

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.08.2020
CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.836 of 2013

National Insurance Company Ltd.,
No.1272, 1273,
Palaniappa Complex, Mettur Road,
Erode -11,
Erode Taluk.

.. Appellant/2nd Respondent

..Vs..

1. A.Latha
2. Minor A.Dharani
- 3.Minor A.Dhanu .. Respondents1 to 3/ claimants
Minors rep by their Next friend Mother/Guardian A.Latha)
4. V.P.Elango
5. Nachiammal
6. Mariappan ..Respondents/Respondents1,3&4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.03.2012 made in M.C.O.P.No.4 of 2010 on the file of the Motor Accident Claims Tribunal, (Principal District Judge) Erode.

For Appellant : Mr.S.Arun Kumar
For Respondents: Mr.R.Prabakar - R1 to R3
R4 to R6 - served - no appearance

J U D G M E N T

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the insurance company challenging the award dated 16.03.2012 passed by the Motor Accident Claims Tribunal, (Principal District Judge) Erode in MCOP. No.4 of 2010.

2. The insurance company has filed this appeal only on the ground that the driver, who caused accident was not possessing a valid Driving license at the time of the accident.

3. The respondents 1 to 3 are the dependents of the deceased and they are his wife and children. They have preferred a claim

before the Motor Accident Claims Tribunal seeking compensation in MCOP.No.4 of 2010 for the death of Arumugam.

4. The Motor Accidents Claims Tribunal, under the impugned award, directed the appellant/insurance company to pay a compensation of Rs.7,57,400/- together with interest and costs to the claimants and respondents 3 and 4 in the Motor Accident Claim, who are the respondents 1 to 3 and 5 and 6 in this appeal.

5. The details of the award passed by the Tribunal in favour of the claimants are as follows:

Head	Award passed by the Tribunal (Rs.)
Loss of income	6,62,400/-
Loss of consortium	25,000/-
Loss of love and affection	60,000/-
Transport charges	5,000/-
Funeral expenses	5,000/-
Total	7,57,400/-

6. Aggrieved by the award dated 16.03.2012, this appeal has been filed by the insurance company.

7. Heard Mr.S.Arunkumar, learned counsel for the Appellant/Insurance Company and Mr.K.Prabakar, learned counsel for the respondents 1 to 3/claimants.

8. Before the Tribunal, the claimants have filed seven documents, which were marked as Ex.P1 to Ex.P7 and two witnesses were examined on their side viz., A. Latha, first respondent/claimant, who is the wife of the deceased as PW1, Mr.Sethupathi - an eyewitness to the accident as PW2. On the side of the appellant/insurance company, three documents were filed, which were marked as Ex.R1 to Ex.R3 and two witnesses were examined before the Tribunal.

9. A consistent stand has been taken by the appellant/insurance company before the Tribunal that the rider of the two wheeler (Insured vehicle) and was the cause of the accident, did not possess a valid driving license at the time of the accident. The appellant/insurance company has neither disputed the cause of the accident nor the involvement of a vehicle insured with them. The fourth respondent, who is the owner of the vehicle, though filed his counter affidavit, did not contest the case before the Tribunal, subsequently. The appellant/insurance company has also called upon the 4th

respondent, who is the owner of the vehicle by a lawyer's notice dated 12.01.2011, which was marked as Ex.R2, to produce the driving license of the rider of the motor-cycle which caused accident and the said notice was also duly acknowledged by the 4th respondent on 13.11.2011, as seen from the acknowledgment card, which was marked as Ex.R2. Despite receiving the notice from the appellant, neither the 4th respondent nor the rider of the motor-cycle has produced the driving license.

10. The Regional Transport Office, Erode has also issued a letter dated 27.07.2011, which has been marked as a Court Exhibit viz., Ex.X1, which states that the rider of the motor cycle, who caused accident, was not possessing a driving license. However, by an erroneous finding, when there is clinching evidence to show that the rider of the motor-cycle was not possessing a driving license, the Tribunal has absolutely made the appellant/Insurance company liable to compensate the claim. In the counter statement filed by the 4th respondent before the Tribunal, he had pleaded that the vehicle, which was involved in the accident, was already sold by him and therefore, he is not liable to compensate the claimant.

11. Admittedly, the Registration Certificate for the motor-cycle, which is insured with the appellant/insurance company stood only in the name of the 4th respondent at the time of the accident. Further, the 4th respondent has only filed his counter affidavit before the Tribunal. But, thereafter, the 4th respondent has failed to contest the case before the Tribunal. The evidence i.e. available on record before the Tribunal conclusively established that the rider of the motor-cycle owned by the fourth respondent and insured with the appellant was not possessing a driving license at the time of the accident. If really the 4th respondent had sold the vehicle, by transferring the ownership in accordance with law, he ought to have placed sufficient evidence before the Tribunal, which he has failed to do so by not contesting the case. Since the Registration Certificate stood only in the name of the 4th respondent at the time of the accident, the judgment of the Hon'ble Supreme Court in the case of Navin Kumar Vs. Vijaya kumar and others reported in 2018 (3) SCC Page 1, squarely applies to the facts of the case as the Registration Certificate stood only in the name of the 4th respondent at the time of the accident.

12. It is settled law that in case of policy violation i.e. non possession of the driving license, the Tribunal ought to have granted pay and recovery rights to the appellant/insurance company, which has erroneously not been granted in the instant case by the Tribunal under the impugned award.

13. Insofar as, the quantum of compensation awarded by the Tribunal is concerned, the appellant/insurance company is not aggrieved by the same and therefore, the compensation awarded by the Tribunal under the impugned award at Rs.7,57,400/- is sustained by this Court. The only direction that needs to be given in this judgment is to direct the appellant/insurance company to pay the compensation assessed by the Tribunal to the claimants and on such payment, recover the said amount from the owner of the vehicle who is the fourth respondent in this Appeal.

14. In the result, the appeal is partly allowed by granting pay and recovery rights to the Appellant insurance company. However, the rate of interest fixed by the Tribunal is confirmed. The appellant/ insurance Company is directed to deposit the award amount along with interest and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.4 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the fourth respondent who is the owner of the vehicle.

15. On such deposit being made, the Tribunal is directed to transfer to the bank accounts of the 1st, 5th and 6th respondents/claimants, who are the wife, mother and father of the deceased as assessed by the Tribunal through RTGS within a period of two weeks thereafter. Since the second and third respondents are minors, their respective shares of award amount along with accrued interest shall be deposited in fixed deposits in any one of the Nationalized Bank till they attain the age of majority, and till such time, the interest accrued thereon shall be withdrawn by the first respondent/guardian of the minor claimants once in three months, directly from the Bank. If the respondents/minor claimants have attained the age of majority, it is open for them to file a formal petition before the Tribunal to get their respective shares. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Rli

To

The Principal District Judge, Motor Accident Claims Tribunal,
Erode.

+1cc to Mr.S.Arunkumar , Advocate SR.No. 27470

+1cc to Mr.R.Prabhakar, Advocate SR.No. 27330

C.M.A.No.836 of 2013

A.SK(04.01.2021)