

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1139 of 2011 and

M.P.No.1 of 2011 and

M.P.No.1 of 2012

1.National Insurance Co. Ltd.,
No.1272 & 1273, Palaniappa complex,
Mettur road, Erode - 11.

...Appellant/3rd Respondent

Vs.

1.Thulasi Mani
2.Parvatham
3.Vasantha Mani
4.Arukkayal
5.Kasthuri
6.Nachayammal
7.Sivakumar
8.Ponnusamy

... Respondents/Petitioner 1 to 6 & Respondent 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.10.2010, in M.C.O.P.No. 347 of 2008, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Erode.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.S.KaithamalaiKumaran
1 to 5
R-7 & 8 : Exparte
R-6 : Deceased Steps due.

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 347 of 2008, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Erode.

2. The claimants in M.C.O.P.No. 347 of 2008 are the wife, the daughters and the mother of the deceased Subramani respectively.

3. The brief case of the respondents 1 to 6/claimants is as follows:

(i) The deceased was aged about 45 years, on the date of the accident. He was working as contract labour at SKM Feed Mill, Nanjai Uthukuli in patch laying section and was earning a sum of Rs.4,000/- per month.

(ii) On 10.05.2008, at about 08.45 pm, the deceased Subramani was riding his bicycle from north to south direction on the extreme left side of the road, on Erode - Muthu road, while, nearing Saminathapuram Bridge, a Yamaha motorcycle bearing Registration No. TN 55 5551, belonging to the eighth respondent herein, driven by the seventh respondent herein, came on the same direction, at high speed in a rash and negligent manner and dashed behind the deceased Subramani and his bicycle. Due to the sudden impact, the deceased Subramani was thrown away and sustained grievous injuries on head and all over his body. Immediately, he was taken to kovai Medical Centre Hospital, Erode for the first aid and then subsequently, shifted to Government Hospital, Erode and during the treatment, he died. According to the respondents 1 to 6/claimants, the accident happened only due to the rash and negligent riding of the seventh respondent herein, and hence, he is solely responsible for the said accident. Since, the said motorcycle was insured with the present appellant, both the owner of the said motorcycle and the present appellant, are jointly and severally liable to pay compensation of Rs.10,00,000/- to them.

4. The learned Tribunal, based upon the oral and documentary evidence, held that, both the owner and the insurer of the said motorcycle are jointly and severally liable to pay compensation and awarded a compensation of Rs.4,97,000/- together with interest at the rate of 7.5% per annum to the respondents 1 to 6/claimants. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. The learned counsel appearing for the appellant would contend that the driver of the motorcycle bearing Registration No. TN 55 5551 does not possess valid driving licence, and hence, the Insurance Company has to be exonerated from its liability to pay compensation to the respondents 1 to 6/claimants. He would further contend that the quantum of compensation awarded by the Tribunal is exorbitant, and therefore, it has to be reduced.

6. After hearing both the parties and going through the available records, this court finds that, mere possession of licence, to drive the other clause vehicles i.e., 'light motor vehicles' is not sufficient to drive the two wheeler. In the decision laid down in IFFCO Tokyo General Insurance Company Limited vs. Jaffer Sadiq reported in 2012 (1) TN MAC 394 (Mad) (DB), a Division Bench of this court, has taken a view that, in respect of the third party claim, the Insurance Company has to 'pay' the compensation and then 'recover' the same from the owner of the offending vehicle by adopting the principle of 'pay and recovery'. Since, the facts of the case (cited supra), is similar to the present case, this court holds that, in the present case also 'pay and recovery' should be adopted. The Insurance Company should 'pay' the compensation to the respondents 1 to 6/claimants and then 'recover' the same from the owner of the motorcycle bearing Registration No. TN 55 5551.

7. Quantum of compensation: After going through the evidence on records and the calculation arrived by the Tribunal for the 'loss of pecuniary benefits' sustained by the legal representatives of the deceased person, I find that the quantum of compensation awarded by the Tribunal is reasonable, and the same does not warrant any interference. The compensation awarded under the other heads are also just and reasonable and hence, it could not be said to be excessive. The plea raised by the Insurance Company, in respect of, the quantum of compensation stands negative. Therefore, the quantum of compensation awarded by the Tribunal is hereby confirmed.

8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The orders passed by the Tribunal directing the present appellant to pay the compensation to the respondents 1 to 6/claimants is modified. The present appellant - National Insurance Company Limited is directed to 'pay' the entire compensation amount awarded by the Tribunal to the respondents 1 to 5, and then, 'recover' the same from the owner of the motorcycle bearing Registration No. TN 55 5551.

(iv) It is brought to the notice of this Court that, the entire compensation awarded by the Tribunal has already been deposited by the National Insurance Company Limited to the credit of M.C.O.P.No. 347 of 2008, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Erode.

(v) The respondents 1 to 5 are at liberty to withdraw the same, as per the apportionment granted by the Tribunal, after following due process of law. Since the sixth respondent has died, her share of compensation is shared between the respondents 2 to 5 equally.

(vi) The National Insurance Company Limited can 'recover' the same, from the owner of the said motorcycle, after filing Execution Petition, before the Motor Accidents Claims Tribunal, Principal Subordinate Court, Erode.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mbi

To

The Motor Accidents Claims Tribunal,
The Principal Subordinate Court,
Erode.

Copy to:

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

+1cc to Mr.S.KaithamalaiKumaran, Advocate sr.19688

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M.P.No.1 of 2012

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