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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1353 of 2013
and M.P.No.1 of 2013

Iffco Tokiyo General Insurance Co. Ltd.,
Tulsi Chambers, 2nd Floor,
195, T.V.Swamy Salai (w), RS Puram,
Coimbatore.

... Appellant/2nd Respondent

Vs.

1.Valliyathal
2.Balasaraswathy
3.Dhandapani
4.Jagadeesan
5.R.Saravanan

...Respondents 1 to 4/Claimants
...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree in M.C.O.P.No.164 of 2010, dated 15.10.2012 on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram.

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan

For Respondents : Mr.Ma.P.Thangavel for R1 to R4
R5 - served - name printed - NA

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 15.10.2012 made in M.C.O.P.No.164 of 2010 on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram.

2. The case of the Appellant is that on 19.08.2009 at about 3.00 p.m., the deceased was driving the Hero Honda bike bearing Registration No.TN-33-W-4334 and returning to his home from North to South after attending his personal work at Dhalavaipattinam. While he was proceeding on Dharapuram to Udumalai road, in front of Dhalavaipattinam Kuttupalli thottam, the fifth respondent's bike (TVS Appachi) bearing Registration



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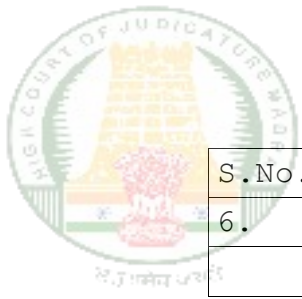
No.TN-42-9796 came from behind in a rash and negligent manner and hit against him. As a result, he was thrown away and sustained major injuries on his head, left fronto, C2, C4, right temporal and multiple injuries over his body. Immediately, he was taken to the Government Hospital, Dharapuram, and was given first-aid, and thereafter, he was admitted as inpatient in PSG Hospitals, Coimbatore. During the course of treatment, he was intubated and ventilated in the Intensive Care Unit, but the injury over the left fronto and parietal region caused severe injury, and as a result, he died on 29.09.2009. The accident was happened solely due to the rash and negligent driving of the fifth respondent. Hence, the respondents 1 to 4 who are the legal heirs of the deceased filed a petition before the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram, claiming Rs.16,00,000/- as compensation under various heads.

3. Denying the allegations, the appellant who is the insurer of the fifth respondent's vehicle filed a counter affidavit before the Tribunal stating that the accident was occurred only due to the mistake of the deceased, hence they were not responsible for the claim. Further, it was stated that the deceased had no driving licence at the time of accident, hence they were not liable to pay compensation to the respondents 1 to 4/claimants. Moreover, it was stated that the averments contained in the petition that the deceased was aged about 65 years at the time of accident and he earned Rs.8,000/- per month working as agriculturist and also owned a dairy farm, and the claimants were fully depending upon the deceased, are all false.

4. During the trial, on the side of the claimants, 14 documents were marked as Exs.P1 to P14 and two persons were examined as witnesses viz. Mrs.Valliyammal and Mr.Mayilswamy. On the side of the appellant, two documents were marked as Exs.R1 and R2, and two persons viz. Mr.A.Karuppanan (Motor Vehicle Inspector Grade I) and Mr.Jayakumar were examined as witnesses.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded Rs.5,25,600/- as compensation as given below :

S.No.	Description	Amount
1.	Loss of income	2,40,000
2.	Transport Expenses	5,000
3.	Funeral Expenses	10,000
4.	Love and Affection	40,000
5.	Loss of Consortium	10,000



S.No.	Description	Amount
6.	Medical Expenses	2,20,600
	Total	5,25,600

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6. Aggrieved by the award, the appellant insurance company has filed this appeal before this Court stating that the Tribunal erred in fixing the compensation at Rs.5,25,600/-.

7. The learned counsel for the respondents 1 to 4 submitted that the first respondent is the wife, the second respondent is the daughter and the third and fourth respondents are the sons of the deceased Muthusamy respectively. The deceased Muthusamy was aged about 65 years at the time of the death. He was an Agriculturist and also owned a dairy farm and from that he used to earn Rs.8,000/- per month. The deceased is the only earning member and looking after his family. Due to the accident, the respondents 1 to 4 lost the support and future earning of the deceased.

8. The learned counsel for the appellant submitted that the Tribunal has grossly erred in fastening the liability on the appellant insurance company. The deceased did not possess valid and effective driving license to drive the insured vehicle on the date of accident and thereby there was serious breach of Motor Vehicles Act and the Policy. The Tribunal failed to appreciate the evidence of RW1 (Motor Vehicle Inspector 1) and Ex.R1 which clearly substantiates the fact that the Insured was not possessing driving license on the date of accident.

9. He further submitted that the Tribunal failed to consider that the insured was possessing learners driving license only for the period 22.1.2009 to 21.7.2009 and on the date of accident, i.e. on 19.08.2009, the insured did not possess driving license to drive the insured vehicle. The Tribunal erred in fixing the monthly salary of the deceased at Rs.6,000/- and dependency at Rs.2,40,000/- which is on higher side.

10. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4, and perused the materials available on record.

11. On perusal of the records, it is observed that the appellant examined two witnesses, viz., RW1 Mr.A.Karuppanan (Motor Vehicle Inspector Grade I) and RW2 Mr.Jayakumar on their side and they have deposed that the deceased was holding only the learners driving license at the time of accident and the same was expired on 21.07.2019 itself. The deposition of RW1 and 2 had corroborated the evidence of the appellant. Hence, this Court is of the view that the appellant shall pay the



compensation to the claimants and recover the same from the fifth respondent who is the owner of the vehicle.

12. As far as the quantum of compensation is concerned, this Court do not find any error in the order of the Tribunal, hence this Court is inclined to confirm the same.

13. Accordingly, this Civil Miscellaneous Appeal is disposed of and the appellant insurance company is directed to pay the entire award amount as fixed by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the fifth respondent. On such deposit being made, the respondents 1 to 4/ claimants are permitted to withdraw the same as per the apportionment made by the Tribunal by filing a formal petition before the concerned Court. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District Court No.3, Dharapuram.

+1cc to Mr.MB.Gopalan, Advocate, S.R.No.16908

C.M.A.No.1353 of 2013

VD(CO)
CB(15/07/2021)