

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3153 of 2012  
and  
M.P.No.1 of 2009

M/s. National Insurance Company Limited,  
Branch Manager,  
Madurai.

.. Appellant/Respondent No.3

Vs.

1.Davasi  
2.Nagammal

...1 & 2 respondents/  
1 & 2 Petitioner

3.Suresh  
4.Samayarajan

...3 & 4 Respondents/  
1 & 2 Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.04.2010 made in M.C.O.P.No.1469 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur.

For Appellant : Mr.J.Chandran  
For RR 1 & 2 : Mr.Ma.P.Thangavel  
3 & 4 : Not ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 23.04.2010 made in M.C.O.P.No.1469 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur.

2.The appellant is the 3rd respondent in M.C.O.P.No.1469 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their son viz., Thangam, who died in the accident that took place on 21.08.2006.

3.According to respondents 1 and 2, on 21.08.2006, at about 07.00 P.M., while the deceased Thangam was riding his motorcycle on Periyandipalayam - Iduvampalayam road, near Andipalayam, the driver of the omni van drove the omni van from the opposite direction in a

rash and negligent manner, dashed against the deceased and caused the accident. Immediately after the accident, the said Thangam was taken to Revathi Hospital, Tirupur and thereafter to Government Hospital, Tirupur. In spite of treatment, the said Thangam succumbed to injuries. At the time of accident, the deceased was aged 25 years and doing Mosaic work and was earning a sum of Rs.300/- per day. Therefore, the respondents 1 and 2 being the parents of the deceased filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation against the respondents 3, 4 and appellant-Insurance Company being the driver, owner and insurer of the omni van respectively.

4.The respondents 3 and 4, being the driver and owner of the omni van respectively remained *exparte* before the Tribunal.

5.The appellant-Insurance Company being the insurer of the omni van filed counter statement and denied various averments made by the respondents 1 and 2. According to the appellant-Insurance Company, the deceased only rode his motorcycle in a rash and negligent manner and dashed against the omni van bearing Registration No.(TN 09 AY 1895) TN 59 U 3251 and invited the accident. Therefore, the appellant-Insurance Company is not liable to pay any compensation to the respondents 1 and 2. The owner and insurer of the motorcycle in which the deceased travelled have to be impleaded as necessary parties and this M.C.O.P. is connected with M.C.O.P.No.1460 of 2006. As per the claim petition, two vehicle numbers i.e., TN 09 AY 1895 and TN 59 U 3251 are mentioned and it is not clear that which one is the offending vehicle. The deceased as well as the driver of the omni van bearing Registration No.(TN 09 AY 1895) TN 59 U 3251 were not possessing valid driving license at the time of accident. Therefore, the appellant-Insurance Company is not liable to pay any compensation to the respondents 1 and 2. The vehicle involved in the accident was bearing Registration No.TN 59 U 3251 but the case was registered only against the driver of the vehicle bearing Registration No.TN 09 AY 1895. Hence, there is no clear information about which vehicle is involved in the accident. The respondents 1 and 2 have to prove that they are the legal heirs of the deceased. The respondents 1 and 2 have to prove the age, avocation and income of the deceased by producing valid documents. At the time of filing the M.C.O.P., the respondents 1 and 2 have not produced any material documents like, F.I.R., Charge sheet, Accident Register, rough sketch, post mortem certificate, etc,. In any event, the quantum of compensation claimed by the respondents 1 and 2 are highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 2nd respondent examined herself as P.W.1 and one Muthu, who is an eye-witness to the accident was examined as P.W.2 and one Kalimuthu was examined as P.W.3 and 4 documents were marked as Exs.P1 to P4. On behalf of the appellant-Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and 3 documents were marked as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the omni van belonging to the 4th respondent and directed the respondents 3, 4 and appellant-Insurance Company, being the driver, owner and insurer of the omni van jointly and severally to pay a sum of Rs.4,42,000/- as compensation to the respondent 1 and 2.

