

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.09.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3369 of 2019
& C.M.P.No.19674 of 2019

National Insurance Company Limited,
Divisional Office - 1,
LRN Complex, Saradha College Road,
Salem 636 007 ... Appellant / Insurer 2nd Respondent

...Vs...

1. R.Selvi
2. K.Periyaswamy
3. P.Anbarasu
4. P.Tamil Elakkiya
5. K.Ramesh

... R-1 to R-4 /claimants & Petitioner
... R-5 / owner of the vehicle/1st
Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 10.07.2018, made in MACTOP No.1569 of 2017 on the file of the Motor Accident Claims Tribunal, II Additional District and Special District Court, Salem.

For Appellant : M/s. N.B.Sureskha
For Respondents: Mr. S.P.Yuvaraj, for R-1 to R-4,
Exparte before the Tribunal, R-5.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance company challenging the liability as well as quantum of compensation.

Brief facts:-

2. The claimants / respondents 1 to 4 are the legal heirs of the deceased Tamilarasan. At the time of accident, the deceased was aged 49 years, Accountant in Coconut business, earned a sum of Rs.15,000/- per month and met with an accident on 31.12.2016.

2.1. The deceased was a pillion rider of the two-wheeler and one Vetrivel was a rider. When they were proceeding in front of Meenakshi Tailor shop, a lorry bearing Registration No.TN52-E-1409 hit them, due to which, both of them sustained grievous

injuries and later, on the same day, despite best treatment given, Tamilarasan died. Claiming a sum of Rs.30,00,000/-, the legal heirs of Tamilarasan / claimants / respondents 1 to 4 herein have filed a petition for compensation.

3. The finding of the Tribunal was that the accident took place only on account of the rash and negligent driving on the part of the driver of the lorry. The compensation of Rs.9,77,200/- has been awarded, the break-up details of which read as follows:-

Loss of dependency (Rs.6825x12x17)	-	Rs.9,07,200/-
Loss of love and affection	-	Rs. 40,000/-
Loss of estate	-	Rs. 15,000/-
Funeral expenses	-	Rs. 15,000/-

		Rs.9,77,200/-

4. The main contention of the learned counsel for the appellant / Insurance Company is that the Insurer should have been totally exonerated from liability, since there was no driving licence to the driver of the vehicle (lorry) at the time of accident. She further submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant.

5. Per contra, the learned counsel for respondents 1 to 4 / claimants submitted that the Tribunal has considered each and every aspect and has rendered its findings on negligence as well as quantum, which do not require any interference by this Court.

6. Heard both sides and perused the records.

7. There is no dispute with regard to the factum of accident and the involvement of the vehicle insured with the appellant / Insurance Company. What was disputed is the finding of the Tribunal, as regards the liability fastening on the Appellant / Insurance Company. According to the learned counsel for the appellant / Insurance Company, the driver of the lorry did not possess valid driving licence and hence there was violation of policy conditions by the owner of the vehicle. A perusal of the award of the Tribunal would go to show that it has discussed the evidence of R.W.1-Officer of the Insurer and Exs.R-1 to R-4 and has ultimately held that the said evidence and documents are not sufficient to hold that the driver of the fifth respondent herein was not holding valid licence at the time of accident. The Tribunal has further observed that the appellant / Insurance Company has not chosen to summon and examine any Officer from the Transport Office.

8. This Court is of the view that this part of the finding of the Tribunal is incorrect. It is evident from the notice and the acknowledgment card, Exs.R-3 and R-4, that the notice has been served upon the fifth respondent / owner of the vehicle. Further, the appellant herein, in paragraph 8, of the counter filed before the Tribunal has taken a specific plea with regard to the non-possession of driving licence by the driver of the vehicle at the time of accident. Thus, the appellant has taken steps to substantiate their stand that the driver of the lorry did not possess driving licence during the relevant point of time. Whereas, the R-5 / Insured / Owner of the vehicle, after receiving the legal notice, kept quiet and remained exparte before the Tribunal. In such circumstances, taking note of the fact that the Insurance Policy was in force at the time of accident, the Tribunal ought to have directed the Insurance Company to pay the compensation and recover the same from the owner of the vehicle. But the Tribunal failed to do so. Hence, the finding of the Tribunal is modified to that extent alone.

9. As far as the quantum of compensation arrived at by the Tribunal is concerned, the same was determined based upon the evidence, documents and settled principles of law and therefore, the award is confirmed as such.

10. In the result, the Civil Miscellaneous Appeal is partly-allowed by modifying the award of the Tribunal to pay the compensation by the Insurance Company and then recover the same from R-5 / owner of the vehicle. No costs. Consequently, the connected CMP is closed.

11. The appellant / Insurance Company shall deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment and thereafter recover the same from the R-5/ Insured. On such deposit being made, the Tribunal is directed to transfer the deposited amount as per the ratio of apportionment made by it to the respective Savings Bank Accounts of the claimants 1 & 2, through RTGS, within one week thereafter.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1. Motor Accident Claims Tribunal, II Additional District and Special

District court, Salem.

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

+1 CC to Ms.N.B. Surekha, Advocate sr 29110.

+1 Cc to Mr.S.P. Yuvaraj, Advocate sr 78737.

C.M.A.No.3369 of 2019
& C.M.P.No.19674 of 2019

RJI (CO)
SP(04/06/2020)



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