

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.490 & 491 of 2015

and

M.P.Nos.1, 1 of 2015

C.M.A.No.490 of 2015:

M/s.Iffco Tokyo General Insurance Company Limited,
Tulsi Chambers, 3rd Floor,
No.195, T.V.Samy Road (West),
R.S.Puram, Coimbatore - 641 002. .. Appellant

Vs.

1.Perumal
2.Bhoopathi Raja
3.Chithra
4.Deepa
5.M.Ramesh Raja
6.M/s.National Insurance Company Limited,
No.37/2-E, Salem Main Road,
Mettur Dam RS, P.B.No.19,
Mettur Dam, Salem - 636 402.
7.J.Shanmugasundaram .. Respondents

C.M.A.No.491 of 2015:

M/s.Iffco Tokyo General Insurance Company Limited,
Tulsi Chambers, 3rd Floor,
No.195, T.V.Samy Road (West),
R.S.Puram, Coimbatore - 641 002. .. Appellant

Vs.

1. Deepa
2.M.Ramesh Raja
3.M/s.National Insurance Company Limited,
No.37/2-E, Salem Main Road,
Mettur Dam RS, P.B.No.19,
Mettur Dam, Salem - 636 402.
4.J.Shanmugasundaram .. Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 19.03.2010 made in M.C.O.P.Nos.44 and 51 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur.

C.M.A.No.490 of 2015:

For Appellant : Ms.C.Harini
for Mr.N.Vijayaraghavan
For RR 1 to 4 : Mr.V.Kumaravelan
For R6 : Mr.S.Arun Kumar
For RR 5 & 7 : No appearance

C.M.A.No.491 of 2015:

For Appellant : Ms.C.Harini
for Mr.N.Vijayaraghavan
For R1 : Mr.V.Kumaravelan
For R3 : Mr.S.Arun Kumar
For RR 2 & 4 : No appearance

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the common award dated 19.03.2010 made in M.C.O.P.Nos.44 and 51 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur.

2.Both the appeals arise out of the same accident and common award. Hence they are disposed of by this common judgment. The parties are referred to as per their respective rank in the claim petition, for the sake of convenience.

3.The appellant in both the appeals is the fourth respondent in M.C.O.P.Nos.44 and 51 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur. The claimants in M.C.O.P.No.44 of 2008 (C.M.A.No.490 of 2015) filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Vijaya, who died in the accident that took place on 04.02.2008. The claimant in M.C.O.P.No.51 of 2008 (C.M.A.No.491 of 2015) filed the above said claim petition claiming a sum of Rs.70,000/- as compensation for the injuries sustained by her in the accident that took place on 04.02.2008.

4.According to the claimants, on 04.02.2008 at 10.30 A.M., one Thangavelu was riding his motorcycle with deceased Vijaya and Deepa, fourth claimant in M.C.O.P.No.44 of 2008 and claimant in M.C.O.P.No.51 of 2008. At that time, the driver of the lorry belonging to the first respondent drove the lorry in a rash and negligent manner and dashed against the motorcycle and caused accident. In the accident, due to injuries, Thangavelu and Vijaya died and Deepa suffered multiple injuries. The lorry was insured with the second respondent-Insurance Company. The third

respondent is the owner of the motorcycle and fourth respondent/appellant is the insurer of the motorcycle. The claimants in M.C.O.P.No.44 of 2008 claimed a sum of Rs.15,00,000/- as compensation for the death of one Vijaya and the claimant in M.C.O.P.No.51 of 2008 claimed a sum of Rs.70,000/- as compensation for the injuries sustained by her.

5.The respondents 1 and 3 being the owners of the lorry and motorcycle respectively, remained absent before the Tribunal and therefore they were set exparte.

6.The second respondent being the insurer of the lorry filed counter statement and stated that accident occurred due to rash and negligent riding by deceased Thangavelu, who is the rider of the motorcycle at the time of accident and only the fourth respondent as insurer of the motorcycle is liable to pay the compensation.

7.The fourth respondent being the insurer of the motorcycle filed counter statement and stated that accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent and the second respondent being the insurer of the lorry is liable to pay compensation.

