



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.10.2017

CORAM

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND**

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.5 of 2016

and

C.M.P(MD)No.82 of 2016

M/s National Insurance Company Limited,
rep. through its Branch Manager,
155A, Great Cotton Road,
Tuticorin.

: Appellant/2nd Respondent

Vs.

1) Poongulali

2) Minor Swetha

3) Minor Vishnupriya

(Minors 2 and 3 are represented by their
Mother and guardian the 1st Respondent)

4) Nagarathinam Ammal

: R1 to R4/Petitioners

5) Azhalia Nageswari

: R5/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree passed in MCOP No.794 of 2008, dated 28.04.2015 by the Motor Accident Claims Tribunal (IV Additional District Court), Madurai.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.P.Mahendran
(for R1 to R3)
R4 - Dismissed
No appearance for R5

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

The appellant Insurance Company has preferred this Civil Miscellaneous Appeal challenging the award passed by the Motor Accident Claims Tribunal (IV Additional District Judge), Madurai, in MCOP No.794 of 2008, dated 28.04.2015, in and by which, the tribunal has awarded a sum of Rs.13,72,500/- to the legal-heirs of the deceased Seenivasan.

2.MCOP No.794 of 2008 was filed by the wife, two children and mother of the deceased Seenivasan claiming a sum of Rs.20,00,000/- as compensation alleging that when the deceased was riding his motorcycle at about 11.15 hours on 24.11.2007 on Dindigul-Madurai



main road from west to east direction, a lorry bearing registration No.TN-28-H-1431 driven by its driver in a rash and negligent manner, dashed against the motorcycle. Due to the injuries sustained in the accident, the deceased died on the spot.

3.The claimants have further stated that the deceased was a proprietor of Meena Jewellery at South Avani Moola Street, Madurai and he was earning not less than Rs.15,000/- per month and they lost their only breadwinner in the unfortunate accident due to the negligence of the driver of the lorry.

4.The appellant contested the claim contending that the driver of the lorry was not having valid and effective driving license to drive the lorry at the time of accident, which amounts to violation of policy condition. It is further stated that the deceased, while over-taking a bus in front of Fathima College, hit against the lorry, therefore, they are not liable to pay any compensation. The Appellant Insurance company has also stated that the claim is excessive and exorbitant.

5.We have heard Mr.J.S.Murali, learned counsel for the appellant and Mr.P.Mahendran, learned counsel for the claimants and perused the materials available on record.

6.P.W.2 Senthilkumar has deposed that he witnessed the accident and immediately, lodged a complaint, which was registered by the Investigating Officer. Ex.P.1 is the copy of the First Information Report. Since there is no contra evidence, the tribunal held that the accident was due to the negligence of the driver of the lorry.

7.As regards quantum, it is not in dispute that the deceased was aged about 36 years on the date of the accident. P.W.1 has stated that the deceased was earning Rs.15,000/- per month, but no corroborative evidence was produced by the claimants. Hence, the tribunal fixed monthly notional income of the deceased at Rs.5,000/- and added 50% towards future prospects. After deducting 1/4th towards personal expenses of the deceased and by applying multiplier 15 awarded Rs.10,12,500/- (Rs.7,500/- x 12 x 15 x 3/4) towards loss of dependency. Taking note of the fact, the first claimant was 28 years and the claimants 2 and 3 were 7 and 2 years and mother of the deceased was aged about 72 years on the date of accident, the tribunal has awarded a sum of Rs.3,25,000/- towards loss of love and affection. The award, in our opinion, appears to be reasonable and they are confirmed.

8.With regard to liability, the evidence of R.W.1 and Ex.R3 copy of the license would reveal that the driving license of the driver of the offending vehicle expired one month prior to the accident, however, the tribunal, without considering these aspects, came to the conclusion that there was no violation of policy condition and fastened liability on the appellant Insurance Company.



9. In view of the above finding that the vehicle was driven by the person, who was not holding valid driving licence, the tribunal ought to have ordered pay and recovery since the claimants are third parties.

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10. In the result, the claimants would be entitled for compensation of Rs.13,72,500/- along with interest @ 7.5% p.a. The appellant Insurance Company is directed to satisfy the award at first instance and thereafter, recover the same from insured. With the above direction, the appeal is disposed of.

11. It is represented that the entire award amount has already been deposited by the appellant. The major claimants are permitted to withdraw their share as apportioned by the tribunal and the share of the minors shall be deposited in the Indian Bank, Madurai High Court Branch, in a Fixed Deposit scheme, till they attain majority. The first claimant, being the mother of the minors is permitted to withdraw the interest directly from the Bank, once in three months for the welfare of the minors. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The 4th Additional District Judge/
Motor Accident Claims Tribunal
Madurai District.
2. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr. P. Mahendran, Advocate, SR.No.84543
+One cc to Mr. J. S. Murali, Advocate, SR.No.84969

skn
RL/5C/3P/KK/SAR1/11/1/2018

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