



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.12.2020

PRONOUNCED ON: 14.12.2020

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.3134 OF 2012

&

C.M.A.NO.1961 OF 2015

&

M.P.NO.1 OF 2015

1. Tmt.Myilathal,
2. Tmt.Samburanam,
3. Tmt.Sumathy,
4. Thiru.Ramalingam,

... Appellants/Petitioners
in C.M.A.No.3134 of 2012

P.Shanmugavadivel.

... Appellant/2nd Respondent
in C.M.A.No.1961 of 2015

/versus/

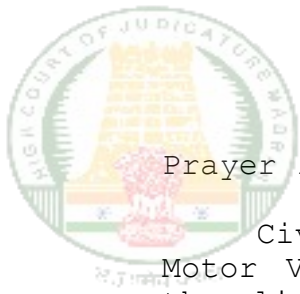
1. Pappusamy,
2. P.Shanmugavadivel,
3. ICICI Lombard GIC Ltd.,
Having Office at 44/5,
II Floor, Cowley Brown Road,
R.S.Puram, Coimbatore - 641 002.

... Respondents/Respondents
in C.M.A.No.3134 of 2012

1. Tmt.Myilathal,
2. Tmt.Samburanam,
3. Tmt.Sumathy,
4. Thiru.Ramalingam,
5. Pappusamy,

6. The Branch Manager,
ICICI Lombard GIC Ltd.,
Office at No.44/5,
II-nd Floor, Cowley Brown Road,
R.S.Puram, Coimbatore - 641 002.

... Respondents/Petitioner 1 to 4,
1st & 3rd Respondent
in C.M.A.No.1961 of 2015



Prayer in C.M.A.No.3134 of 2012:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to enhance the compensation amount and fix the liability against the Insurance Company in judgment and decree dated 09.03.2011 and made in M.C.O.P.No.738 of 2009 on the file of MACT/Additional District Judge, FTC-3, Coimbatore.

Prayer in C.M.A.No.1961 of 2015:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the judgment and decree dated 09.03.2011 made in M.C.O.P.No.738 of 2009 on the file of the Motor Accidents Claims Tribunal/Additional District Court/Fast Track Court - III, Coimbatore and re-fix the liability on the insurer.

For Appellant : Mr.Suganthan,
in C.M.A.No.1961 of 2015 for Mr.N.Manokaran

For Appellant : Mr.Ma.P.Thangavel,
in C.M.A.No.3134 of 2012

For R1 to R4 : Mr.Ma.P.Thangavel,
in C.M.A.No.1961 of 2015

For R3 : Mrs.R.Sreevidhya
in C.M.A.No.3134 of 2012

For R6 : Mrs.R.Sreevidhya
in C.M.A.No.1961 of 2015

For R1 : No appearance
in C.M.A.No.3134 of 2012

For R5 : No appearance
in C.M.A.No.1961 of 2015

For R2
in C.M.A.No.3134 of 2012 : Mr.Suganthan,
For Mr.N.Manokaran

COMMON JUDGMENT

(The case has been heard through video conference)

These two Civil Miscellaneous Appeal are filed under Section 173 of Motor Vehicles Act, 1988, against the award of the Motor Accident Claims Tribunal, Coimbatore.



(i). C.M.A.No.3134 of 2012 is filed by the claimants seeking enhancement of compensation.

(ii). C.M.A.No.1961 of 2015 is filed by the owner of the offending vehicle challenging the liability fixed on the owner and exonerating the insurer on the ground of violation of policy condition.

2. The facts of the case leading to the claimants is as below:-

On 26.08.2008, Thiru.Ayyasamy (deceased) was riding his TVS-50 moped alone in Palaghat Road, near Thalakkottaparai, a Tractor with trailer carrying electrical pole in the trailer rash and negligently driven by his driver dashed the moped while suddenly turned to right. The electrical pole in the trailer hit the moped and Thiru.Ayyasamy who sustained injury, died in the hospital.

3. A claim petition for Rs.5,00,000/- was filed by the wife and children of Thiru.Ayyasamy.

4. The Insurance Company filed counter stating that the accident occurred due to negligence of the deceased who was riding his motor cycle bearing registration No.TN-37-C-1882 carelessly. The driver of the tractor had no valid driving license since there is breach of policy condition, the Insurance Company is not liable to indemnify the tractor owner. The Trailer attached to tractor had no insurance coverage. The quantum of compensation claimed by the claimant also questioned by the Insurance Company as excessive. The owner of the tractor remind absent.

5. The Tribunal, on considering the policy conditions and the F.I.R. report, awarded a sum of Rs.2,40,000/- payable by the Tractor owner. The Tribunal held that accident occurred due to negligence of the Tractor driver. He had no valid driving licence and the trailer was not insured. Due to negligence, the electrical pole projecting from the trailer hit the deceased Ayyasamy. Therefore, tractor owner is liable. The tractor has to be used only for agricultural purpose but has been used for transporting goods. For these reasons, the Tribunal exonerated the Insurance Company and directing the driver of the tractor to pay compensation.

