IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 26.08.2019

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

C.M.A. No.2422 of 2004

1. Kuppanna Gounder
2. Palaniammal
3. Palanisamy .. Appellants / claimants

versus

1. P.Iyyamperumal (Died)
2. The National Insurance Company Ltd., Post Box No.19, Mettur Dam 636 402
3. Alamelu
4. Ponnusamy
5. Govindammal
6. Priyadharsini
7. Balasingam
8. Swathi .. Respondents /Respondents

(RR3 to R8 brought on record as LRs of the deceased first respondent viz., P.Iyyamperumal vide Court Order dated 02.07.2019 made in CMP 1020 to 1022/2012 in CMA No.2422/2004 (RMDJ)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and award dated 15.10.2001 made in M.C.O.P.No.264/99 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge Court) Mettur.

For Appellants : Mr.J.Ramakrishnan

For Respondents: R1-died
M/s.R.Sreevidhya for R2
No appearance for R3 to R8

J U D G M E N T

This Civil Miscellaneous Appeal is preferred against the Judgment and Decree, dated 15.10.2001, passed in M.C.O.P.No.264 of 1999 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge Court) Mettur.

2. The brief facts of the case are as follows:

On 18.12.1995 at about 11 a.m., one Chellammal was standing in the road of Yerikaatu Muniyappan temple. At that time, the vehicle belonging to the first respondent herein bearing Registration No.TN27 Y 1319 came at high and uncontrollable speed and hit the said pedestrian. Due to the said accident, she sustained grievous injuries all over the body and died on the spot. Stating so, the legal heirs of the deceased, who are the husband, daughter and son, have filed a claim petition before the Tribunal claiming a sum of Rs.1,00,000/- as compensation.

3. The Tribunal, after contest, has fastened the liability on the owner of the vehicle / insured and exonerated the liability on the Insurer and arrived at the total compensation of Rs.60,000/- under the following heads :

i. Compensation	Rs.50,000/-
ii. Funeral Expenses	Rs. 2,000/-
iii. Damage to Clothes / personal materials / property	Rs. 2,500/-
iv. Loss of Consortium	Rs. 5,000/-
	Rs.59,500/-
(Rounded off) Total	Rs.60,000/-

4. Aggrieved over the compensation so arrived at by the Tribunal, the claimants, as appellants, have filed the instant appeal.

5. Pending appeal, the owner of the vehicle/first respondent herein died and his legal heirs were brought on record (R3 to R8). Despite serving notice on R3 to R8 and their names having been printed in the cause list, there is no appearance on behalf of them. However, the Appeal is taken up on merits, considering the paucity of time.

6. Heard the learned counsel for the appellants as well as the learned counsel for the second respondent/Insurance Company.

7. The learned counsel for the claimants/appellants submitted that the Tribunal has not awarded any sum towards loss of love and affection and loss of income of the deceased and the compensation arrived at by the Tribunal under each and every heads is very low and it needs substantial enhancement. He further submitted that the Tribunal erred in discharging the liability on the second respondent by holding that the first respondent did not possess valid driving licence at the time of accident merely because he has not been obtained endorsement or badge in his licence. He further submitted that the Motor Vehicles Act is a beneficiary legislation, as per the provisions of which, the claimants must realize the award of

the Tribunal and the award should not be a paper decree and hence, the Tribunal ought to have ordered pay and recovery.

8. Per contra, the learned counsel for the second respondent / Insurance company submitted that the Tribunal has rightly arrived at the conclusion on negligent aspect and has fastened the liability on the owner of the vehicle and exonerated the insurance company. She also submitted that the Tribunal has analysed each and every aspects into consideration and has awarded the compensation, which is nothing but just. She further submitted that the accident was of the year 1995, the claim amount was Rs.1,00,000/- and the deceased, at the time of accident, was aged 65 and the Tribunal has awarded Rs.60,000/- as total compensation; the methodology adopted by the Tribunal perfectly matches with the settled principles of law, weightage of evidence and probabilities of the case and hence, no interference is required.

9. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

10. A perusal of the award of the Tribunal would go to show that the driver of the vehicle was having licence only to drive a light motor vehicle and there was no endorsement authorising him to carry goods accompanying the vehicle. At this juncture, it is felicious to refer to the decision of the Hon'ble Supreme Court in [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] reported in AIR 2017 SC 3668, wherein it has been held that a person who has a valid licence to drive a light motor vehicle can drive a vehicle of same category and obtaining endorsement or badge is not necessary. In view of the Judgment of the Hon'ble Supreme Court referred to above, the second respondent / Insurance Company cannot be exonerated of its liability to pay compensation on the ground that the driver of the Insured vehicle did not obtain endorsement or badge. Hence, they are liable to pay the compensation.

11. Further, this Court is of the opinion that the burden of proof placed on the insurer was put on a higher pedestal, making it thereby, virtually impossible for the insurer to avoid liability, rather than Insured. In a series of judgments, it was made clear by various High Courts that such construction of the statute was only in keeping with the mandate of Parliament to ensure that the victims were provided compensation by the insurer rather than be left to the fate of seeking enforcement from the owners of vehicles. The slant of the Courts was evident and it was made clear as well that compulsory motor insurance was to provide relief to the victims and if so, the Courts have to necessarily lean in favour of this mandate. Hence, the R2 herein is directed to pay first and then recover the same from the owner of the vehicle/R1.

12. As far as the quantum of compensation arrived at by the Tribunal is concerned, it is not in dispute that the accident was of the year 1995, the claimed amount was

Rs.1,00,000/- and the total compensation was arrived at Rs.60,000/-. In the absence of any documentary proof for the income of the deceased, a sum of Rs.60,000/-, as total compensation, for the deceased woman aged 65, is just, reasonable and hence, the same does not require any interference by this Court.

13. In the result, the Appeal is partly-allowed so far as the liability is concerned and it is dismissed so far as the quantum of compensation is concerned.

14. The second respondent / Insurer 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. As it was observed by the Tribunal that the first appellant alone is the LR of the deceased, on such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant / appellant, through RTGS, within one week thereafter. It is made clear that the second respondent herein is permitted to recover the compensation amount from the legal heirs of the owner of the vehicle / R1 herein in accordance with law.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

msv / srk

To

1. The Motor Accidents Claims Tribunal
(Subordinate Judge Court), Mettur.

Copy To

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

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No. 72571
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 73957

C.M.A. No.2422 of 2004

MP(CO)
GN(01/09/2020)