

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.01.2020

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.2114 of 2010

1.Kunjammal
2.Nagamani
3.Thanigainathan

Appellants / Claimants

versus

1.Sampath
2.A.K.Abdul Gani
3.The Branch Manager,
Bajaj Allianz General
Insurance Co. Ltd.,
Coimbatore.

Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 11.12.2009 passed in M.C.O.P.No.318 of 2007 on the file of the Motor Vehicle Accidents Claims Tribunal [Fast Track Court-II, Additional District Judge], Gobichettipalayam.

For Appellants : Mr.A.V.Arun

For Respondent Nos.1 & 2 : Not ready in notice

For Respondent No.3 : Mr.N.Vijaya Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants [claimants], challenging the judgment and decree dated 11.12.2009 passed in M.C.O.P.No.318 of 2007 on the file of the Motor Accidents Claims Tribunal [Fast Track Court-II, Additional District Judge], Gobichettipalayam.

2. For the sake of convenience hereinafter the parties are referred to, as per their litigative status before the Tribunal.

3. It is a case of fatal. The case of the claimants is that, on 05.08.2006 at about 9.30p.m., the deceased Palanisamy, who was the husband of the first appellant and father of the appellants 2 and 3. Along with one Thannasi, the deceased travelled in a motorcycle bearing Registration No. TN-36-Y-6998 in Bannari Road. At that time, another one motorcycle bearing Registration No. TN-39-AD-1359 came from opposite direction in a rash and negligent manner and hit against the vehicle, in which, the deceased was travelled. Due to the accident, the deceased sustained head injury and thereafter, he was admitted in the Government Hospital, Sathyamangalam. Despite of giving necessary treatment, he was died on 07.08.2006.

4. According to the appellants/claimants, the accident had occurred only due to the negligent act of the driver, who drove the motorcycle bearing Registration No. TN-39-AD-1359. At the time of accident, the deceased was aged about 70 years and was earning Rs.5,000/- per month, by working as a agricultural coolie, besides he earned a pension of Rs.5,114/-. Due to the said accident, the appellants lost the bread winner of the family. Accordingly, they claimed Rs.5,00,000/- as a total compensation for the death of the deceased Palanisamy.

5. Per contra, opposing the claim made by the appellants / claimants, by filing counter, the third respondent [Insurance Company] denied the accident itself and stated that only due to the rash and negligent act of the driver, who drove the motorcycle bearing Registration No. TN-36-Y-6998, the accident had occurred. The main defence would taken by the third respondent is that though the vehicle, which was liable for the accident was insured with them, the driver, who drove the vehicle at the time of accident was not having any valid licence. Therefore, the Insurance Company is not at all any liability to pay the compensation fixed by the Claims Tribunal. The claim of the appellants / claimants are exorbitant and thus, the third respondent sought for dismissal of the Claims Petition.

6. Before the Claims Tribunal, the first appellant [Kunjammal] examined herself as P.W.1. One Thannasi, who accompanying with the deceased at the time of accident was examined as P.W.2 and 12 documents were marked as Ex.P.1 to Ex.P.12 on the side of the claimants.

7. On the other hand, two witnesses have been examined on the side of the third respondent as R.W.1 and R.W.2, 11 documents were marked as Ex.B.1 to Ex.B.11.

8. Having considered all the materials placed before him, the learned Presiding Officer, Claims Tribunal came to the

conclusion that at the time of accident, the driver, who drove the vehicle, was not having any valid licence and hence, the Insurance Company is not liable to pay any compensation. The Claims Tribunal fixed Rs.1,60,490/- as a total compensation to the appellants and directed the respondents 1 and 2 to pay the same. Aggrieved over the same, the appellants / claimants are before this Court, challenging the liability fixed by the Claims Tribunal.

9. Since the respondents 1 and 2 are remained ex parte before the Claims Tribunal, for disposing this Civil Miscellaneous Appeal, no notice was sent to respondents 1 and 2.

10. Today, when the appeal is taken up for consideration, I have heard the arguments of Mr.A.V.Arun, learned counsel appearing for the appellants, Mr.N.Vijaya Raghavan, learned counsel appearing for the third respondent and also perused the records carefully.

11. Both the learned counsel appearing on behalf of the appellants / claimants and the learned counsel appearing on behalf of the third respondent would made a submission that with regard to the fixation of quantum, there was no dispute among them. The only grievance redressed by the learned counsel appearing for the appellants / claimants is that the Claims Tribunal when at the time of passing the award fixed the liability on the driver of the vehicle as well as on the owner of the vehicle and also directed them to pay the entire compensation. According to him, it is very difficult to recover the said amount from them. In this regard, he would further contend that since at the time of accident, the vehicle was insured with the third respondent, he is having the liability to pay the entire compensation but without noting the said aspect, the Claims Tribunal passed an order, which is nothing but erroneous one.