6. The Learned Counsel appearing for the vehicle owner in C.M.A.No.1961 of 2015 relying upon the judgments of the Hon'ble Supreme Court, wherein, the Apex Court in exercise of power under Article 142 of Constitution, directed the Insurance Companies to "pay and recover", submitted that, the present case also pay and recovery has to be ordered.



7. The Learned Counsel for the claimants in C.M.A.No.3134 of 2012 submitted that, the award of Rs.2,40,000/- for 60 years old retired employee of Railway Department is very less and compensation has to be enhanced. Taking note of the age and income of the deceased, who was not earning less than Rs.300/- per day, prayed for enhancing the compensation.

8. The Learned Counsel for the Insurance Company submitted that, the Tribunal has rightly fixed the liability as well as quantum. When the driver had no valid driving licence and the owner of the vehicle had transported goods in the vehicle meant for agricultural purpose, grave violation of the policy condition found committed by the vehicle owner. Therefore, the vehicle owner is not entitled for indemnity by the Insurance Company.

9. On perusing the evidence, this Court finds that the claimants have not produced any documents to show that the deceased had any other additional income except his pension. Though, the claimants had stated that, he had agricultural land and from the land, he had income, no evidence produced by the claimants to show, he had agricultural land. Therefore, the Tribunal has notionally fixed the income of Thiru.Ayyasamy (deceased) as Rs.36,000/- per month, after deducting $1/3^{\text{rd}}$ towards his personal expenditure, applied multiplier 8 and awarded a sum of Rs.1,92,000/- for the loss of income. Apart from his medical expense of Rs.16,230/-, under other non-conventional heads Rs.29,000/- has been awarded. The total award is round of Rs.2,40,000/- with 7.5% interest from the date of petition, till the date of realisation.

10. The vehicle owner remind absent and not produced any document to show that the driver of the tractor had valid driving licence or to show the tractor insured for agricultural purpose alone can be used to carry goods.

11. After the liability fixed by the Tribunal against the vehicle owner for the reasons accorded, the appeal has been filed directing the Insurance Company to pay and then recover from the vehicle owner. To facilitate the claimants to get remedy immediately the principle of pay and recover was invented by the Apex Court and followed by the Courts below. After making payment to the claimants it authorises the Insurance Company to recover the same from the offending vehicle owner. It is an exception to the general rule. The offending vehicle owner cannot as a matter of right ask for application of pay and recover principle when there is violation of policy condition. In this case, there is a clear violation of policy condition by carrying goods in the vehicle meant for agricultural purpose and allow a person to driver without valid driving license. Hence,



the petition filed by the vehicle owner in C.M.A.No.1961 of 2015 is liable to dismissed.

12. As far as quantum of compensation is concerned, the Tribunal has notionally fixed the income of the deceased as Rs.36,000/- per annum. The deceased was 60 years old at the time of accident. Therefore, multiplier 9 has to be applied for arriving the loss of income. The claimants are widow and married daughters and son. Therefore, this Court finds no error in deducting 1/3rd of the income for the personal expenditure of the deceased. However addition of 10% to the notional income for future prospects is to be granted (Rs.36,000 + Rs.3,600) $\times$ 2/3 $\times$ 9 = Rs.2,37,600 with the modification. The award of the tribunal is enhanced as below:-

Sl.No s.	Compensation under various heads	Award passed by this Court
1.	Loss of earning	Rs.2,64,000/-
2.	Funeral expenses	Rs. 15,000/-
3.	Loss of consortium for 1 st claimant	Rs. 40,000/-
4.	Love and affection for the claimants 2 to 4	Rs. 80,000/-
5.	Medical bills	Rs. 16,230/-
	Total	Rs.3,88,830/-

13. The award of the Tribunal is enhanced to Rs.3,88,830/- which shall be payable by the 2nd respondent in M.C.O.P.No.738 of 2009 vehicle owner with 7.5% interest from the date of petition till the date of realization, within a period of 8 weeks from the date of receipt of a copy of this judgment. The claimant, who is the appellant in C.M.A.No.3134 of 2012 is permitted to withdraw the amount deposited on filing appropriate application. Accordingly, the Civil Miscellaneous Appeal No.3134 of 2012 is partly Allowed and Civil Miscellaneous Appeal No.1961 of 2015 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bsm



To:-

1. The Motor Accidents Claims Tribunal/
Additional District Court/
Fast Track Court - III,
Coimbatore.

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

+2ccs to Mr.N.Manokaran, Advocate, S.R.No.40767 & 40768

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.40800

C.M.A.No.3134 of 2012
& C.M.A.No.1961 of 2015
& M.P.No.1 of 2015

CP (CO)
CS/13/09/2021