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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.380 of 2015 and
M.P.No.1 of 2015

The Branch Manager,
United India Insurance Co. Ltd.,
178, 1st Floor, Dr.Nanjappa Road,
Coimbatore - 18.

.. Appellant/ 2nd Respondent

Vs.

1.Poovathal (died)

2.K.Nagamanickam

...2nd Respondent/ 1st Respondent

3.Sarthambal

4.Kalamani

5.Moorthy

6.Dhanya

7.Minor. Sree Hari

8.Minor. Sree Lakshmi

...3 to 8 Respondents/LRs of
deceased Claimant

(Respondents 3 to 8 brought on record as LRS
of the deceased R1 viz., Poovathal, vide
Court order dated 13.12.2018, made in C.M.P.
Nos.19233, 19236 and 19241 of 2018)

(Minor respondents 7 and 8 are represented by
their mother/next friend the sixth respondent
herein)

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of Motor Vehicles Act, 1988, against the Judgment
and Decree dated 27.03.2012 made in M.C.O.P.No.67 of 2010 on the
file of Motor Accidents Claims Tribunal, Principal Sub Court,
Tiruppur.

For Appellant : Mr.T.Ravichandran

For R2 : Mr.V.Anandhamoorthy

For R3 to R8 : Mr.Ma.Pa.Thangavel



J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 27.03.2012 made in M.C.O.P.No.67 of 2010 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Tiruppur.

2.The appellant/Insurance Company is the second respondent in M.C.O.P.No.67 of 2010 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Tiruppur. Initially, the first respondent filed the above said claim petition claiming a sum of Rs.5,00,000/- for the injuries sustained by her in the accident that took place on 11.11.2009. Pending claim petition, the first respondent died and respondents 3 to 8 were brought on record as legal heirs of the first respondent.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the rider of the motorcycle belonging to the second respondent and directed the appellant and second respondent to pay a sum of Rs.3,52,895/- as compensation jointly and severally, to the first respondent/claimant.

4.Against the said award dated 27.03.2012 made in M.C.O.P.No.67 of 2010, the appellant/Insurance Company has come out with the present appeal for setting aside the award passed by the Tribunal.

5.The learned counsel appearing for the appellant contended that the rider of the motorcycle was a minor at the time of accident and he did not possess driving license. In view of the violation of policy condition, the appellant/Insurance Company is not liable to pay any compensation to the claimant. The Tribunal erred in applying multiplier method mechanically and there is no evidence with regard to injuries. The amounts awarded by the Tribunal are excessive and prayed for setting aside the award of the Tribunal.

6.Per contra, the learned counsel appearing for the respondents 3 to 8/the legal heirs of claimant contended that the appellant failed to prove that the rider of the motorcycle did not possess driving license at the time of the accident. The Tribunal considering the injuries and nature of treatment and disability, awarded compensation for loss of income by applying multiplier method. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.



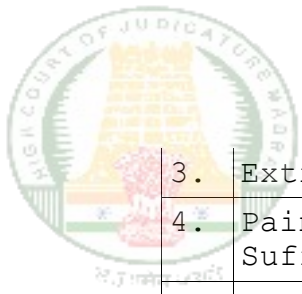
7.The learned counsel appearing for the second respondent/owner of the vehicle, contended that the appellant failed to prove that the rider of the motorcycle was not possessing a driving license at the time of accident. The appellant has not taken a stand before the Tribunal that the rider of the motorcycle was a minor at the time of accident. The Tribunal considering the fact that the rider was possessing license and insurance was in force, rightly directed the appellant/Insurance Company to pay compensation.

8.Heard the learned counsel appearing for the appellant, second respondent as well as respondents 3 to 8 and perused all the materials available on record.

9.From the materials on record, it is seen that an official from R.T.O. who was examined as R.W.1 has deposed that Learner's license was issued to one Rajendiran S/o. Mayilsami of Munukattipalayam. The appellant has not let in any evidence to substantiate his contention that the rider of the motorcycle did not possess driving license at the time of accident. In view of such failure as well as policy was in force, the Tribunal has directed the appellant/Insurance Company to pay compensation and there is no error in the said finding.

10.As far as quantum of compensation is concerned, the Tribunal considering the nature of injuries, treatment taken, evidence of doctor, disability certificate and nature of work granted compensation for permanent disability by applying multiplier method and there is no error in the said finding. According to the learned counsel appearing for the respondents 3 to 8, the deceased first respondent/claimant was taking treatment for two months as in-patient in the hospital and Tribunal has not awarded any amounts for attender charges. The Tribunal has awarded a sum of Rs.50,000/- towards loss of amenities, which is excessive and the same is reduced to a sum of Rs.20,000/-. In view of the fact that no amount has been awarded towards attender charges, a sum of Rs.20,000/- is granted under this head. Thus, the amounts granted by the Tribunal are modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	1,62,000/-	1,62,000/-	confirmed
2.	Transportation	5,000/-	5,000/-	confirmed



3.	Extra Nourishment	10,000/-	10,000/-	confirmed
4.	Pain and Suffering	50,000/-	50,000/-	confirmed
5.	Medical Bills	75,895/-	75,895/-	confirmed
6.	Loss of Amenities	50,000/-	20,000/-	reduced
7.	Attender Charges	-	20,000/-	granted
	Total	3,52,895/-	3,42,895/-	Reduced by Rs.10,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,52,895/- is modified to a sum of Rs.3,42,895/- with interest and costs. The learned counsel appearing for the appellant/Insurance Company submitted that the appellant/Insurance Company has already deposited the entire award amount to the credit of M.C.O.P.No.67 of 2010 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Tiruppur. Hence, the respondents 3 to 5 are entitled to a sum of Rs.85,724/- each, the 6th respondent is entitled to a sum of Rs.51,433/- and the minor respondents 7 and 8 are entitled to a sum of Rs.17,145/- each. The respondents 3 to 6 are permitted to withdraw their respective share of the modified award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor respondents 7 and 8 are directed to be deposited in any one of the Nationalized Bank, till they attain majority. On such deposit, the sixth respondent, being the mother of the minor respondents 7 & 8 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 7 & 8. The appellant/Insurance company is directed to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.67 of 2010 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Tiruppur. Consequently the connected miscellaneous petition is closed. No costs.

krk

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruppur.



+1cc to Mr.T.Ravichandran, Advocate, SR.No.86372
+1cc to Mr.Ma.P.Thangavel, Advocate, SR.No.86429
+1cc to Mr.V.Anandhamurthy, Advocate, SR.No.86511

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and
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Kak (18/06/2019)