12. On the other hand, the learned counsel appearing for the third respondent would contend that though the vehicle was insured at the time of accident, since the vehicle was driven by the driver without any valid licence it cannot be said that the Insurance Company is having the liability to pay the compensation.

13. Upon considering the arguments advanced by either side, it is necessary and useful to consider the judgment of our Hon'ble Apex Court in MANUARA KHATUN vs. RAJESH KUMAR SINGH reported in (2017) 4 SCC 796, in which, it has held as follows:-

"21. In view of the foregoing discussion,

we are of the view that the direction to United India Insurance Co. Ltd. (Respondent 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. Respondent 3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) Respondent 1 in execution proceedings arising in this very case as per the law laid down in para 26 of Saju P. Paul case [(2013) 2 SCC 41]."

14. According to the proposition laid down by our Hon'ble Apex Court, the Insurance Company, who insured the vehicle is having the liability to pay the entire compensation, with the right to recover the same from the owner of the offending vehicle. So, applying the principles laid down by our Honourable Apex Court, this Court directs the third respondent / Insurance Company to pay the award amount to the appellants/claimants and thereafter, the third respondent / Insurance Company is permitted to recover the compensation amount from the owner of the offending vehicle. The compensation awarded by the Motor Vehicle Accidents Claims Tribunal [Fast Track Court-II, Additional District Judge], Gobichettipalayam in M.C.O.P.No.318 of 2007 is confirmed.

15. In the result,

[i] The Civil Miscellaneous Appeal is partly allowed.

[ii] The petitioner in M.C.O.P.No.318 of 2007 is entitled to award amount of Rs.1,60,490/- [Rupees One Lakh Sixty Thousand Four Hundred Ninety only] with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The third respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the appellants [claimants] in this appeal are permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

sri

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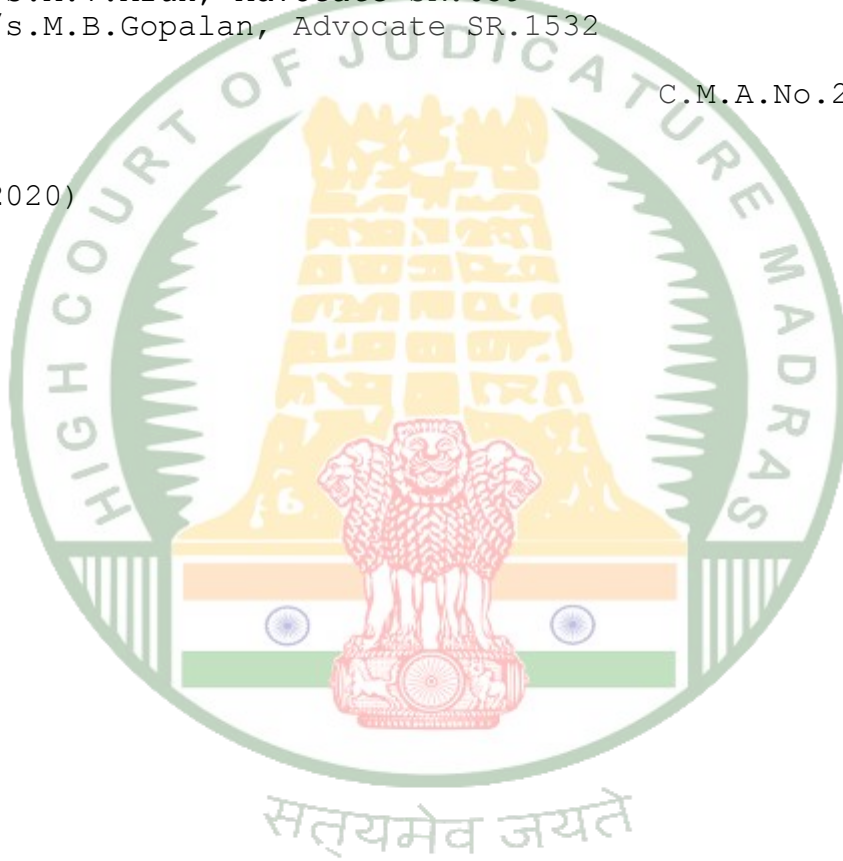
1.The Motor Vehicle Accidents Claims Tribunal
[Fast Track Court-II, Additional District Judge],
Gobichettipalayam.

2.The Section Officer,
VR Section,
High Court, Madras-104.

+lcc to M/s.A.V.Arun, Advocate SR.639
+lcc to M/s.M.B.Gopalan, Advocate SR.1532

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NRL(CO)
CB(03/09/2020)



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