8.Before the Tribunal the first claimant in M.C.O.P.No.44 of 2008 was examined as P.W.1. The fourth claimant in M.C.O.P.No.44 of 2008 and the claimant in M.C.O.P.No.51 of 2008 was examined as P.W.2 and one Dhanabal was examined as P.W.3 and 9 documents were marked as Exs.P1 to 9. The second respondent-Insurance Company examined one Nakeeran, Senior Assistant in second respondent-Insurance Company as R.W.1 and marked Insurance copy of the lorry as Ex.R1. The fourth respondent/appellant did not let in any oral and documentary evidence.

9.The Tribunal considering the pleadings, oral and documentary evidence held that accident occurred due to rash and negligent driving by the driver of the lorry belonging to the first respondent as well as the rider of the motorcycle since three persons were traveling in the motorcycle and also the rider of the motorcycle did not possess valid driving license at the time of accident. The Tribunal fixed 65% negligence on the part of the driver of the lorry belonging to the first respondent and 35% negligence on the part of the rider of the motorcycle belonging to the third respondent and directed the 1st and 2nd respondent to pay a sum of Rs.2,27,500/- and Rs.14,300/- being 65% liability and 3rd and 4th respondents to pay a sum of Rs.1,22,500/- and Rs.7,700/- being 35% liability in M.C.O.P.Nos.44 and 51 of 2008 respectively as compensation to the claimants.

10.Challenging the said award dated 19.03.2010 made in M.C.O.P.Nos.44 and 51 of 2008, the fourth respondent-Insurance Company has come out with the present appeal.

11.The learned counsel appearing for the fourth respondent/appellant contended that the claimants have let in both oral and documentary evidence to prove that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent. The respondents 1 to 3 have not let in any evidence to show that rider of the motorcycle also contributed negligence to the accident. In the very same accident, the rider of the motorcycle died. The legal heirs of the deceased Thangavelu, who is the rider of the motorcycle at the time of accident, filed M.C.O.P.No.49 of 2008 against the driver, owner and insurer of the lorry. In the said M.C.O.P., the Tribunal directed the Insurance Company of the lorry to pay the compensation to the legal heirs of the deceased Thangavelu, rider of the motorcycle. The owner and the insurer of the motorcycle are not parties in the said M.C.O.P.No.49 of 2008. In such circumstances, the Tribunal erroneously fixed 35% liability on the part of the fourth respondent/appellant for not possessing driving license by the rider of the motorcycle at the time of accident and prayed for setting aside 35% negligence fixed on the part of the rider of the motorcycle and also 35% liability fixed on the part of the fourth respondent/appellant to pay compensation.

12.The learned counsel appearing for the second respondent-National Insurance Company Limited contended that the accident has occurred solely due to rash and negligent riding by the rider of the motorcycle, who was riding the motorcycle with two pillion riders. The rider of the motorcycle did not possess valid driving license at the time of accident. The Tribunal ought to have fixed entire negligence on the part of the rider of the motorcycle and dismissed the claim petition against the respondents 1 and 2 being the owner and insurer of the lorry. The Tribunal erroneously fixed 65% negligence on the part of the driver of the lorry and 65% liability on the part of the second respondent - National Insurance Company Limited. He therefore prayed for setting aside 65% negligence fixed on the part of the driver of the lorry and 65% liability fixed on the part of the second respondent - National Insurance Company Limited to pay compensation.

13.The learned counsel appearing for the claimants contended that the claimants in M.C.O.P.No.44 of 2008 claimed that deceased Vijaya was an agriculturist and milk vendor and also selling flowers and was earning a sum of Rs.5,000/- per month. The Tribunal erroneously fixed a very meager sum of Rs.2,400/- as notional monthly income of the deceased and granted a very

meager sum of Rs.3,50,000/- as compensation, which needs to be enhanced. The claimant in M.C.O.P.No.51 of 2008 claimed that she was an agriculturist and was also doing milk vending business and was earning a sum of Rs.3,000/- per month. The Tribunal has awarded a very meager sum of Rs.22,000/- as total compensation. The amounts awarded by the Tribunal in both M.C.O.Ps are very meager and prayed for enhancement of compensation.

