

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2212 of 2015
and M.P.No.1 of 2015

The Branch Manager,
M/s. Oriental Insurance Co. Ltd.,
BO ADUGUDI, No.6, 7th Main,
Above Food World, 80 Feet Road,
3rd Block, 7th Main, Koramangala,
Bangalore, Karnataka - 560 034. ... Appellant/2nd Respondent

Vs

1. Muniappa
2. Manjula ... Respondents 1 & 2/Petitioners
3. K.Lakshman Shetty ... 3rd Respondent/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988,
against the Judgment and Decree dated 17.04.2015 made in
M.C.O.P.No.127 of 2013 on the file of the Motor Accident Claims
Tribunal, (Special District Court for Motor Accident Claims
Cases), Krishnagiri.

For Appellant : Mrs.Elveera Ravindran

For R1 & R2 : Mr.M.Sriram

JUDGMENT

Challenging the liability as well as the quantum of
compensation awarded by the Tribunal, the appellant Insurance
Company has filed the present Civil Miscellaneous Appeal.

2.The case in brief, is as follows:

On 13.02.2011 at about 4.00 p.m., the deceased Deepa was
proceeding on the left side of the Hosur - Krishnagiri NH7 Road,
by walk. When she was nearing Kamandoddi Bleak Mariamman Kovil
along with her uncle and grandfather, the motorcycle bearing
Reg.No. KA-05-W-9388 belonging to the third respondent and
insured with the appellant insurance company, came from Hosur
side to Krishnagiri side and dashed against the deceased Deepa.
Due to the impact, she sustained fatal injuries. She was given

treatment in various hospitals, but she succumbed to the injuries on 20.02.2011. The parents of the deceased filed a claim petition before the Tribunal claiming compensation for the death of the deceased. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.5,93,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant insurance company has preferred this appeal.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in fixing the liability on the appellant Insurance Company. According to him, since the rider of the motorcycle did not possess valid and effective driving licence, the Insurance Company is not liable to pay any compensation to the claimants. On the other hand, he submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the respondents 1 and 2 / claimants has submitted that the Tribunal has rightly considered the materials and evidence and has passed the impugned judgment and hence the same does not require any interference in the hands of this Court.

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

7.Ex.P1-First Information Report was registered against the rider of the motorcycle bearing Registration No.KA-05-W-9388 stating that he was responsible for the accident, which corroborated with the evidence of P.W.1/mother of the deceased, who narrated the incident as stated in the claim petition, before the Tribunal. There was nothing to suggest that she was not in the scene of occurrence. Hence, based on the evidence of P.W.1 and in the light of Ex.P1, 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 in question, which factual finding this Court is not inclined to interfere.

8.With regard to the point raised by the Insurance Company that the rider of the motorcycle was not possessing the valid driving licence to drive the motorcycle, the Tribunal has not discussed the issue properly in the judgment. The Tribunal has just narrated the submissions put forth by the learned counsel on either side and ultimately held that the owner and the insurer of the vehicle have to pay the compensation jointly and

severally. But the fact remained that the Insurance Company has taken steps by sending notice to the owner of the motorcycle through registered post, to prove that the driver of the motorcycle was not possessing the valid driving licence at the time of accident, but the same was returned. Copy of the notice is marked as Ex.R2 and the returned cover is marked as Ex.R3. It is also seen that the owner of the vehicle remained ex-parte before the Tribunal. He had not come forward to adduce evidence to prove that the driver was having the valid driving licence to drive the motorcycle. In these circumstances, this Court deems it fit to direct the appellant Insurance Company to pay the compensation to the claimant as ordered by the Tribunal and thereafter recover the same from the owner of the vehicle.

9. With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has relied upon the exhibits, evidence of witnesses, took note of the II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded the above compensation amount under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

10. In the result, the 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 four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondents 1 and 2 / claimants are permitted to withdraw the same on making proper application before the Tribunal. Thereafter, the Insurance Company shall proceed against the owner of the vehicle, the third respondent herein, for recovery of the compensation amount, in accordance with law.

सत्यमेव जयते
s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

av/km
To

1. The Special District Judge
The Motor Accidents Claims Tribunal
Special District Court, Krishnagiri.

2. The Section Officer,
VR Section, Madras High Court.

+1 CC to Mr. Mukund R. Pandiyan, Advocate sr 91763.

+1 Cc to Mrs.Elveera Ravindran, Advocate sr 91994.

C.M.A.No.2212 of 2015
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BR(CO)
SP(02/09/2020)



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