

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****RESERVED ON : 09.08.2017****PRONOUNCED ON: 18.09.2017**

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CORAM**THE HONOURABLE MRS. JUSTICE J. NISHA BANU****C.M.A (MD) No. 362 of 2016****and****C.M.P. (MD) No. 5197 of 2016**

The Divisional Manager,
National Insurance Company Limited,
No.3, North Veli Street,
Madurai 625 001

... Appellant / 2nd Respondent.**Vs.**

1. Renuka Devi ... 1st Respondent / 1st Petitioner
2. Minor Ashok ... 2nd Respondent / 2nd Petitioner
3. Minor Anu ... 3rd Respondent / 3rd Petitioner
4. Nagammal ... 4th Respondent / 4th Petitioner
(R.4 name amended vide order
dated 09.01.2017 made in CMP (MD)
No.12133 of 2016 in CMA (MD) No.362/16)

5. Kumar ... 5th respondent / 1st respondent

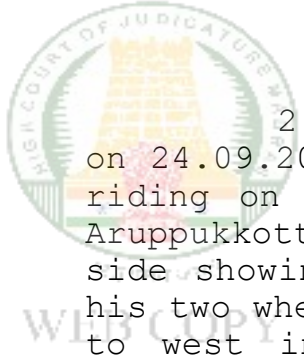
6. The Branch Manager,
United India Insurance Company Ltd.,
Door No.443, Periyakulam Road,
Theni - 625 431. ... 6th respondent / 3rd respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 26.08.2013 passed in M.C.O.P.No.125 of 2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Aruppukkottai.

For Appellant : Mr.D.Sivaraman
For R1 to R4 : Mr.T.Muruganantham
For R6 : Mr.C.Karthick

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the judgment and award of the Motor Accidents Claims Tribunal, Subordinate Judge, Aruppukkottai, in M.A.C.O.P.No.125 of 2012, dated 26.08.2013.



2.It is the case of the claimants before the Tribunal that on 24.09.2012 at about 14.45 hours, when the deceased Muthumari was riding on a two wheeler bearing registration No.TN 67 AF 4348 in Aruppukkottai-Tiruchuli road and turned the motorcycle on the left side showing indicator and hand signal, the first respondent drove his two wheeler bearing registration No.TN 67 AD 6701 from east to west in a rash and negligent manner and dashed against the motorcycle. Due to the accident, the said Muthumari sustained grievous injuries on her left foot and head and fell unconscious on the spot and thereafter, after treatment she succumbed to injuries. Hence, her legal heirs filed an application in M.C.O.P.No.125 of 2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Aruppukkottai, seeking compensation.

3.The 1st respondent, owner of the vehicle (sixth respondent herein), was set *ex parte* before the Tribunal.

4.Before the Tribunal, the Claimants examined two witnesses as P.Ws.1 and 2 and marked thirteen documents as Ex.P.1 to Ex.P.13. The respondents examined one witness as R.W.1 and marked one document as Ex.R1.

5.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle belonged to the first respondent and directed the appellant/Insurance Company and the sixth respondent herein, jointly to pay a compensation to the tune of Rs.15,00,000/-.

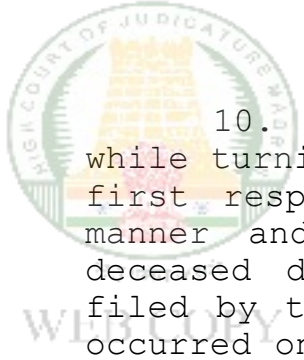
6.Against which, the appellant/Insurance Company has filed this present appeal on the following grounds:-

- (i) the Tribunal is not correct in fixing the negligence;
- (ii) the deceased did not possess valid driving licence; and
- (iii) the quantum awarded by the Tribunal is on the higher side.

7. The learned counsel for the appellant while filing the objections, has specifically stated that the deceased is also responsible for the accident, because she did not follow the traffic rules, but that was not considered by the learned Judge while passing the award. Hence, he prays for appropriate orders.