14.Heard the learned counsel appearing for the fourth respondent, second respondent as well as claimants and perused the entire materials on record.

15.It is the case of the claimants that driver of the lorry belonging to the first respondent drove the same in a rash and negligent manner and dashed against the motorcycle and caused accident. To substantiate the said contention, the claimant Deepa, fourth claimant in M.C.O.P.No.44 of 2008 and claimant in M.C.O.P.No.51 of 2008 was examined as P.W.2, who was one of the pillion rider and eye-witness. She also marked F.I.R., which is registered against the driver of the lorry belonging to the first respondent. The respondents 1 and 2 have not examined the driver of the lorry or any independent-witness to disprove the evidence of P.W.2 and F.I.R., which is registered against the driver of the lorry belonging to the first respondent. The Tribunal considering the contention of the second respondent that rider of the motorcycle did not have valid driving license at the time of accident and three persons traveled in the motorcycle at the time of accident, fixed 35% negligence on the part of the rider of the motorcycle. The finding of the Tribunal fixing 35% negligence on the part of the rider of the motorcycle belonging to the third respondent is without evidence.

16.It is well settled that even if driver of the vehicle did not possess valid driving license, it must be proved that due to his negligence, the accident has occurred or he also contributed to the accident. In the present case, there is no evidence to prove that rider of the motorcycle contributed negligence to the accident. The fact remains that at the time of accident, three persons traveled in the motorcycle is contrary to the provisions of Motor Vehicles Act, 1988.

17.Considering the materials on record, I hold that accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent. The second respondent as insurer of the lorry is liable to pay the compensation. At the same time it must be noted that at the time of accident three persons traveled in the motorcycle and therefore the claimants are not entitled to entire compensation awarded by the Tribunal. The claimants are entitled to only 80% of the amounts awarded by the Tribunal.

18.As far as quantum of compensation is concerned, the claimants in M.C.O.P.No.44 of 2008 contended that deceased Vijaya was an agriculturist and milk vendor and also selling flowers and was earning a sum of Rs.5,000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal rightly fixed a sum of Rs.2,400/- as monthly income of the deceased, which is not meager. The Tribunal considering the entire materials on record has awarded a sum of Rs.3,50,000/- as compensation to the claimants in M.C.O.P.No.44 of 2008, which is not meager. The claimant in M.C.O.P.No.51 of 2008 contended that she was an agriculturist and was also doing milk vending business and was earning a sum of Rs.3,000/- per month. Except oral evidence, no material evidence was produced by the claimant to prove the avocation and income. The Tribunal considering the entire materials on record has awarded a sum of Rs.22,000/- as compensation to the claimant in M.C.O.P.No.51 of 2008. The amounts awarded by the Tribunal under different heads are not meager and they are just compensation. There is no error in the compensation awarded by the Tribunal warranting interference by this Court.

19.In the result,

19(i). C.M.A.No.490 of 2015 is allowed. The second respondent- National Insurance Company Limited is directed to deposit 80% of the award amount, i.e., Rs.2,80,000/-, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.44 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur. On such deposit, the claimants in M.C.O.P.No.44 of 2008 are permitted to withdraw their respective share of the modified award amount, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently connected Miscellaneous Petition is closed.

19(ii).C.M.A.No.491 of 2015 is allowed. The second respondent- National Insurance Company Limited is directed to deposit 80% of the award amount, i.e., Rs.17,600/-, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.51 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur. On such deposit, the claimant in M.C.O.P.No.51 of 2008 is permitted to withdraw the modified award amount, along with interest and costs, after adjusting the amount if any already withdrawn, by filing

necessary applications before the Tribunal. No costs.
Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Mettur.

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

+2ccs to Mr.N.Vijayaraghavan , Advocate SR.No. 102168,102167

+2ccs to Mr.S.Angamuthu, Advocate SR.No. 101347,10346

+1cc to Mr.S.Arun Kumar, Advocate SR.No. 101739

C.M.A.Nos.490 & 491 of 2015

A.SK(06/08/2020)



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