BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.17 of 2015
and
MP(MD)No.2 of 2015

The Branch Manager,
The Oriental Insurance Company Ltd.,
D.D.J Centre,
1st Floor,
Opp. To Vadasery Bus Stand,
Nagercoil. : Appellant/2nd Respondent

Vs.

1.Arumugam
2.Padma : R1 and R2/Petitioners 1 and 2
3.Subramania Pillai : 3rd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed in MCOP No.123 of 2011, dated 29.04.2014 on the file of the Motor Accidents Claims Tribunal-cum-Sub Court, Valliyoor.

For Appellant : Mr.C.Jawahar Ravindran

For R1 and R2 : Mr.N.Tamilmani

For 3rd respondent : No appearance

JUDGMENT

This appeal is directed against the award of the Motor Accidents Claims Tribunal (Subordinate Judge), Valliyoor, made in MCOP No.123 of 2011, dated 29.04.2014.

2.The claim petition was filed by the respondents 1 and 2 herein claiming compensation of Rs.30,00,000/- alleging that on 11.01.2011 at 9.00 pm, the deceased Murugan was riding the Honda Shine motor cycle bearing registration No.TN-72-AZ-3939 on Nagercoil-Tirunelveli main road from east to west direction. While so, a TVS Bike bearing registration No.TN-74-R-7728, which was coming from the opposite direction in a rash and negligent manner, dashed against the Honda Shine motor cycle, which was driven by the deceased. In the impact, both the riders died on the spot.

3.In the counter filed by the appellant, it was contended that the the owner and the insurer of the Honda Shine motor cycle are necessary parties, so, the claim petition is liable to be dismissed for non-joinder of proper and necessary parties. The appellant also refuted the averments with regard to the negligence and quantum of compensation stating that the claim is very high and excessive.

4.Heard both sides and perused the materials available on record.

5.The claimants in order to prove their case, examined one Jacob Manoharan as PW2. He deposed in his evidence that he saw the accident on 11.01.2011 at 9.00 pm and the accident occurred only due to the rash and negligent driving of the rider of the TVS Bike. The claimants have marked Ex.P1 first information report, Ex.P2 copy of the observation mahazar and Ex.P3 rough sketch. The tribunal, on appreciation of the evidence of the claimants, found that the accident had taken place due to the rash and negligent driving of the rider of TVS Bike bearing registration No.TN-74-R-7728.

6.The appellant examined one Mr.Subbiah, Record Clerk of the R.T.O Office, Nagercoil as RW1 and Mr.Anandaraj, Assistant Manager of the Insurance Company as RW2. RW1 and RW2 deposed that the rider of the TVS Bike bearing registration No.TN-74-R-7728 was not having a valid driving licence on the date of the accident. Ex.R3 and R5 would show that the Insurance company has issued notice to the rider of the TVS Bike to produce the relevant documents, including driving licence. Ex.R4 is the acknowledgement. The tribunal, after considering the evidences, both oral and documentary, came to the conclusion that the rider of the offending vehicle was not having driving licence on the date of the accident. After referring to the decisions reported in 2012(2) TN MAC 420 [United India India Insurance Company Limited vs. Sujatha Arora & others] and 2013(2) TN MAC 262 SC [S.Ayyappan vs. United India Insurance Company & another, the tribunal held that the Insurance Company is liable to pay the compensation to the claimants at the first instance and recover from the owner of the offending vehicle thereafter.

7. PW1 deposed that the deceased was 27 year old on the date of the accident and he was earning Rs.20,000/- per month by doing business. Ex.P4 postmortem certificate mentioned the age of the deceased as 27 year and Ex.P7 transfer certificate also corroborated the evidence of PW1. Since, no rebuttal evidence was adduced from the other side, the tribunal fixed the age of the deceased as 27 year and assessed the income of the deceased at Rs.6,000/- per month. Since the deceased was a bachelor, the tribunal following the Sarla Verma's case [2009 ACJ 1298] deducted

50% of the income towards his personal and living expenses and by applying the multiplier of 17, awarded compensation of Rs.6,12,000/- towards loss of income. Another sum of Rs.20,000/- was awarded towards loss of love and affection and Rs.25,000/- towards funeral expenses. In total, the tribunal has awarded Rs.6,57,000/- with interest @ 7.5% p.a. This court is of the considered view that the award of the Tribunal is fair and reasonable and the direction to the appellant Insurance Company to pay and recover the award amount from the owner of the offending vehicle is in consonance with the settled position of law.

8.In the result, this appeal is dismissed. The appellant Insurance Company is directed to deposit the entire amount together with interest, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimants are permitted to withdraw the entire amount without filing any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from the owner of the offending vehicle as per the direction of the Tribunal, by following the mode in **Nanjappan's case** [***(2004)13 SCC 224]***. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub Assistant Registrar

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To

The Subordinate Judge, Valliyoor.

COPY TO:

THE SECTION OFFICER,
V.R.SECTION/RECORD KEEPER,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to Mr.c.Jawahar Ravindran Advocate Sr.No. 43696

+1cc to Mr.N.Tamilmani, Advocate Sr.No. 43057

JAM/29.11.16/km/3p-5c

Judgment made in

CMA(MD)No.17 of 2015
09.08.2016