneous Appeal is ordered, confirming the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. The appellant/ Insurance Company is directed to deposit the entire award amount together with accrued interest, less the amount already deposited if any, to the credit of M.C.O.P.No.240 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Dharapuram, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimants in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. No costs. Consequently, connected M.P.No.1 of 2009 is also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Sub Judge,
Motor Accidents Claims Tribunal,
Dharapuram

2. The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.M.B.Gopalan Advocate sr.24711
+1 cc to Ma.P.Thangavel Advocate sr.24743

C.M.A. No.3390 of 2009
and M.P.No.1 of 2009

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