

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3426 of 2010
and
MP No.1 of 2010

The Divisional Manager,
New India Assurance Company Ltd.,
Division Office,
No.1, Bharathi Road,
Cuddalore. ...Appellant/2nd Respondent

versus

1. Pachammal
2. Radha
3. Chinnammal
4. Seenuvasan ...R1 to R4/Claimants
5. R.Saravanan ... 5th Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 30.07.2010 made in MCOP No.2402 of 2007 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Cuddalore.

For Appellant : Mr.K.Vinod for
Mr.ElVeera Ravindran

For R1 to R5 : Served - No appearance

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JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 30.07.2010 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Cuddalore in MCOP No.2402 of 2007.

2. The Appellant / Insurance Company has challenged the impugned award both on the ground that the Tribunal has not granted pay and recovery rights to them despite the fact that the Driver of the insured vehicle did not possess a valid

Driving Licence and they have also challenged the quantum of compensation assessed by the Tribunal.

3. The Tribunal under the impugned award has awarded a sum of Rs.1,38,000/- together with interests and costs to the respondents 1 to 4 in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency	1,20,000/-
Transport charges	3,000/-
Loss of mental agony	10,000/-
Funeral expenses	5,000/-
Total	1,38,000/-

4. Heard Mr.K.Vinod, learned counsel for the appellant. Despite service of notice, there is no representation on behalf of the respondents.

5.As seen from the impugned award in Paragraph No.7, the Tribunal has considered the evidence of PW1 and PW2, who are the first respondent and an Eye witness to the accident respectively. Through PW1, Ex.P6 viz., charge sheet was marked. As seen from the charge sheet, the Driver of the insured vehicle has been charge sheeted under Section 304-A, IPC read with Section 3 of the Motor Vehicles Act.

6. This Court has perused the charge sheet, Ex.P6. As seen from Ex.P6, the police in their charge sheet have categorically stated that the Driver of the insured vehicle did not possess a valid Driving Licence. The Tribunal under the impugned award has taken note of this undisputed fact but has erroneously not granted pay and recovery rights to the appellant Insurance Company. It is settled law that once the Driver of the insured vehicle does not possess a valid Driving Licence, Pay and Recovery will have to be necessarily granted to the insurer.

7. Though the Appellant / Insurance Company or the insured have not let in any evidence before the Tribunal, the Tribunal ought to have granted Pay and Recovery rights to the appellant, when there is conclusive proof viz., Ex.P6, being the charge sheet filed under Section 3 of the Motor Vehicles Act, 1988, which will establish that the Driver of the insured vehicle was not having a valid Driving Licence at the time of the accident. Therefore, there is merit in the contention of the appellant that Pay and Recovery rights ought to have been granted to them by the Tribunal. Accordingly, the same is granted to the appellant / Insurance Company by this Court.

8. Insofar as the quantum of compensation is concerned, the compensation awarded by the Tribunal under various heads amounting to Rs.1,38,000/- is a just compensation, since the notional income assessed by the Tribunal is only Rs.3,000/- for an accident, which happened in the year 2007 that too when the claimants have claimed that the deceased was earning Rs.6,000/-p.m. as a Flower Merchant and a Milk Vendor. Considering the same, the compensation awarded by the Tribunal under various other heads as indicated earlier are reasonable sum and is a just compensation.

9. For the foregoing reasons, excepting for granting Pay and Recovery rights to the appellant / Insurance Company in respect of all other aspects, the impugned award is hereby confirmed. Accordingly, this appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

10. The appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.2402 of 2007 on the file of the Chief Judicial Magistrate Court, Motor Accidents Claims Tribunal, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants / respondents 1 to 4, as per the same ratio of apportionment made by the Tribunal through RTGS, within a period of two weeks thereafter.

11. It is made clear that on such deposit, the appellant / Insurance Company is permitted to recover the same from the insured viz., fifth respondent, in accordance with law.

sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

vsi2

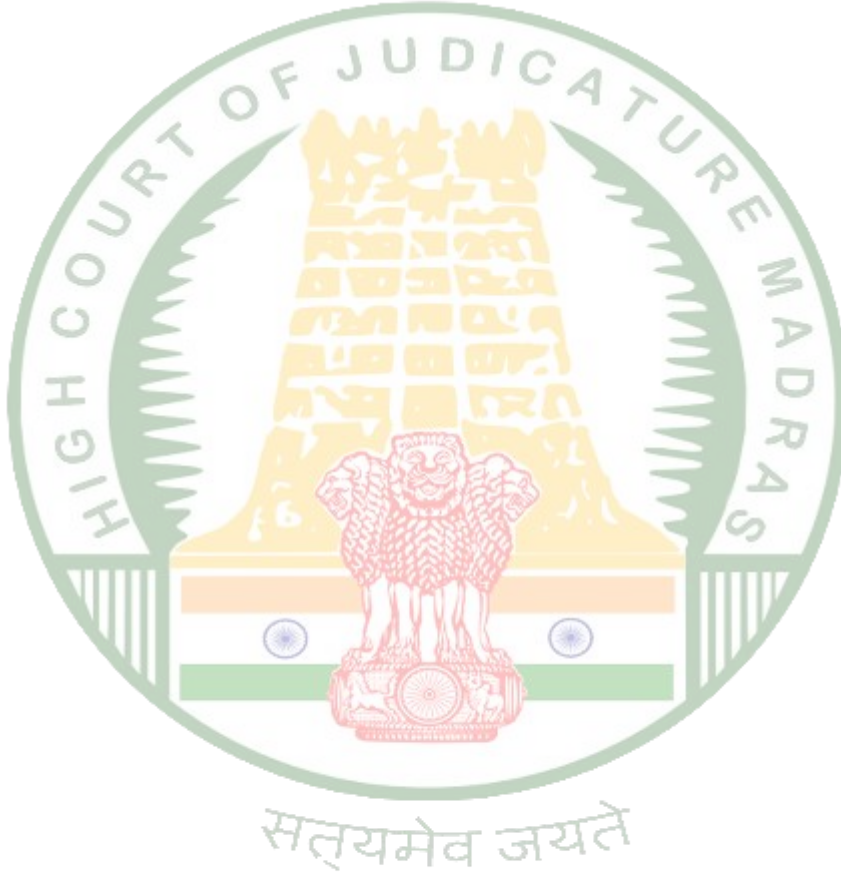
To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Cuddalore.

2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai - 104.

C.M.A.No.3426 of 2010

SAI (CO)
GMY (23/04/2021)



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