8. *Per contra*, learned counsel appearing for the respondents/claimants would submit that on appreciation of facts and circumstances of the case and the materials available on record, the Court has rightly awarded compensation, which need not be interfered by this Court.

9. Heard the learned counsel for the appellant; the learned counsel for the claimant and the learned counsel for the sixth respondent and also perused the materials available on record.



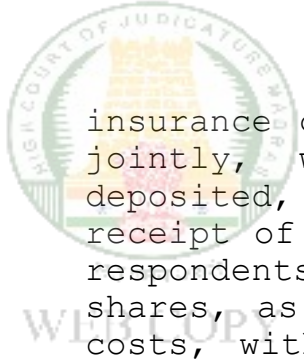
10. A perusal of the records would show that the deceased while turning vehicle despite showing indicator and hand signal, the first respondent drove the two wheeler in a rash and negligent manner and dashed against the motorcycle and due to that the deceased died. The learned Judge also considered the objections filed by the appellant/Insurance Company stating that the accident occurred only due to the negligence on the part of the deceased and also considered the objection of the appellant that the deceased did not have valid driving licence and therefore, they are not liable to pay the compensation.

11. It is an admitted fact that the motorcycle belongs to the first respondent. To prove the negligent act of the first respondent, P.W.2 has been examined and he has specifically stated that the deceased turned her vehicle after giving proper hand signal and showing indicator and also by following the traffic rules. In the cross examination, nothing was elicited to reject the evidence of P.W.2. A criminal case was also registered against the first respondent and the said case is pending before the concerned Court of law. P.W.2 clearly speaks about the first respondent, who was the cause for the accident and therefore, there is no reason to reject the evidence of P.W.2. The copy of the FIR and the final report have also been marked as Exs.A1 to A6, which are also corroborates the evidence of P.W.2. Therefore, it is clearly found that the accident occurred only due to the rash and negligent driving of the first respondent and therefore, the finding of the Tribunal is confirmed.

12. The submission of the learned counsel for the appellant/Insurance Company that the deceased did not have any valid licence at the time of accident, was also answered by the learned Judge by relying on the Judgement of the Hon'ble Apex Court in **SUDHIR KUMAR RANA v. SURINDER SINGH AND OTHERS** reported in **2008 (12) SCC 436**, that the deceased had license to drive motorcycle without gear and that can be seen from Ex.B1, but there is no evidence to show that the motorcycle driven by the accused is a motorcycle with gear and therefore, as per the above Judgment, the non-possession of the valid license by the deceased would not have any significance and hence, the above submission is also rejected.

13. In respect of quantum, Ex.P10-the pay certificate of the deceased and Ex.P11 series-vouchers were marked and on perusal of the same would show that the deceased was earning a sum of Rs.12,000/-. To corroborate the same, the employer of the deceased was examined as P.W.2 and the certificate issued by the Commercial Tax Department has been marked as Ex.P9 and the auditor statement was also marked as Ex.P12, but the learned Judge has taken only a sum of Rs.8,000/- as monthly income, which is low. However, the claimant has not filed any cross-appeal before this Court and therefore, the award of the tribunal stands confirmed.

14. In the result, this Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company and the sixth respondent



insurance company are directed to deposit the entire award amount, jointly, with accrued interests and costs, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondents/claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs. Consequently, connected Miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To,

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Aruppukkottai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s. C.KARTHIK Advocate in SR. No. 79316
+1cc to M/s. T.MURUGANANTHAM Advocate in SR. No. 79676
+1cc to M/s. D.SIVARAMAN Advocate in SR. No. 79370
SSM
JS/JC/SAR.2/26.10.2017/4P-6C

Pre-Delivery Judgement made in
C.M.A (MD) No.362 of 2016
and
C.M.P. (MD) No.5197 of 2016
18.09.2017