

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :02.11.2020

Pronounced on :04.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.483 of 2016

and

C.M.P.No.3759 of 2016

Future General India Insurance Company Limited,
Delta Plaza, 414 Veer Savarkar Marketing,
Prabhadevi, Mumbai 400 025. ... Appellant /2nd Respondent

/versus/

1.Valli

2.Saravanan

3.Kannan

4.Kolandai Gounder

... Respondents 1 to 4/

Petitioners 1 to 4 and

5.Manikandan

...5th Respondent/ 1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.24 of 2012 dated 12.02.2015 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Mettur.

For Appellant :Ms.Harini for

Mr.N.Vijayaraghavan

For R1 to R3 :No appearance

For R4 :died

For R5 :No appearance

J U D G M E N T

(The case has been heard through Video Conferencing)

This appeal is filed by the Insurance company, aggrieved by the fixation of liability as well as the quantum of compensation awarded by the Tribunal.

2.On 06.12.2011, in front of Kanaga Hospital on Omalur to Darmapuri Main Road, while the deceased Arumugam was riding his TVS Scooty Streak motor cycle bearing Reg.No.TN 30 AY 3341, an unnumbered TATA Ace bearing Reg.No.TN 30 AW 0175 rash and

negligently dashed the deceased vehicle. Due to sudden hit, the deceased fell down and sustained injury all over his body. He was taken to the hospital for treatment, but on 22.12.2012 he died at Ramakrishna Hospital, Coimbatore due to the injuries. At the time of his death, the deceased was about 64 years old. He was an Ex-Service Man, earning pension and also a LIC Agent. Hence, his wife, two sons and father filed a claim petition for Rs.30 lakhs as compensation against the vehicle owner and the insurance company.

3.The Insurance Company contested the claim on the ground that the TATA Ace vehicle had no valid insurance and its driver had no valid driving license. The deceased contributed for the accident. Therefore, the owner of the two wheeler and its insurer are necessary parties. The claim of compensation under various heads are denied and disputed.

4.The Trial Court considering the evidence let in by the claimants and the insurance company, had awarded a sum of Rs.16,00,749.00 with interest at the rate of 7.5% p.a., payable by the Insurance company to the claimants.

5.In the appeal, it is contested by the Insurance Company that the Tribunal erred in fastening the liability on the appellant/insurer, when the insured vehicle was not having valid registration on the date of accident and there was breach of policy terms and violation of provisions of Motor Vehicles Act. It was contended that the offending vehicle had only temporary registration, which expired on 30.11.2011 and got permanent registration only on 15.12.2011 six days after the accident. Since on the date of accident, the offending vehicle had not valid registration, it amounts to violation of Motor Vehicles Act. Hence, the Insurance Company is not liable to indemnify the owner. It is also contended that the Tribunal erred in taking the entire pension of Rs.18,000/- without deducting the family pension of Rs.6,000/-drawn by the wife of the deceased. The Tribunal has also erred in considering Ex.P10-Statement of Account, which indicates that the deceased was earning around Rs.10,000/- per year as commission. Whereas, the Tribunal erred in fixing the loss of income at Rs.27,000/-.

6.Referring Ex.R3-Registration Certificate and Ex.R2-Motor Vehicle Inspector Report, the learned counsel appearing for the appellant/Insurance Company would submit that the offending vehicle was insured under the appellant Insurance Company on 01.11.2011. When it had temporary registration valid upto 30.11.2011. The owner of the vehicle should have registered the vehicle permanently, but he has failed to get the permanent registration number within the time limit. The accident occurred on 06.12.2011, when the vehicle has no registration either

temporary or permanent. The vehicle though insured had no valid registration on the date of accident. Therefore, for violation of policy condition as well as the Motor Vehicles Act, the right of pay and recovery should be granted to the Insurance Company.

7. Heard the learned counsel appearing for the appellant. Perused records.

8. This Court, on perusing the records, finds force in the submissions of the learned counsel appearing for the appellant regarding fixation of liability and quantum. Ex.P4-Policy indicates that the offending vehicle has insurance coverage from 01.11.2011 to 31.10.2012(midnight). Being a new vehicle, the temporary registration number is not mentioned in the policy note. The Motor Vehicle Inspector Report Ex.R2 indicates that the permanent registration number of the vehicle is TN 30 AMT 2535 and the temporary registration expired on 30.11.2011. Ex.P3-Registration Certificate stands in the name of R.Manikandan, S/o Rajendran issued on 15.12.2011. Thus, it is clear from the records that on the date of the accident on 06.12.2011 the vehicle had no valid registration number. It amounts to violation of Motor Vehicles Act. However, the insurance company is bound to pay the claimants and to recover the same from the owner.

