

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-09-2017

Coram:

The Honourable Mr.**Justice R.SUBBIAH**
and
The Hon'ble Mr.**Justice P.VELMURUGAN**

C.M.A.No.2797 of 2015

The Branch Manager,
IFFCO-TOKIO General Insurance Co. Ltd.,
J.H.Tower, Second Floor,
New No.24, Old No.302, LIC Colony Road,
Salem 636 004 ... Appellant/2nd Respondent

vs.

1.P. Devi ... 1st Respondent/1st Petitioner
2.M.Selvaraj ... 2nd Respondent/2nd Petitioner
3.S.Ramya ... 3rd Respondent/3rd Petitioner
4.C.Chinnaraj ... 4th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the Judgment and decree in M.C.O.P.No.571 of 2013 dated 22.12.2014 on the file of the Motor Accidents claims Tribunal/District Judge (Special Court for Motor Accident Claims Cases) Krishnagiri.

For Appellant : Mr.C.R. Krishnamoorthy

For respondents : Mukund R. Pandiyan (R1 – R3)

J U D G M E N T**(Judgment of the Court was delivered by R.SUBBIAH,J.)**

The appeal is filed by the Insurance Company challenging the award passed by the learned District Judge (Special Court for Motor Accident Claims Cases) Krishnagiri in M.C.O.P.No.571 of 2013 dated 22.12.2014. The present appeal has been filed questioning the liability of the insurance company in paying the compensation as well as the quantum of compensation awarded by the Tribunal. Respondents 1 and 2 are the parents and 3rd respondent is unmarried sister of the deceased. They are the claimants before the Tribunal. The 4th respondent is the owner of the two wheeler bearing Reg.No.TN24 J 9811 insured with the appellant Insurance Company, which had caused the accident.

2. The case of the claimants is that on 13.06.2011 at about 7.30 p.m. the deceased Jawahar was proceeding towards Krishnagiri in his TVS 50 bearing Reg.No.29 R3466. At that time, the rider of the TVS Super XL(H.D.) bearing Regn No.TN.24 J-9811, belonging to the 4th respondent in the appeal and insured with appellant Insurance Company came in a rash and negligent manner from the opposite direction at a hectic speed without sounding horn and without minding

the rules of the road and dashed against the TVS 50 bearing Reg.No.29 R3466 and caused the accident. In the said accident, the deceased Jawahar sustained grievous head injury. He was immediately taken to the Government Hospital, Krishnagiri and after first-aid treatment, he was taken to Bangalore and given treatment in various hospitals. But, inspite of treatment he died on 19.06.2011. Hence, the parents of the deceased made claim for Rs.75 lakhs as compensation.

3. The claim made by the claimants was resisted by the Insurance Company by taking a defence that the accident took place only due to the negligence of the deceased. The rider of the insured vehicle did not have driving license. Hence, the insurance company is not liable to pay the compensation amount.

4. In order to prove the case, on the side of respondents 1 to 3/ claimants, three witnesses were examined as P.W.1 to P.W.3. P.W.1 is the mother of the deceased, P.W.2 is an eye witness and P.W.3 is the legal officer of EDAC Engineering Company and 12 documents were exhibited on their side as Exs.P1 to P12. On the side of the Insurance Company two witnesses were examined and Exs.R1

to R3 were marked.

5. After hearing both sides and perused the oral and documentary evidence, the learned District Judge, Special District Court (MACT), Krishnagiri, has come to the conclusion that the accident was caused by the rash and negligent driving of the rider of the two wheeler bearing Regn No.TN.24 J-9811 belonging to the 4th respondent herein and insured with the appellant Insurance Company. By coming to such a conclusion, the Tribunal has calculated the compensation under different heads and passed an award for a total sum of Rs.25,21,000/-. Aggrieved over the award passed by the learned District Judge, Special District court (MACT), Krishnagiri, the Appellant / Insurance Company has preferred this appeal.

