

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3729 of 2013

1.Rajendiran

2.Rani

3.ChandraAppellants

vs.

1.C.Ranganathan

2.The Branch Manager,
The Oriental Insurance Company Ltd.,
No.3L Siddhaveerappa Chetty Street,
Dharmapuri Town and Taluk,
Dharmapuri District. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.07.2011 passed in MCOP.No.680 of 2010 on the file of the Motor Accident Claims Tribunal / Principal District Court, Dharmapuri.

Appellants : Mr.M.Selvam
R1 : Mr.I.Abrar MD Abdullah
R2 : Mr.Elveera Ravindran

J U D G M E N T

The appellants are the claimants in MCOP.No.680 of 2010 on the file of the Motor Accident Claims Tribunal / Principal District Court, Dharmapuri. They filed the claim petition under Section 163(A) of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Chinnakannu, mother of the claimants in a road accident on 31.07.2010.

2. The case of the claimants in nutshell is as follows:

On 31.07.2010, the deceased Chinnakannu was walking along Yettimarathupatty - Dharmapuri Main Road and at about 05.00 p.m, a speeding motorcycle bearing Registration No. TN 29 AF 4720 hit her, as a result whereof, she sustained fatal

injuries and died in the hospital.

3. According to the claimants, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 29 AF 4720 belonging to the first respondent, was the cause of the accident and that since the said motorcycle was insured with the second respondent / the Oriental Insurance Company Limited, the owner of the motorcycle and the insurer are jointly and severally liable to pay compensation.

4. The owner of the motorcycle remained absent before the Tribunal and therefore he was set exparte. The second respondent / The Oriental Insurance Company Limited contested the claim petition and the learned Principal District Judge / Motor Accident Claims Tribunal, Dharmapuri while awarding compensation of Rs.1,45,000/- together with interest at the rate of 7.5% per annum to the claimants, concluded that since the rider of the motorcycle was not in possession of valid driving licence on the date of the accident, the first respondent / owner of the motorcycle should pay the award amount. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mr.M.Selvam, learned counsel appearing for the appellants, Mr.I.Abrar MD Abdullah, learned counsel appearing for the first respondent and Mr.Elveera Ravindran, learned counsel appearing for the second respondent.

6. In the decisions in (i) New India Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

7. In the facts and circumstances of the present case, the orders passed by the Tribunal exonerating the Insurance Company from paying the award amount is liable to be set aside. Therefore, the Insurance Company is directed to pay the award amount in the first instance and then recover the same from the owner of the motorcycle.

8. As far as the quantum of compensation is concerned, the Tribunal has adopted multiplier method and awarded just compensation of Rs.1,45,000/- to the claimants and therefore,

I do not see any reason to upset the quantum of Award passed by the Tribunal.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The second respondent / The Oriental Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.1,45,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.680 of 2010 on the file of the Motor Accident Claims Tribunal / Principal District Court, Dharmapuri within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the motorcycle bearing Registration No. TN 29 AF 4720 on the same cause of action.

(iii) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Motor Accidents Claims Tribunal,
The Principal District Judge,
Dharmapuri.

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

+lcc to Mr.M.Selvam, Advocate, S.R.No. 22046

+lcc to Mr.Elveera Ravindran, Advocate, S.R.No. 91603

CMA.No.3729 of 2013

CNR(CO)
GN(28/12/2020)