

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2116 of 2013
and M.P. No. 1 of 2013

The Divisional Manager,
United India Insurance Co. Ltd.,
MM. Reddy Complex,
Bangalore Road,
Hosur 635 109. .. Appellant/2nd Respondent

Vs.

1.Lakshmi
2.Kavitha
3.Radha ..1 to 3 Respondents/ Petitioners
4.S. Sasikumar .. Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 17.04.2012, made in M.C.O.P. No. 475 of 2009, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Ms. I. Malar

For Respondents: M/s. Mukund R. Pandiyan
(For R1 to R3)
:R4 Exparte

J U D G M E N T

This appeal has been filed against the award dated 17.04.2012, made in M.C.O.P. No. 475 of 2009, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P. No. 475 of 2009, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one Muniappan, who died in the accident that took place on

3. According to the respondents 1 to 3, on the date of accident viz., 15.04.2007, when the deceased was walking towards Hosur in Bangalore- Hosur Road, slowly and cautiously, the rider of the TVS XL Super bearing Registration No. TN 24 W/0040 belonging to the 4th respondent drove the same in a rash and negligent manner, at an uncontrollable speed and dashed on the deceased and caused the accident. In the accident, the deceased succumbed to injuries and the respondents 1 to 3 filed the claim petition, claiming compensation against the 4th respondent and appellant as owner and insurer of the vehicle respectively.

4. The 4th respondent remained *ex parte* before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied various averments made by the respondents 1 to 3 in the claim petition. According to the appellant, the rider of the TVS Super XL belonging to the 4th respondent drove the same slowly and cautiously by observing all the rules of the road and the deceased suddenly crossed the road negligently and invited the accident. The accident occurred due to the negligence of the deceased. In any event, the respondents 1 to 3 have to prove the age, avocation and income of the deceased and manner of the accident, to claim compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and marked 6 documents as Exs.P1 to P6. The appellant examined one witness as R.W.1 and marked two documents as Exs.R1 & R2.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the deceased Muniappan died in the accident involving the TVS XL Super belonging to the 4th respondent and insured with the appellant and directed the appellant to pay a sum of Rs.4,18,600/- as compensation to the respondents 1 to 3 at the first instance and recover the same from the 4th respondent.

8. Challenging the liability fastened on them and questioning the compensation granted by the Tribunal by award dated 17.04.2012, made in M.C.O.P. No. 475 of 2009, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in awarding compensation to the respondents 1 to 3 in the absence of documentary evidence to show that the accident occurred

due to rash and negligent riding by the rider of the TVS XL Super belonging to the 4th respondent. The Tribunal failed to consider that at the time of accident, the rider of the two wheeler did not possess driving license. The appellant proved that the rider of the two wheeler did not possess driving license by letting in oral and documentary evidence. In the absence of driving license, the Tribunal erred in ordering pay and recovery. The learned counsel appearing for the appellant further submitted that the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the respondents 1 to 3 have filed the claim petition under Section 163-A of the Motor Vehicles Act (hereinafter referred to as 'the Act') and they need not plead and prove the negligence on the part of the rider of the two wheeler. The Tribunal considering the entire materials on record, held that the respondents 1 to 3 are entitled to get compensation and awarded compensation under different heads which are not excessive and prayed for dismissal of the appeal.

11. Heard learned counsel appearing for the appellant as well as the respondents 1 to 3 and perused the materials available on record.

12. From the materials on record, it is seen that the respondents 1 to 3 have filed the claim petition under Section 163-A of the Act. As per Section 163-A of the Act, the respondents 1 to 3 need not plead and prove the negligence. In spite of taking note of Section 163-A of the Act, the Tribunal proceeded to consider the materials placed before it and held that the accident has occurred only due to rash and negligent riding by the rider of the two wheeler and considering the fact that the rider of the two wheeler did not possess driving license, ordered pay and recovery. It is well settled that for not possessing driving license, the Insurance Company cannot be exonerated. The respondents 1 to 3 who are the third parties are entitled to get compensation. Hence, there is no error in the said award of the Tribunal, warranting interference by this Court.