6. The Appellant/ Insurance Company has taken the following two main grounds in this appeal:-

(i) since the rider of the two wheeler who had caused the accident was not holding driving licence to drive the vehicle at the relevant time point of time, the Insurance company is not liable to indemnify the insured to pay the compensation amount. The trial court has failed to consider properly Ex.R.3, Motor Vehicle Inspector

report, in which it is clearly stated that the rider of the two wheeler bearing Registration Number TN-24-J-9811 has not furnished Driving Licence to the Motor Vehicle Inspector at the time of inspection. The 1st respondent has not produced the driving license at any point of time. If the driving licence is obtained, he could have shown the Driving Licence to the M.V.I, or produced the same before the Court. In such circumstances the trial court ought to have accepted the case of the appellant that the rider of the said two wheeler did not posses driving licence and permitted the Insurance Company to recover the compensation amount from the insured, after paying it to the claimants/respondents 1 to 3.

(ii) So far as quantum of compensation is concerned, it is the case of the claimants that the deceased was a B.E. (Mech) degree holder. He had completed the course in April 2011 in first class. He has been selected in the campus interview from EDAC Engineering Company at Chennai and he has to join duty on 20.06.2011. But, he had died before he joins the duty. But, the Tribunal without considering these aspects had fixed an exorbitant sum of Rs.20,000/- as monthly income and made the calculation on that basis and awarded an exorbitant sum of Rs.21,60,000/- under the head of loss of income which is on the

higher side. Similarly, the Tribunal has awarded an exorbitant sum of Rs.2,00,000/- towards the loss of love and affection to the parents of the deceased. Hence, the amount awarded by the Tribunal needs proper modification.

7. Per contra, the learned counsel appearing for the respondents 1 to 3/ claimants has made his submission that the Tribunal has carefully gone through the oral and documentary evidence and come to the conclusion that the accident was caused due to the negligence of the rider of the vehicle who insured the vehicle with the appellant insurance company and awarded just and proper compensation to the claimants, which does not require any interference.

8. We have gone through the materials placed before us. In order to prove that the rider of the two wheeler/insured vehicle did not possess driving licence at the time of accident, R.W.2 Mr.M.M.Prabhu, Regional Transport Officer, Krishnagiri, was examined on the side of the appellant Insurance Company. He has categorically deposed in his evidence that as per the records available in the R.T.O.office, Krishnagiri, it was found that no license was issued to Ajithkumar

S/o.Chinnapaiyan, who had driven the vehicle at the time of the accident. Though notice was served on the owner of the vehicle, he has not chosen to appear before the Tribunal to deny the evidence adduced by the Regional Transport Officer. Under such circumstances the Tribunal ought to have given liberty to the appellant/Insurance company to pay and recover the compensation amount from the owner of the vehicle. But the Tribunal has failed to give such liberty to the appellant/insurance company. Therefore, we are of the opinion that the appellant insurance company is entitled to recover the amount after paying the compensation amount to the claimants.

9. In so far as the quantum of compensation is concerned, at the relevant point of time, the deceased was 22 years and had completed his Engineering Graduation. He was selected in the campus interview by M/s. EDAC Engineering company. The photostate copy of the appointment letter issued by M/s.EDAC Engineering company was marked as Ex.P.6. In the said letter, it is stated that the deceased Jawahar was selected as an engineering trainee in campus interview; He was offered a salary of Rs.15,000/- per month during the training period of 18 months and after the completion of training, he would get Rs.4.02 lakhs per annum. P.W.3 Mr.V.Balaji Pathak, the Legal Officer

of EDAC Engineering company was also examined to speak about Ex.P.6. Hence, based on his evidence, the Tribunal has fixed Rs.20,000/- as monthly income of the deceased and deducted half of the income towards personal expenses and fixed Rs.1,20,000/- as annual contribution to the family. Thereafter, applying multiplier 18, since the deceased was 22 years of age at the time of accident, the Tribunal has arrived a sum of Rs.21,60,000/- ($\text{Rs.1,20,000} \times 18$) as loss of income to the petitioners. The Tribunal has also awarded Rs.1,00,000/- each to the 1st and 2nd respondent/parents of the deceased, for the loss of love and affection. Considering the fact that the Respondents 1 and 2 have lost their only son, the Tribunal has awarded Rs.2,00,000/- for loss of love and affection, which is very reasonable.

