

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2216 of 2015

And

M.P.No.1 of 2015

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
Represented by its Manager,
Having Office at
No.6, Lattice Bridge Road,
Sorando Building,
Adaiyar,
Chennai.

... Appellant/Respondent No.2

vs.

Mrs.Ajantha ... Respondent No.1/Petitioner No.1
Dineshkumar ... Respondent No.2/Petitioner No.2
Sathishkumar ... Respondent No.3/Petitioner No.3
Irudhayamary Shanthi ... Respondent No.4/Respondent No.1

The Civil Miscellaneous Appeal is preferred under
Section 173 of the Motor Vehicles Act, 1988, against the
judgment and decree dated 17.11.2014 passed in M.C.O.P.No.355 of
2013 on the file of the learned District Judge, District Court-
cum-Motor Accidents Claims Tribunal, Nagapattinam.

For Appellant : Ms.C.Harini for
Mr.M.B.Gopalan

For Respondents : No Appearance

J U D G M E N T

The present Civil Miscellaneous Appeal
is directed against the judgment and decree dated 17.11.2014
passed by the learned District Judge, District Court-cum-Motor
Accidents Claims Tribunal, Nagapattinam in M.C.O.P.No.355 of
2013.

2. The accident occurred on 08.11.2011
at about 11.00 A.M., and the deceased Sundaram @ Sundararajulu
was coming in his Motorcycle bearing Registration No.TN-51-C-

0506 from South to North in the extreme left side of Tiruthuraipundi-Nagapattinam ECR Main Road and when he was nearing Thenkarai Easalur-Venmanicheri Cross Road, a Maruti Car bearing Registration No.TN-69-AB-7741 belongs to the first respondent was driven by its driver in a rash and negligent manner and dashed against the Sundaram @ Sundararajulu. The deceased Sundaram @ Sundararajulu sustained serious injuries all over the body and died on the way to the Thiruvavur Medical College Hospital. The Keezhaiyur Police Station registered a case in Crime No.321 of 2011 under Sections 279 and 304 (A) of IPC.

3. The Tribunal awarded compensation of Rs.5,36,000/- and the learned counsel appearing on behalf of the appellant-Insurance Company mainly contended that the insured vehicle's driver was not possessing a valid driving license at the time of accident. Therefore, the appellant-Insurance Company is not liable to pay compensation. In other words, the Tribunal has erroneously fixed the liability on the Insurance Company, despite the fact that the driver of the insured vehicle was not possessing a valid driving license at the time of accident.

4. This Court is of the considered opinion that in respect of third party, in such cases, the compensation is to be awarded. However, the Courts are bound to grant Pay and Recovery with reference to Proviso (4) to Section 149 of the Motor Vehicles Act, 1988. Therefore, wherever a third party insured or died on account of the fact that the driver of the insured vehicle was not possessing valid driving license, then the Courts are bound to order for Pay and Recovery. However, compensation cannot be denied as the victim is an innocent person and not committed any illegality in this regard. Applying the said provisions, the Tribunal ought to have granted Pay and Recovery, enabling the Insurance Company to settle the compensation and recover the same from the owner of the vehicle. However, such an order was not passed and thus, the appellant-Insurance Company is constrained to prefer the present Civil Miscellaneous Appeal.

5. As far as the quantum of compensation is concerned, this Court is of the opinion that the Tribunal has not awarded adequate compensation considering the over all facts and circumstances.

6. The fact remains that the deceased left behind his wife and two sons. The monthly income arrived by the Tribunal is also improper and the total compensation granted is also not in consonance with the principles and the same cannot be construed as just compensation. Under these circumstances, undoubtedly, the appellant-Insurance Company is

entitled to get an order of Pay and Recovery with reference to Proviso (4) to Section 149 of the Motor Vehicles Act, 1988 and the quantum of compensation fixed by the Tribunal is also found to be inadequate and under these circumstances, this Court is inclined to enhance the compensation suo motu considering the over all facts and circumstances. The monthly income arrived by the Tribunal is inadequate. Accordingly, the following revised enhanced compensation is granted to the respondents-claimants and the details of the same, are given below:-

	Rs.
Loss of Income (Rs.6,067x12x13)	9,46,452/-
Loss of Consortium	40,000/-
Loss of Love and Affection for two sons	80,000/-
Funeral expenses	15,000/-

Total	10,81,452/-
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Thus, the total compensation payable to the claimants/respondents comes to Rs.10,81,452/-.

7. The appellant-Insurance Company is directed to deposit the entire enhanced compensation along with interest at rate of 7.5% per annum, if not deposited, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the respondents-claimants are permitted to withdraw the amount by filing an appropriate application and as per the apportionment granted by the Tribunal in the Motor Accidents Claims Tribunal. The payments are to be made only through RTGS. The appellant-Insurance Company is permitted to file an execution petition to recover the amount of compensation paid to the respondents-claimants by following the procedures contemplated.

8. Accordingly, judgment and decree dated 17.11.2014 passed by the learned District Judge, District Court-cum-Motor Accidents Claims Tribunal, Nagapattinam in M.C.O.P.No.355 of 2013 is quashed and consequently, C.M.A.No.2216 of 2015 stands allowed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

The District Judge,
District Court-cum-Motor Accidents Claims Tribunal,
Nagapattinam.

Copy to

1.Mrs.Ajantha, W/o Sundaram,
Ramarmada Street,
Venmanacherry,
Kilvelur Taluk.

2.Dineshkumar, S/o Sundaram
Ramarmada Street,
Venmanacherry,
Kilvelur Taluk.

3.Sathishkumar, S/o Sundaram
Ramarmada Street,
Venmanacherry,
Kilvelur Taluk.

4.The Section Officer,
Vernacular records,
High Court, Madras-104.

+1cc to M.B.Gopalan, Advocate Sr.21766

CMA No.2216 of 2015

bp[co]
srg 06/05/2021

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