8.Against the said award dated 23.04.2010 made in M.C.O.P.No.1469 of 2007, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the accident has occurred only due to rash and negligent riding by the deceased and the Tribunal erred in awarding excessive amounts as compensation to the respondents 1 and 2. The Tribunal failed to consider the report of the Police mentioned through R.W.1 as Ex.R2, which shows that Registration Number of the Omni van mentioned in F.I.R. is TN 09 AY 1895 and the driver of the vehicle escaped from the place of occurrence. The Engine Number and Chassis Number were false. The Motor Vehicle Inspection was carried out only for the vehicle bearing Registration No.TN 59 U 3251 and in the Motor Vehicle Inspection Report, the name of the driver and insurer for the vehicle bearing Registration No.TN 59 U 3251 were not mentioned. R.W.1 has deposed that vehicle bearing Registration No.TN 59 U 3251 only was inspected and not the vehicle bearing Registration No.TN 09 AY 1895. The Tribunal failed to see that the appellant-Insurance Company denied the liability on the ground that both the vehicles were not insured with the appellant-Insurance Company and the owner and insurer of the motorcycle bearing Registration No.TN 39 A 1362, in which the deceased travelled were not impleaded as necessary parties. The owner and driver of the omni van remained exparte and also not produced the Registration Certificate of the offending vehicle, Driving License and Insurance Policy. The Tribunal erred in holding that the vehicle bearing Registration Number TN 59 U 3251 was changed into TN 09 AY 1895. In any event, the total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 and 2 made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials on record.

12.It is the contention of the respondents 1 and 2 that while the deceased was riding his motorcycle on Periyandipalayam - Iduvampalayam road, near Andipalayam, the driver of the omni van bearing Registration No.TN 59 U 3251 drove the same in a rash and negligent manner and dashed on the motorcycle and caused the

accident. In the accident, the said Thangam sustained injuries and died in the hospital. The F.I.R. was registered against the 3rd respondent-driver of the omni van bearing Registration No.TN 59 U 3251. The respondents 1 and 2 claimed compensation against the respondents 3, 4 and appellant-Insurance Company, who are the driver, owner and insurer of the said vehicle. The appellant-Insurance Company denied its liability on the ground that F.I.R. was registered against the driver of the vehicle bearing Registration No.TN 09 AY 1895 and in the claim petition, the vehicle number has been mentioned as TN 59 U 3251 and accident has occurred only due to rash and negligent riding on the part of the deceased. The respondents 1 and 2 to substantiate their said contention, examined P.W.2/eye-witness and marked Ex.P1/F.I.R. The appellant-Insurance Company examined the Sub-Inspector of Police as R.W.1 who deposed that the driver of the omni van bearing Registration No.TN 09 AY 1895 escaped from the place of occurrence and the vehicle bearing Registration No.TN 59 U 3251 was only sent for inspection. According to the appellant-Insurance Company, the Tribunal without any evidence, held that the Registration No.TN 59 U 3251 was changed to TN 09 AY 1895. The said contention is contrary to the facts.

13.From the award of the Tribunal, it is seen that R.W.1/Sub-Inspector of Police has deposed that the vehicle bearing Registration No.TN 59 U 3251 was the offending vehicle and the said vehicle was sent for inspection and marked Ex.R2/Investigation Report to that effect. The Tribunal accepting the contention of the respondents 1 and 2, held that the vehicle bearing Registration No.TN 59 U 3251 was stolen by somebody else and was changed to TN 09 AY 1895 and the vehicle bearing Registration No.TN 59 U 3251 was insured with the appellant-Insurance Company. The Tribunal considering the evidence on record, held that the vehicle bearing Registration No.TN 59 U 3251 was subsequently changed. In view of the same, the Tribunal has rightly held that respondents 3, 4 and appellant-Insurance Company are jointly and severally liable to pay compensation to the respondents 1 and 2. There is no error in the said finding of the Tribunal, warranting interference by this Court.

14.As far as quantum of compensation is concerned, the Tribunal considering the entire materials on record, has awarded a sum of Rs.4,42,000/- as compensation to the respondents 1 and 2, which is just and reasonable and hence, the same is not interfered with.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.4,42,000/- along with interest and costs is confirmed. The respondents 3, 4 and appellant-Insurance Company are jointly and severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited 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.1469 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount as

per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-  
Asst.Registrar (CS II )

/true copy/  
Sub Asst. Registrar

krk

To

1.Motor Accident Claims Tribunal,  
The Subordinate Judge,  
Tiruppur, Coimbatore

2.The Section Officer,  
VR Section,  
High Court,  
Madras.

+1 cc to Mr.Ma.P.Thangavel Advocate sr20843

+1 cc to Mr.J.Chandran Advocate sr20728

C.M.A.No.3153 of 2012

ca(co)  
aa11/03/2021

सत्यमेव जयते  
WEB COPY