9. So far as the quantum of compensation is concerned, the Tribunal erred in awarding Rs.4,20,000/- for loss of income, besides awarding Rs.10,80,000/- towards loss of income, after applying multiplier. This amount is duplication of award. As pointed out by the learned counsel appearing for the appellant, the loss of income was arrived by the Tribunal, without taking note of the family pension received by the first claimant and improper appreciation of the LIC agent commission. Therefore, the award amount requires modification. Ex.P7 Statement of Account issued by the State Bank Of India, Omalur Branch reveals that the deceased was drawing pension of Rs.16,666/- per month. Ex.P10- the Statement of Account issued by the LIC for the financial Years starting from 2001 to 2011, in respect of commission earned by the deceased during this period. His commission for the year 2010-2011 is as below:

First Year Commission	:Rs.10,795-00
Bonus Commission	:Rs. 2,025-00
Renewal Commission	:Rs.17,559-00

Total:	Rs.30,379-00

Therefore, the annual income through LIC agent of the deceased is fixed as Rs.30,000/-. The pension income, less the family pension is taken as Rs.11,000-00 p.m. (i.e Rs.17,000/-(pension) - Rs.6000/-(family pension)).

10.Thus, the award of the Tribunal is modified and reduced as below:

Sl. No.	Particulars	Award amount of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Confirmed/Enhanced/Reduced/
1.	Loss of income	4,20,000-00 10,80,000-00	5,40,000-00 (11,000+2500= 13500x2/3=9000 x12x5)	Reduced
2.	Transport Charges	8,000-00	8,000-00	Confirmed
3.	Extra Nourishment	6,000-00	6,000-00	Confirmed
4.	Loss of Damage to clothing	4,000-00	4,000-00	Confirmed
5.	Medical expenses	6,749-00	6,749-00	Confirmed
6.	Funeral expenses	26,000-00	15,000-00	Reduced
7.	Loss of consortium to the 1 st claimant	10,000-00	40,000-00	Enhanced
8.	Loss of love and affection to claimants 2 to 4	40,000-00	60,000-00 (20,000x3)	Enhanced
Total		16,00,749-00	6,79,749-00	Reduced

11.The award of the Tribunal is modified from Rs.16,00,749-00 to Rs.6,79,749-00. The claimants/respondents 1 to 4 are entitled to Rs.6,79,749-00 as compensation with interest at the rate of 7.5% p.a from the date of petition i.e 21.02.2012 till the date of realisation. The award amount shall be apportioned to the claimants 1 to 4 as below:-

First claimant Rs.2,00,000-00

Second claimant Rs.2,00,000-00

Third claimant Rs.2,00,000-00

Fourth claimant Rs. 79,749-00

12.The appellant/Insurance Company is directed to deposit the award money, less the amount already deposited, if any, within a period of six weeks from the date of award. Liberty is

granted to the appellant/Insurance Company to recover the same from the owner of the vehicle. The claimants 1 to 4/respondents 1 to 4 are permitted to withdraw their respective share amount, on filing appropriate application before the Tribunal.

13.In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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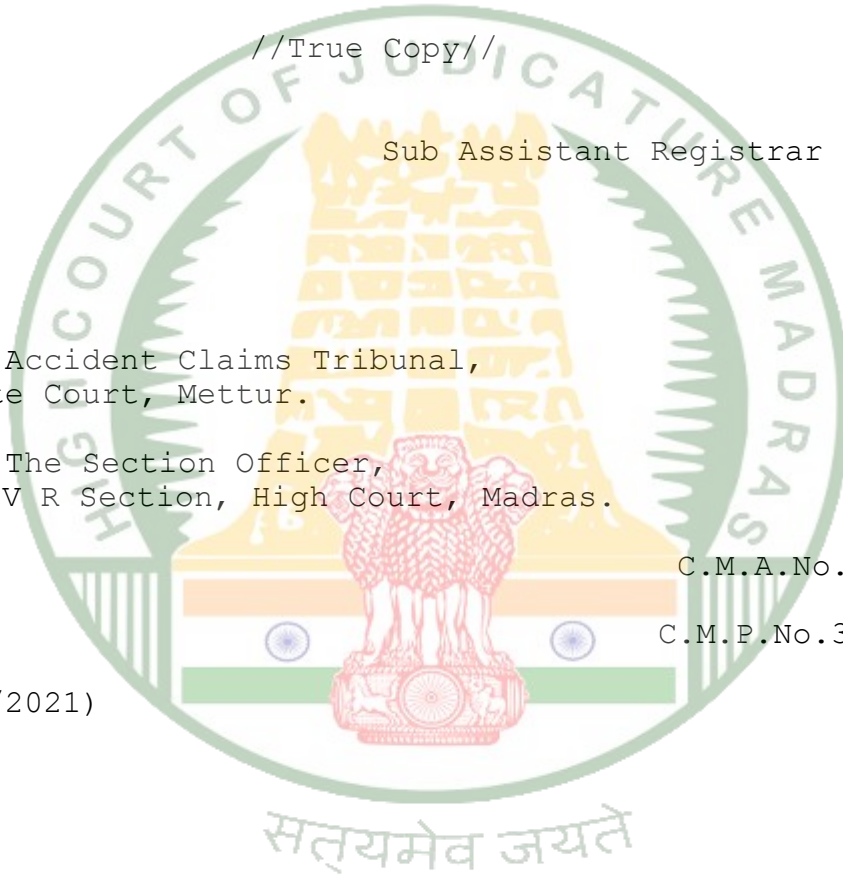
To:

The Motor Accident Claims Tribunal,
Subordinate Court, Mettur.

Copy to : The Section Officer,
V R Section, High Court, Madras.

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and
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MP (CO)
RMP (08/04/2021)



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