13. As far as the quantum of compensation is concerned, in the absence of any evidence, the respondents 1 to 3 contended that the deceased was doing Vegetable and Seasonal business and was earning a sum of Rs.3,300/- per month. The Tribunal fixed a sum of Rs.3,300/- per month as notional income of the deceased, as claimed by the respondents 1 to 3 and deducted 1/3rd towards the personal expenses, applied multiplier '14' and awarded compensation towards loss of dependency. The respondents 1 to 3 have filed the claim petition under Section 163-A of the Act. As per II Schedule, they are entitled to

compensation only as per structural formula in the II Schedule. The deceased was aged 45 years at the time of accident and the correct multiplier applicable is '15'. Hence, applying multiplier '15' and deducting 1/3rd towards the personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.3,96,000/- [Rs.3,300/- x 12 x 15 x 2/3]. The amounts awarded by the Tribunal towards loss of consortium, funeral expenses and loss of estate are excessive and hence, the same are reduced to Rs.5,000/-, Rs.2,000/- and Rs.2,500/- towards the said heads respectively. The amount of Rs.24,000/- granted by the Tribunal towards loss of love and affection is set aside. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	3,69,600/-	3,96,000/-	Enhanced
2.	Loss of estate	5,000/-	2,500/-	Reduced
3.	Funeral expenses	5,000/-	2,000/-	Reduced
4.	Loss of consortium	15,000/-	5,000/-	Reduced
5.	Loss of love and affection	24,000/-	-	Set aside
	Total	4,18,600/-	4,05,500/-	Reduced by Rs.13,100/-

14. In the result, the appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,18,600/- is modified to Rs.4,05,500/- together with interest and costs. The appellant-Insurance Company is directed to deposit the modified award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 475 of 2009, at the first instance and recover the same from the 4th respondent. On such deposit, the respondents 1 to 3 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the

amount, if any, already withdrawn, by filling necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

gsa
To

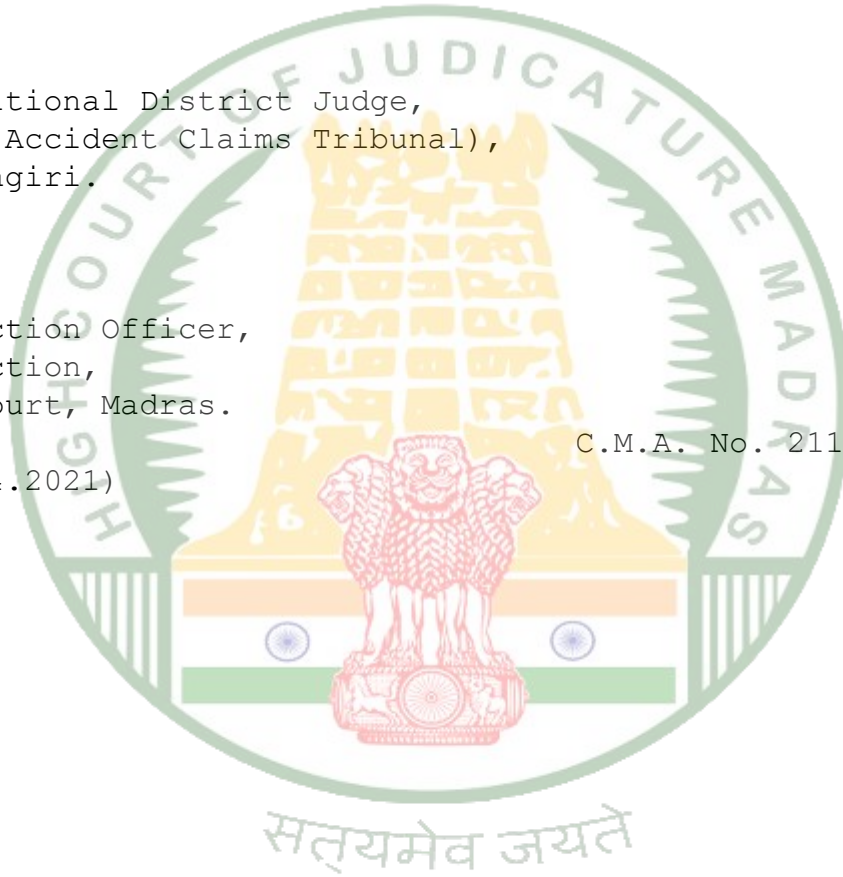
1.The Additional District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

Copy to

The Section Officer,
V.R Section,
High Court, Madras.

A.SK(19.04.2021)

C.M.A. No. 2116 of 2013



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