

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1027 OF 2014

AND

M.P.NO.1 OF 2014

The Branch Manager,
M/s.Iffco Tokio General Insurance Co. Ltd.,
Tulsi Chambers, 3rd Floor,
No.195, T.V.Swamy Road (West),
R.S.Puram, Coimbatore.

... Appellant/2nd Respondent

...Vs...

1.Nathiya

2.Moganapriya (Minor)

3.Mogan Kumar (Minor)
(Respondents 2 & 3 Minors
Respondent by mother & NF 1st
Respondent)

4.Chinnammal

5.A.Kaliyappan

6.Sri Rangan

... Respondents/Petitioners 1 to 4
and RR1, 3

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in MCOP.No.323 of 2009 dated 12.06.2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Harur.

For Appellant : Mr.Rajadurai
for Mr.M.B.Gopalan

For Respondents 1 to 4 : Mr.J.Pradeep

For Respondents 5 & 6 : No appearance

J U D G M E N T

(This Appeal has been taken up for hearing through Video conferencing)

This appeal has been filed by the insurance company challenging the award dated 12.06.2013 passed by the Motor Accident Claims Tribunal (Sub Court, Harur) in MCOP.No.323 of 2009.

2. The Appellant insurance company has challenged the award on the ground of its liability to pay entire compensation as well as they have also challenged the quantum of compensation assessed by the Tribunal. The claimant was a pillion rider in the insured motor cycle when the accident happened. It was a case of collision between two motor vehicles, out of which one is insured with the Appellant insurance company and the other is uninsured.

3. The Tribunal under the impugned award has directed the Appellant insurance company to pay the claimants a sum of Rs.7,71,987/- as compensation together with interest and costs as detailed hereunder:

Sl.No.	Heads	Award
1	Loss of Dependency	6,71,500
2	Medical Expenses	68,187
3	Loss of consortium	10,000
4	Loss of Estate	5,000
5	Ambulane	12,300
6	Funeral Expenses	5,000
	Total	7,71,987

4. Aggrieved by the same, the Appellant has preferred this Appeal.

5. Heard Mr.Rajadurai, learned counsel representing Mr.M.B.Gopalan learned counsel for the Appellant and Mr.J.Pradeep, learned counsel for the respondents 1 to 4. Despite service of notice on the respondents 5 & 6, there is no representation on their side.

6. Insofar as the contention raised by the Appellant that the two wheeler which came from the opposite direction and collided with the insured two wheeler is also responsible for

the cause of accident is concerned, the same has been considered by the Tribunal under the impugned Award. As seen from the impugned award, FIR has been registered only against the insured two wheeler. No contra evidence has been produced by the Appellant insurance company to show that the two wheeler which was coming in the opposite direction was also responsible for the cause of accident.

7. Before the Tribunal, the claimants have filed six documents which were marked as Ex.P1 to Ex.P6 and they have also examined three witnesses on their side namely Nathiya, the wife of the deceased as PW1, Chellakutty, an eye-witness to the accident as PW2 and Perumal, an employer of the deceased as PW3. On the side of the Appellant insurance company, only one document was filed namely Motor Vehicle Inspector report dated 10.09.2008 which was marked as Ex.R1 and two witnesses were examined namely RW1, Junior Assistant in R.T.Office and RW2, Junior Assistant in MVI Office, Mettur.

8. This Court has examined the evidence placed on record by the Appellant before the Tribunal. The evidence produced by the claimants before the Tribunal conclusively establishes that the cause of accident was only the insured two wheeler. The said evidence does not disprove the contention of the claimants that the accident had happened only due to the fault of the insured motor cycle. The Tribunal has rightly considered the evidence available on record and has rightly come to the conclusion that the insured two wheeler alone is responsible for the cause of accident and has rightly mulcted the entire liability on the Appellant insurance company.

9. Insofar as the issue of quantum of compensation and as seen from the compensation awarded by the Tribunal under various heads are concerned, the same is a just compensation and it does not call for any interference. Further in the grounds of appeal, the Appellant has also not pointed out as to why the compensation awarded by the Tribunal under various heads is excessive, excepting for stating that the compensation awarded by the Tribunal is excessive. Therefore, there is no scope for interference by this Court as regards, the quantum of compensation awarded by the Tribunal.

10. Two vehicles were involved in the accident and the rider of the insured vehicle as well as the vehicle which was coming in the opposite direction also died. It is not known whether any other claim has been made by the legal representatives of the respective deceased riders as well as the pillion rider in the vehicle which was coming in the opposite direction. Therefore liberty is required to be granted to the Appellant to raise all defences available to them in case any claim is made against

them by the legal representative of the deceased riders or the pillion rider of the uninsured vehicle.

11. Eventhough this court is of the considered view that there is no merit in this Appeal and the findings of the Tribunal has to be necessarily confirmed, this Appeal is dismissed without prejudice to the rights of the Appellant to state all their defences in any connected MCOPs. filed by the legal representatives of the deceased riders of both the vehicles or by the pillion rider in the uninsured vehicle. Excepting for this liberty granted to the Appellant, there is absolutely no merit in this Appeal.

Conclusion:

12. The Appellant Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited to the credit of MCOP.No.323 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first and fourth respondents are permitted to withdraw their respective shares of award amount lying to the credit of MCOP.No.323 of 2009 along with accrued interest by filing appropriate applications. The respondents 2 and 3 being minors, their respective shares of Award amount shall be deposited in any Nationalised Bank, till they attain majority and the first respondent who is the guardian/mother of the minors is permitted to withdraw the interest once in six months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court,
Motor Accident Claims Tribunal, Harur.

Copy To

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

C.M.A.No.1027 of 2014

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