

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.251 of 2010
and M.P.No.1 of 2010

National Insurance Company Ltd.,
No. 11/289, Ramakrishna Road,
Salem. ... Appellant/2nd Respondent
vs.

1.Veerappa Aasari (Deceased)
2. Selvaraj,
3. Saroja,
4. P. Loganathan,
(R2 & R3 recorded as LRs of the
deceased R1 vide order of court
dated 15.2.2011 made in CMA No
251 of 2010. Memo filed on
22.06.2010.) ... Respondents/Petitioners/
1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of
the Motor Vehicles Act, 1988, against the judgment and decree
dated 08.04.2009, made in M.C.O.P.No.589 of 2005, on the file of
the Motor Accidents Claims Tribunal, (Principal District Judge),
Namakkal.

For Appellant : Mr.S. Arunkumar
For R2 & R3 : Mr. MA.P. Thangavel
For R4 : Mr.S. Marudhachalamurthy

सत्यमेव जयते
JUDGMENT

The appellant is the second respondent-Insurance Company and
the respondents 1 to 3 herein are the claimants in the claim
petition. The claim petition has been filed claiming a sum of
Rs.5,00,000/- as compensation for the death of one Bakkiyam, who
was the wife of the first respondent and the mother of
respondents 2 and 3.

2. According to respondents 1 to 3, on 21.07.2004, when the
deceased Bakkiyam was walking on the extreme left side of the
road, the fourth respondent's driver who was driving in a stage
carriage bus bearing Registration No.TN-30-Y-3699, drove the
same in a rash and negligent manner, without observing the road

traffic rules and hit against the deceased Bakkiyam, due to which, the above said bus ran over the said Bakkiyam and sustained severe injuries all over her body. She was admitted as inpatient at Government Hospital, Erode and died on the same day. At the time of the accident, the deceased was working as a coolie and earning a sum of Rs.4,000/- p.m. The accident occurred only due to the rash and negligent driving of the driver of the fourth respondent. The fourth respondent is the owner of the bus and the alleged vehicle was insured with the appellant. Therefore, both the appellant and 4th respondent are liable to pay the compensation.

3. The appellant-Insurance company filed a counter statement and denying all the averments made in the claim petition wherein, it is stated that the respondents 1 to 3 failed to prove the age, occupation and income of the deceased. The accident had occurred only due to the negligent act on the part of the deceased Bakkiyam. The driver of the bus had valid driving license at the time of the accident. The driving license was periodically renewed by the 4th respondent's driver by the competent Motor Vehicles Inspector from the year, 1989. Though the license was not renewed immediately after 08.03.2004, the same was renewed only on 29.04.2004 by the competent authority. Therefore, the driver of the bus had valid driving license during the time of accident. In any event, the claim of compensation is excessive and prayed for dismissal.

4. Before the Tribunal, the second respondent examined himself as P.W.1 and 4 documents were marked as Exs.P.1 to P.4. On the side of the appellant/Insurance Company, three witnesses were examined as RW1 to RW3 and 4 documents were marked as Exs.R1 to R4.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only due to the rash and negligent driving of the driver of the 4th respondent. Therefore, both the appellant and 4th respondent herein are liable to pay the compensation to the respondents 2 and 3. The Tribunal awarded a sum of Rs.3,96,000/- as compensation under the following heads:

Loss of income	Rs.3,64,000/-
Love and affection	Rs. 30,000/-
Funeral expenses	Rs. 2,000/-
Total	Rs. 3,96,000/-

6. Aggrieved against the order of the Tribunal, the appellant preferred the present civil miscellaneous appeal.

7. The learned counsel for the appellant/Insurance Company would submit that the driver of the 4th respondent herein do not possess valid driving license at the time of accident i.e. 21.07.2004 and he renewed the same only on 28.07.2004, which was expired on 08.03.2004. In view of the violation of the policy condition, the appellant/Insurance Company is not liable to pay any compensation and the notional income of the deceased at Rs.3,500/- p.m. fixed by the Tribunal is highly excessive.

8. Pending the appeal, the first respondent died and respondents 2 & 3 are recorded as the legal heirs of the deceased first respondent.

9. The learned counsel appearing for the 4th respondent would submit that the deceased was working as a coolie and earning a sum of Rs.3,500/- per month and they have not proved any documents to substantiate their claim. In view of the absence of any evidence, the Tribunal had fixed the monthly income at Rs.3,500/- p.m awarded compensation by adopting multiplier '13'.

10. I have heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondents and perused all the materials available on record.

11. It is an admitted fact that the driver of the bus possessed a heavy vehicle driving licence valid upto 08.03.2004, only prior to the occurrence, as per the version of the RW1. RW3, the owner of the vehicle has stated in his evidence that the driver of the vehicle has renewed his license and the same was marked as Ex.R4.

12. In view of the facts and circumstances of this case, the appellant has not examined any evidence to prove that he was prohibited from holding any license and hence, there is no interfere with the order passed by the Tribunal. Accordingly, the award is confirmed and the appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Motor Accidents Claims Tribunal,
(Principal District Judge),
Namakkal.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.20053

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.19961

C.M.A.No.251 of 2010
and M.P.No.1 of 2010

skv(co)
rmp(10/05/17)



WEB COPY