



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.04.2019
CORAM
THE HONOURABLE **MRS. JUSTICE S.RAMATHILAGAM**

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C.M.A. (MD) .No.720 of 2016
and
C.M.P. (MD) No. 7260 of 2016

M/s.United India Insurance Company Limited,
Rep by its Divisional Manager,
Xavier Building, PWD Office Road,
Nagercoil, Nagercoil Village,
Kanyakumari District. :Appellant/3rd Respondent

Vs.

1.J.Dionisious Varma (Died)	:Respondent / Claimant
2.Mr.Kumaresan	: Respondent / 1 st Respondent
3.S.Bala Narayanan	:Respondent / 2 nd Respondent
4.Josmin Varma	: Respondent
5.Heston Robins Varma	: Respondent

(R4 and R5 were brought on record as legal heirs of the deceased first respondent, as per order dated 10.07.2018 in C.M.P. (MD) Nos.5264 to 5266 of 2018)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order, dated 06.06.2015 made in M.C.O.P.No.19 of 2013 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Court), Nagercoil.

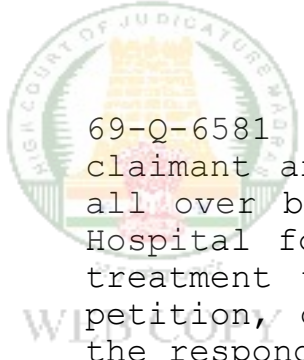
For Appellant :Mr.B.Rajesh Saravanan
For R2 : No appearance
For R4 and R5 :Mr.T.Selvakumaran
For R3 :Mr.M.P.Senthil

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company, against the judgment and decree dated 06.06.2015 passed in M.C.O.P.No.19 of 2013, by the Motor Accidents Claims Tribunal (Principal Subordinate Court), Nagercoil.

2.The brief facts of the case are as follows:

On 06.10.2011, at about 11.15 am, the claimant along with his wife riding his two wheeler bearing Reg.No.TN.74-L-6007 at Kanyakumari-Nagercoil Four Way Road. At that time, the second respondent/driver drove the two wheeler bearing Registration No.TN-



69-Q-6581 in a rash and negligent manner and hit against the claimant and his wife. Due to which, they were sustained injuries all over body. Immediately, they were taken to Nagercoil Seenivasa Hospital for first aid and thereafter, they were taken for further treatment to the Kims Hospital. Hence, the claimant filed a claim petition, claiming a sum of Rs.15,00,000/- as compensation against the respondents therein.

3.Before the Tribunal, the case of the claimant was resisted by the appellant herein/Insurance Company by filing a counter statement. According to the appellant, due to the negligent act of the claimant, the accident had taken place and hence, the appellant is not liable to pay compensation. It is further stated that it is for the claimant to establish his age, occupation and income. In the absence of the same, the appellant herein/Insurance Company prayed for dismissal of the claim petition.

4.Before the Tribunal, on the side of the claimant, four witnesses were examined as P.Ws.1 to 4 and 26 documents were marked as Exs.P1 to P26 and on the side of the respondents, two witnesses were examined as D.Ws1 and 2 and did not mark any document.

5.After considering the oral and documentary evidences, the Tribunal has held that since there is also a negligent on the part of the claimant, directed the appellant to pay the compensation of Rs.9,13,700/- with 7.5% interest per annum, against which, the present appeal is filed by the appellant /Insurance Company.

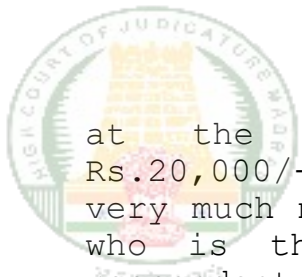
6.In the grounds of appeal, the appellant/Insurance Company has stated that the claimant was not having a valid driving licence at the time of accident and hence, there is a violation of policy condition. Further, it is stated that the claimant has not produced any evidence or document to prove that he has earning a sum of Rs.20,000/- per month. Further, the appellant has stated that the fixation of monthly income of the claimant at Rs.3,000/- and the award of Rs.9,13,700/-, under various heads, which were made by the Tribunal are highly excessive. Therefore, the appellant contended that he is not liable to pay compensation as awarded by the Tribunal.

7.Heard the learned counsel appearing on both sides.

8.The learned counsel for the appellant contended that the claimant, who was driving the vehicle, has no valid license at the time of accident, since the vehicle was insured, which is also revealed in the Motor Vehicle Report. He further argued that the accident occurred only due to the rash and negligent driving on the part of the claimant, who was riding the said vehicle. Since the Tribunal has considered the said aspect, fixed the liability on the appellant.

<https://hcservices.ecourts.gov.in/hcservices/>

9.The learned counsel appearing for the claimant contended that



at the time of accident, he has earned a sum of Rs.20,000/- per month and the income determined by the Tribunal is very much meagre. During the pendency of this appeal, the claimant, who is the first respondent herein died and that the fourth respondent/wife and the fifth respondent/son, were impleaded. The impleading respondents are all dependents of the claimant.

10. On a perusal of the award passed by the Tribunal, it is observed that a direction was given to the appellant to pay compensation. Since the claimant was not having valid driving licence at the time of accident, this Court has adopted the "pay and recovery" method. The amount awarded by the Tribunal under various heads seems to be fair and reasonable and hence, the same is confirmed.

11. In the result, the Award dated 06.06.2015 made in M.C.O.P.No.19 of 2013 by the the Motor Accidents Claims Tribunal-cum-Principal Subordinate Court, Nagercoil, is confirmed and the Civil Miscellaneous Appeal is partly allowed. Accordingly, the fourth and the fifth respondents are entitled for a sum of Rs.9,13,700/- with interest at 7.5% per annum as compensation. The appellant/Insurance Company is directed to deposit the award amount as awarded by the Tribunal with accrued interest and costs, less the amount if any, already deposited at the first instance, within a period of 8 weeks from the date of receipt of a copy of this order and then to recover the same from the owner of the vehicle/third respondent herein by initiating separate proceedings before the claims Tribunal. On such deposit being made, the fourth and fifth respondents are permitted to withdraw their respective shares as awarded by the Tribunal with proportionate accrued interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

To

1. The Motor Accidents Claims Tribunal
(Principal Subordinate Court), Nagercoil.

2. The Record Keeper, VR Section
Madurai Bench of Madras High Court,
Madurai. (2 Copies)



+1 CC to M/s.B.RAJESH SARAIVANAN, Advocate (SR-60059[F] dated 10/04/2019)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-60522[F] dated 11/04/2019)

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