10. That apart, the Tribunal has awarded Rs.25,000/- to the 3rd respondent, under the head of Loss of Love and Affection and also awarded Medical Expenses of Rs.1,05,000/- based on Medical Bills-Ex.P.8, Rs.20,000/- towards funeral expenses and Rs.11,000/- for transport expenses, all totaling to Rs.25,21,000/-. The compensation amount awarded by the Tribunal under the various heads appears to be very reasonable. Hence, we are confirming the

award passed by the Tribunal. However, liberty is given to the Insurance Company to recover the award amount with interest from the owner of the vehicle after paying the same to the Respondents 1 to 3/claimants.

11. In fine, the Civil Miscellaneous Appeal is disposed of with the above modification. It is reported before this Court that the Appellant/Insurance Company has deposited the entire award amount. Hence, the respondents 1 to 3 are permitted to withdraw their respective shares with accrued interest thereon. No costs.

(R.P.S., J.) (P.V., J.)
01-09-2017

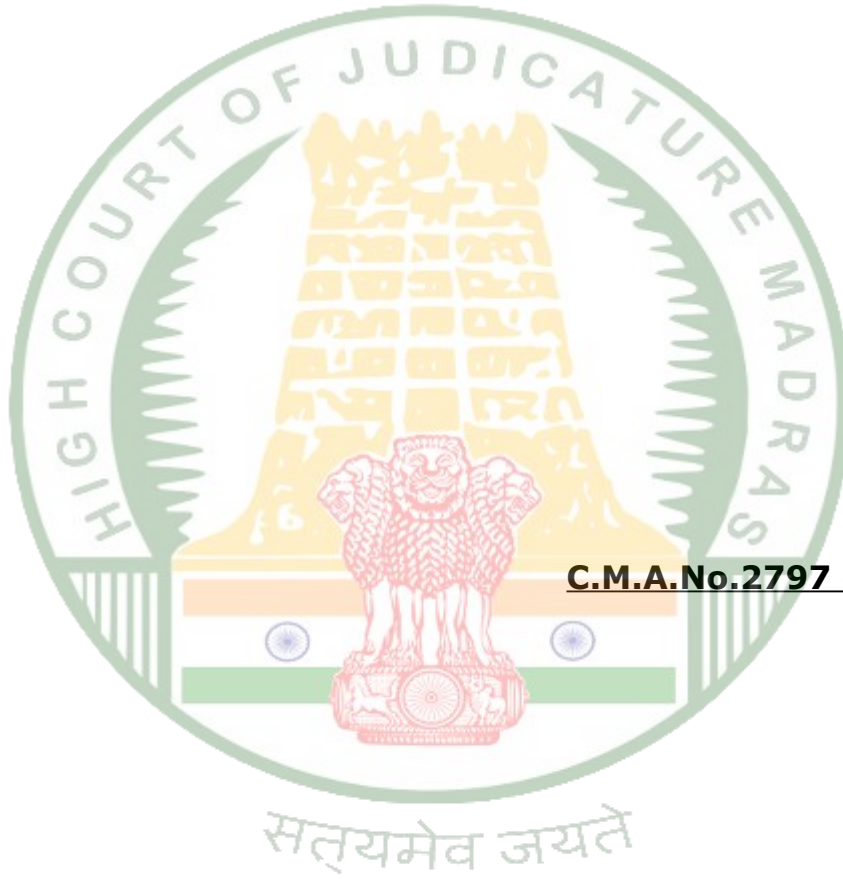
Index : yes/no
Internet : yes/no

To

The District Judge,
(Special Court for Motor Accident Claims Cases)
Motor Accidents claims Tribunal,
Krishnagiri.

**R.SUBBIAH, J.
and
P.VELMURUGAN, J.**

ggs/ssv



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