

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1900 of 2015
& M.P.No.1 of 2015

The Manager,
M/s. HDFC-ERGO General Insurance
Company Limited,
Salem ... Appellant

..Vs..

1. Rajendran
2. Vellaiyammal
3. Pandiyan ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 20.01.2015, made in MACTOP No.178 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge & Chief Judicial Magistrate, Ariyalur.

For Appellant : Mr. J.Michael Visuvasam

For Respondents : Mr. T.Gobinath, for R-1 & R-2,
R-3 died.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant / Insurer / Insurance company challenging the liability as well as the quantum of compensation awarded by the Tribunal.

Brief facts:-

2. On 21.04.2013 at about 02.30 pm, one Manivel was riding his two-wheeler bearing Registration No.TN31-AW-2601 and at that time, the vehicle (TATA Ace) bearing Registration No.TN61-C-8715 belonging to the third respondent came from the opposite side in a rash and negligent manner and hit against the two-wheeler, due to which, the victim sustained multiple injuries and succumbed to the injuries, on the same day. An FIR came to be registered. The legal representatives of the deceased, who are the parents, filed a claim petition before the Tribunal contending that the

driver of the Tata Ace was negligent in his driving and hence the Insured and the Insurer of the said vehicle are liable to pay the compensation. Counter statement has been filed by the appellant and the third respondent herein (Insurer and the Insured) before the Tribunal denying the averments made in the claim petition. After elaborate trial, the Tribunal has fastened the liability on the appellant herein and arrived Rs.4,89,000/- as total compensation, aggrieved by which, the appellant is before this Court.

3. Heard the learned counsel for the appellant / Insurer and the learned counsel for respondents 1 and 2 / claimants. Despite ordering notice twice, the third respondent / Insured has not been served till now and hence, this Appeal itself is taken up for final disposal, since the disposal of this case will not in any way affect the rights of the third respondent.

4. The main contention of the learned counsel for the appellant / Insurance Company is that it should have been totally exonerated from the liability, as the driver of the third respondent was not authorized to drive a 'Transport Vehicle' as he was holding only an invalid driving licence at the time of accident; in other words, the learned counsel submitted that the driver of the Van does not possess valid driving licence with endorsement or badge; that the Tribunal ought to have appreciated the evidence of R.Ws.1 and 2 and Exs.R-1 to R-7 marked on the side of the appellant and ordered for pay and recovery at least; and the Tribunal has erred in granting a sum of Rs.4,89,000/- as total compensation.

5. Per contra, the learned counsel for respondents 1 and 2 / claimants submitted that the negligence aspect of the accident is proved beyond reasonable doubt and the deceased died only due to rash and negligent manner of driving by the third respondent's driver and respondents 1 and 2 have lost their son and suffering a lot without any income and hence the compensation awarded by the Tribunal may not be interfered with. He further submitted that Tribunal has considered each and every aspect into consideration and has awarded the compensation, which does not require any interference by this Court.

6. At the outset, it has to be pointed out that the argument of the learned counsel for the appellant that the driver of the third respondent did not possess a valid driving at the time of accident no longer survives for consideration, in the light of 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 appellant/Insurance Company cannot be exonerated from its liability on the ground that the driver of the insured vehicle did not obtain endorsement or badge. Hence, the appellant / Insurance Company is liable to pay the compensation.

7. As far as quantum of compensation is concerned, the Tribunal has considered the pleadings, oral and documentary evidence and has awarded the total compensation at Rs.4,89,000/- under three different heads, viz., loss of income of the deceased, funeral expenses and loss of love and affection. The Tribunal has taken the monthly income of the deceased at Rs.4,500/-, deducted 50% towards personal and living expenses, adopted the multiplier of 17 and arrived at the loss of income at Rs.4,59,000/-. The Tribunal has also awarded Rs.10,000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection. This Court is of the view that the quantum arrived at by the Tribunal commensurates with the settled principles of law, weightage of evidence, probabilities of case and II Schedule of the Motor Vehicles Act. Hence, this Court finds no error in the findings rendered on quantum by the Tribunal warranting interference by this Court.

8. In the result, this Civil Miscellaneous Appeal filed by the Insurer stands dismissed. No costs. Consequently the connected MP is closed.

9. The appellant / Insurance Company is directed to 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. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Accounts of the claimants / respondents 1 and 2 herein, through RTGS, within one week thereafter.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. Motor Accident Claims Tribunal, Additional District and Sessions

Judge & Chief Judicial Magistrate, Ariyalur.

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

+1 cc to Mr.J.Michael Viswasam, Advocate,sr.94035

+1 cc to Mr.T.Gobinath, Advocate, SR.94157.

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