

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3301 of 2009 and
M.P.No.1 of 2009

IffcoTokio General Insurance Co.Ltd.,
T.V.Samy Road (West)
R.S.Puram, Coimbatore. ... Appellant / 2nd Respondent

Vs

1.Saraswathi
2.Murugan
3.Subbulakshmi
4.Lakshmi
5.Selvi
6.Vijaya
7.Latha ... Respondents 1 to 7/
Petitioner 1 to 7

Jayapal @ Kandasamy (died)

8.Arumugham
(R8 ex-parte in Lower Court and
hence notice may be dispensed with). .. Respondents 8 and 9 /
Respondents 1 and 3

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 20.07.2009 made in MCOP No.181 of
2007 on the file of the Motor Accidents Claims Tribunal,
Additional District Judge, Fast Track Court No.4, Bhavani, Erode
District.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : No appearance for R1 to R7
8th Respondent - Exparte

JUDGMENT

This appeal is preferred by the Insurance Company against
the award of a sum of Rs.2,41,000/- towards compensation to the
respondents 1 to 7, due to the death of the husband of the first
respondent, in a motor vehicle accident.

2.The case in brief, is as follows:

On 26.03.2007, at about 5.00 p.m., the first respondent and her husband (deceased) were standing in the Vettukirai Bus Stop in the Gobi - Erode Main Road. At that time, the motorcycle bearing Reg.No. TN-30-D-6642 belonging to one Jayapal @ Kandasamy and insured with the appellant Insurance Company, came from East to West direction in a rash and negligent manner in the said road and dashed against the deceased. Due to the said impact, the deceased sustained grievous injuries. He was taken to the Gobi Government Hospital and thereafter, while he was taken to the Government Hospital, Coimbatore for further treatment, he died. The wife, son and daughters of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.3,00,000/- as total compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,41,000/- with interest at the rate of 7.5% per annum from the date of petition. Even though the Tribunal granted liberty to the Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle on the ground of violation of policy conditions, since the owner of the vehicle had also subsequently died, the Tribunal held that the MCOP has abated in respect of the owner of the vehicle.

3.Challenging the judgment and decree passed by the Tribunal, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has grossly erred in fastening the liability on the Insurance Company in a case where the driver of the insured vehicle did not have a valid driving licence. He also disputed the quantum of compensation awarded by the Tribunal, stating that the same is excessive and exorbitant.

5.There is no representation on behalf of the respondents 1 to 7 / claimants.

6.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

7.P.W.1-Murugan, son of the deceased, deposed before the Tribunal that when his parents were standing in the Vettukirai Bus Stop in the Gobi - Erode Main Road, the motorcycle in question, driven by its rider in a rash and negligent manner, came from East to West direction in the said road and dashed against his father and due to the same, his father sustained grievous injuries. P.W.1 further deposed that his father was taken to the Gobi Government Hospital and thereafter to the

Government Hospital, Coimbatore for further treatment, but he died on the way to the hospital. The complaint with regard to the accident, has been given by one Kulasekaran. It is seen from the complaint that the said Kulasekaran and one Ramamoorthy had seen the accident and based on the complaint given by the said Kulasekaran, the First Information Report has been registered. The said Ramamoorthy has been examined as P.W.2. The complaint made by the said Kulasekaran as well as the deposition of P.W.2 are in the similar lines, as deposed by P.W.1-son of the deceased. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the motorcycle, which factual finding this Court is not inclined to interfere.

8. Since the rider of the motorcycle was not having the valid driving licence at the relevant point of time, the Tribunal has directed the Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle. Since the owner of the vehicle had also died subsequently, the Tribunal held that the MCOP has abated in respect of the owner of the vehicle, which observation made by the Tribunal, according to this Court, is inappropriate. If the owner of the vehicle dies, then the compensation has to be recovered from his legal heirs. Therefore, the observation of the Tribunal in this regard stands modified to the extent that the Insurance Company shall pay the compensation and recover the same from the legal heirs of the vehicle owner, in the manner known to law.

9. With regard to the quantum of compensation awarded by the Tribunal, since there were no documentary evidences produced to substantiate that the deceased was earning by way of Garment business and by way of doing agriculture, the Tribunal fixed the monthly income of the deceased at Rs.3,000/- on the ground that he would have earned the said sum even as a coolie worker, deducted $\frac{1}{3}$ rd of the amount towards personal expenses, arrived at the annual income at Rs.24,000/-, applied the multiplier of 5 and thereafter arrived at a sum of Rs.1,20,000/- towards loss of income. The Tribunal has also awarded a sum of Rs.1,05,000/- towards loss of love and affection, Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium and Rs.1,000/- towards transportation expenses. The Tribunal has correctly assessed the monthly income of the deceased, adopted the correct multiplier and arrived at the sum of Rs.1,20,000/- towards loss of income. The amounts awarded by the Tribunal towards the other heads are also very reasonable and hence the same are confirmed.

10. In the result, the impugned judgment and decree passed by the Tribunal in respect of the quantum of compensation, is confirmed, but in respect of liability, the Insurance Company

shall pay the compensation to the claimants and recover the same from the legal heirs of the vehicle owner, in the manner known to law. Accordingly, the Civil Miscellaneous Appeal is partly allowed. Consequently, the connected miscellaneous petition is closed. No costs. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 7 / claimants are permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Additional District Judge, Fast Track Court No.4,
The Motor Accidents Claims Tribunal
Bhavani, Erode District.
2. The Section Officer,
VR Section, Madras High Court.

+1 cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.73064

C.M.A.No.3301 of 2009
and M.P.No.1 of 2009

EV(CO)
SSM(24/10/2019)

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