

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.1638 of 2015

And

M.P.No.1 of 2015

The Oriental Insurance Co. Ltd.,
Represented by its Manager,
No.31, Sidda Veerappachetty Street,
Dharmapuri District. ... Appellant/R-2

vs.

1.Venkatraman ... Respondent -1/Petitioner -1
2.Chinnammal ... Respondent-2/Petitioner-2
3.Minor Yuvaraj ... Respondent-3/Petitioner-3

(Minor R-3 represented by next friend first
petitioner)

4.J.Sasikumar ... Respondent-4/Respondent-1
5.Sureshkumar ... Respondent-5/Respondent-3

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2013 passed in M.C.O.P. No.34 of 2011 on the file of the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Harur.

For Appellant : Mr.S.Arun Kumar

For Respondents-1to3: Mr.M.Selvam

For Respondents-4&5 : Not Ready in Notice and
set ex parte
in Lower Court.

J U D G M E N T

The Civil Miscellaneous Appeal on hand is preferred by the Oriental Insurance Company, challenging the judgment and decree dated 19.12.2013 passed by the learned Sub-Judge, Sub-Court-cum-Motor Accidents Claims Tribunal, Harur in M.C.O.P.

No.34 of 2011.

2. The accident occurred on 26.10.2011 at about 16.00 hours in Theerthamalai to Mambadi Road near Thirudan Pallam down Devil Tamarind Tree. The Kottapatty Police Station registered a case in Crime No.25 of 2011 under Sections 279 and 304(A) of IPC.

3. The deceased was working as a Building Mason. He was earning Rs.6,000/- per month and the legal heirs of the deceased filed claim application, claiming compensation of Rs.10 lakhs under Section 166(1) of the Motor Vehicles Act, 1988.

4. The Tribunal adjudicated the issues with reference to the documents and the evidences.

5. The following points were formulated by the Tribunal for consideration:-

"(1) Whether the accident has occurred due to the rash and negligent driving of the driver of the first respondent ?

(2) Whether the petitioners are entitled to get any compensation ?

(3) Who is liable to pay the compensation ?

(4) What will be the quantum of compensation ?

6. Regarding the responsibility and entitlement, with reference to point Nos.1 and 2, the Tribunal examined Mr.Rajendran as PW-1 and one eyewitness Mr.Ramajayam was examined as PW-2 and Exs.P-1 to P-3 were marked. The Junior Assistant Officer of the RTO was examined as RW-1 and the Senior Assistant Officer of the second respondent/Insurance Company was examined as RW-2 and Exs.R-1 to R-6 were marked. As per the oral evidence of the petitioners, on 26.01.2011, the deceased was proceeding in his Hero Honda Motor Cycle bearing Registration No.TN-29-M-7650 was driven very slowly, carefully with observing all the rules of the road. On that day at about 16.00 hours while thus he was proceeding in Theerthamalai to Mambadi Road near Thirudanpallam Devil Tamarind Tree, at that time, the pick up van bearing Registration No.TN-23-AQ-5239 was driven by its driver on the opposite direction of the Motor Cycle in a rash and negligent manner without observing any rules of the road in high speed, he lost his control and dashed against the deceased and his Motor Cycle. Due to the impact, the deceased sustained fatal injuries and died on the spot.

7. With reference to the above facts, the Tribunal arrived a finding that the accident has taken place only because of rash and negligent driving of the driver of the first

respondent's pick up van. The first respondent/first petitioner is the father of the deceased Perumal and the second petitioner is the mother of the deceased and the third petitioner is the minor brother of the deceased Perumal. The petitioners 1 to 3 are the dependents of the deceased Perumal. Accordingly, the Tribunal held that all the claimants are entitled to get compensation.

8. With reference to Point No.3, regarding liability, the Tribunal arrived a conclusion that the respondents are liable to pay compensation to the petitioners. The quantum of compensation amount is also fixed and accordingly, the total compensation of Rs.5,28,000/- was awarded by applying the Multiplier 17.

9. The learned counsel appearing on behalf of the appellant/ Insurance Company mainly contended that the vehicle was not registered at the time of accident and therefore, the Insurance Company is not liable to pay compensation. The driver of the vehicle has not possessed a valid driving license at the time of accident and on that ground also, the Tribunal has committed an error. Section 39 of the Motor Vehicles Act, 1988, enumerates the necessity of registration. When there is no registration, then the Insurance Company is not liable to pay compensation.

10. Apart from this, the learned counsel for the appellant/ Insurance Company made a submission that the Tribunal has failed to appreciate the evidences of PWs-1 and 2 in a right perspective and on all these grounds, the Award of the Tribunal is liable to be set aside.

11. This Court is of the considered opinion that if in case of no driving license, the Courts have held that the claimants are entitled for compensation. In view of the fact that they are all third parties, the third parties cannot be made to suffer on account of these technical defects and compensation to such innocent persons can never be denied nor be delayed.

12. This being the factum, in such cases, the Courts have awarded compensation to be paid by the Insurance Company at the first instance. The liberty is granted to the Insurance Company to recover the same from the owner, who is responsible for not registering the vehicle or allowing the driver, who is not having driving license to drive the vehicle. Thus, in all such cases, pay and recovery is to be ordered.

13. In a classic case of Oriental Insurance Co. Ltd

vs. Shri Nanjappan And Others [2004 (13) SCC 224], wherein the Hon'ble Supreme Court derived the principles that the pay and recovery is to be ordered. Applying the said principles, the Tribunal ought to have considered for grant of pay and recovery, enabling the claimants to get compensation without any undue delay.

14. As far as the quantum of compensation is concerned, this Court do not find any infirmity or perversity as the monthly income of the deceased, the multiplier applied is in accordance with the provisions of the Act. Under these circumstances, the quantum of compensation awarded by the Tribunal is confirmed. However, the said compensation is to be settled by the appellant/Insurance Company and they are at liberty to recover the said compensation from the owner of the vehicle by filing necessary execution petitions.

15. The learned counsel for the appellant/Insurance Company made a submission that the entire award amount has already been deposited before the Tribunal. Thus, the claimants are permitted to withdraw the said amount with accrued interest by filing appropriate applications before the Tribunal and all the payments are to be made only through RTGS. The appellant/Insurance Company is at liberty to file an execution petition to recover the amount of compensation paid to the claimants.

16. Accordingly, the judgment and decree dated 19.12.2013 passed by the learned Sub-Judge, Sub-Court-cum-Motor Accidents Claims Tribunal, Harur in M.C.O.P. No.34 of 2011 is confirmed. The appellant/ Insurance Company is directed to pay the compensation to the respondents/claimants, within a period of six weeks from the date of receipt of a copy of this judgment and recover the said amount of compensation by filing an execution petition in accordance with law. Consequently, CMA No.1638 of 2015 stands allowed in part. However, there shall be no order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

Svn

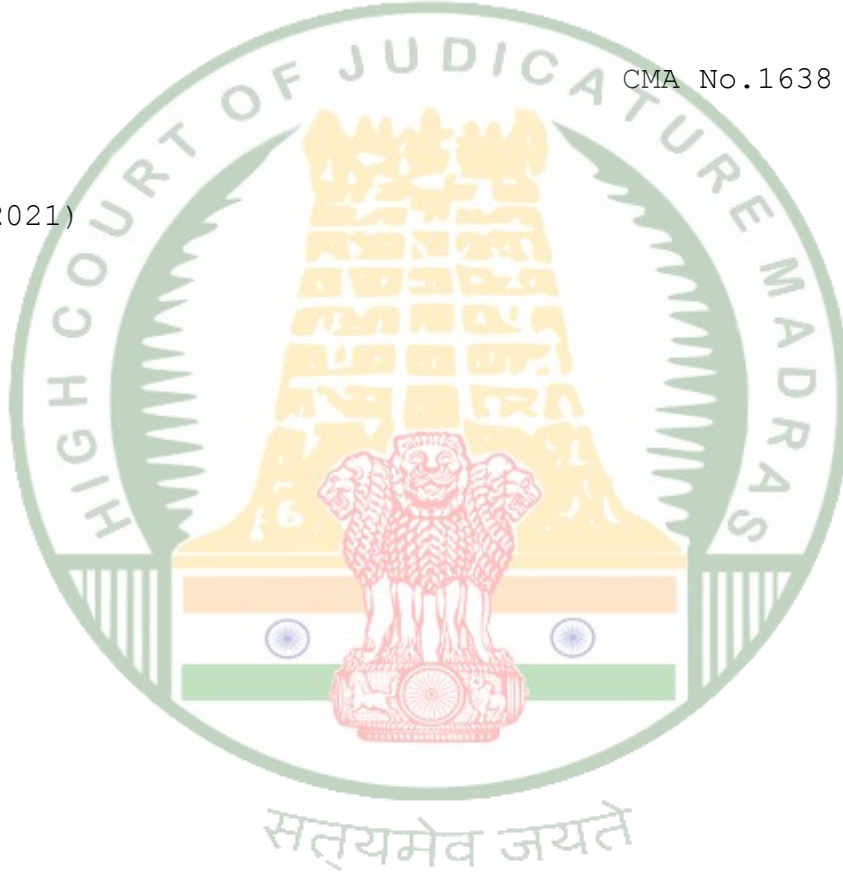
To

- 1.The Sub-Judge,
Sub-Court-cum-Motor Accidents Claims Tribunal,
Harur.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+lcc to Mr.S.Arunkumar, Advocate, S.R.No. 18808

CMA No.1638 of 2015

RJI (CO)
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