

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2436 of 2018
and C.M.P.No.18571 of 2018

The Divisional Manager
Reliance General Insurance Company Ltd.

... Appellant/3rd Respondent

Vs.

- 1.A.Asha Rani ...1 & 2 Respondents/Petitioner
2.Minor Bhowdiga
(Rep by her mother and next friend
A.Asha Rani)
3.E.Navaneetham ...3rd Respondent/1st Respondent
4.K.Venkatesan .. 4th Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.01.2018 made in M.C.O.P.No.61 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.J.Pradeep for R1 and R2
Mr.M.R.Thangavel for R3
No appearance for R4

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award dated 30.01.2018 made in M.C.O.P.No.61 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The appellant/Insurance Company is the third respondent in M.C.O.P.No.61 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. The respondents 1 and 2 filed the above said claim

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petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Abimannan who died in the accident that took place on 14.10.2014.

3. According to the respondents 1 and 2, on 14.10.2014, at about 12.30 p.m., while the deceased along with his relatives went to attend a marriage at Tirupattur and after attending the marriage, the deceased was proceeding in his motorcycle bearing Registration No. TN 23 F 4586 from Vellore to Tirupattur road near Thamuleri Muthur fly over, a Tata Ace bearing Registration No. TN 23 BP 3416, which came in the opposite direction, driven by the fourth respondent, driver-cum-owner in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the said accident, the deceased was thrown away from his motorcycle, sustained injuries and died on the way to hospital. Therefore, the respondents 1 and 2 have filed the above claim petition claiming compensation against the fourth respondent and appellant/Insurance Company.

4. The fourth respondent, owner of the Tata Ace bearing Registration No. TN 23 BP 3416, remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 and 2. According to the appellant, the driver of the Tata Ace drove the same in a careful manner, observing all the road rules & regulations and the deceased alone came in a rash and negligent manner and invited the accident. The accident occurred only due to the negligence on the part of the deceased. In any event, the driver of Tata Ace did not possess valid driving license to drive the transport vehicle on the date of accident. There is a violation of policy condition. Hence, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 and 2. The appellant/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents 1 and 2 is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined Mr. Manikandan, Mr. Srinivasan and Mr. Prasad as P.W.2 to P.W.4 and marked eleven documents as Exs. P1 to P8 and Exs. X1 to X3. On the side of the appellant/Insurance Company, one Mr. Vinod kumar, the Manager of the Insurance Company was examined as R.W.1 and Mr. Baskar, the Junior Assistant of Regional Transport Office, Tirupattur was examined as R.W.2 and marked six documents as Ex. R1 to R4 and Exs. X4 and X5.

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7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the fourth respondent, driver-cum-owner of the Tata Ace and directed the appellant/Insurance Company being the insurer of the said vehicle, to pay a sum of Rs.10,75,100/- as compensation to the respondents 1 to 3.

8.Against the said award dated 30.01.2018 in M.C.O.P.No.61 of 2018, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on the appellant/Insurance Company as well as quantum of compensation awarded to the respondents 1 to 3.

9.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the accident has occurred only due to rash and negligent riding of the motorcycle by the deceased and erroneously fastened the liability on the appellant. The Tribunal ought to have fixed 50% contributory negligence on the part of the deceased. The appellant filed Exs.R3 and R4 and proved that driver of the Tata Ace did not possess valid driving license at the time of accident. The Tribunal ought to have considered the evidence of R.W.1 and R.W.2 and Exs.R2 to R4 and atleast held that the appellant is entitled to recover the award amount only from the fourth respondent herein. The Tribunal having noted that the deceased was not in employment, erred in granting Rs.6,500/- per month as notional income of the deceased and granted 25% enhancement towards future prospects. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent made submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Though notice has been served on the fourth respondent and his name is printed in the cause list, there is no representation on behalf of the fourth respondent either in person or through counsel.

12. Heard the learned counsel appearing for the appellant, learned counsel for the respondents 1 and 2 as well as the learned counsel for the third respondent and perused the entire materials available on record.

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13. It is the contention of the respondents 1 to 3 that while the deceased was riding his motorcycle from Vellore to Tirupattur road, near Thamuleri Muthur fly over, a Tata Ace driven by the fourth respondent, driver-cum-owner of the vehicle and insured with the appellant, came in a rash and negligent manner and dashed against the motorcycle driven by the deceased. To substantiate this contention, the first respondent examined herself as P.W.1, Srinivasan and Prasad, two eyewitnesses were examined as P.W.3 and P.W.4 and also marked the First Information Report as Ex.P1, which was registered against the driver of the Tata Ace. On the other hand, it is the contention of the appellant that the accident has occurred only due to negligent riding of the motorcycle by the deceased, he alone dashed against the Tata Ace and invited the accident. The fourth respondent did not possess valid driving license to drive the offending vehicle on the date of accident. To prove the same, the appellant marked the Rough sketch, copy of Insurance Policy, copy of Driving License and Motor Vehicle Inspector's Report as Exs.R1 to R4 and examined R.W.1 and R.W.2. The appellant did not examine any eyewitness or driver of the Tata Ace to prove that accident has occurred only due to rash and negligent riding of the motorcycle by deceased. In the absence of any contra evidence to the evidence of P.W.2 and P.W.3, the Tribunal considering the evidence of P.W.1 to P.W.3, First Information Report/Ex.P1 held that the accident has occurred only due to rash and negligent driving by the fourth respondent, driver-cum-owner of the Tata Ace and directed the appellant to pay the compensation to the respondents 1 to 3. The further contention of the learned counsel for the appellant is that driver of the Tata Ace did not possess valid driving license to drive a Transport vehicle at the time of accident and hence the appellant is not liable to pay compensation. The said contention is without merits. The Hon'ble Apex Court in the judgment reported in (2017) 14 Supreme Court Cases 663 [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] held that when a person possess driving license to drive a particular class of vehicle, he can drive all the categories of vehicle in the said class without obtaining a badge to drive a commercial vehicle in that class. In the present case, the fourth respondent possessed a Driving license on the date of accident to drive light motor vehicle like Tata Ace and therefore, the appellant/the insurer of the said vehicle is liable to pay compensation. The Tribunal considered this fact and relying on the Judgment of the Hon'ble Apex Court held that pay and recovery cannot be ordered and fastened the liability on the appellant. There is no error in the said finding of the Tribunal warranting interference by this Court.

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14.As far as quantum of compensation is concerned, the respondents 1 to 3 contended that the deceased was working as a Medical Technician in a Private Lab and was earning a sum of Rs.25,000/- per month. To substantiate the same, the respondents 1 to 3 marked the experience certificate, salary certificate and pay slip of the deceased as Exs.X1 to X3. The Tribunal considering the evidence of P.W.2 and Exs.X1 to X3, fixed the monthly income of the deceased as Rs.6,500/- and after adding 25% towards future prospects and awarded compensation towards loss of income. The accident is of the year 2014. The deceased was 42 years at the time of accident. The monthly income fixed and 25% enhancement granted is not excessive. The Tribunal after considering all the materials available on record in proper perspective, awarded compensation, which is not excessive and the same is hereby confirmed.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.10,75,100/- awarded by the Tribunal along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 3 are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor second respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. On such deposit, the first respondent, mother of the minors is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr
To

1.The Motor Accident Claims Tribunal,
The I Additional District and Sessions Judge,
Vellore.

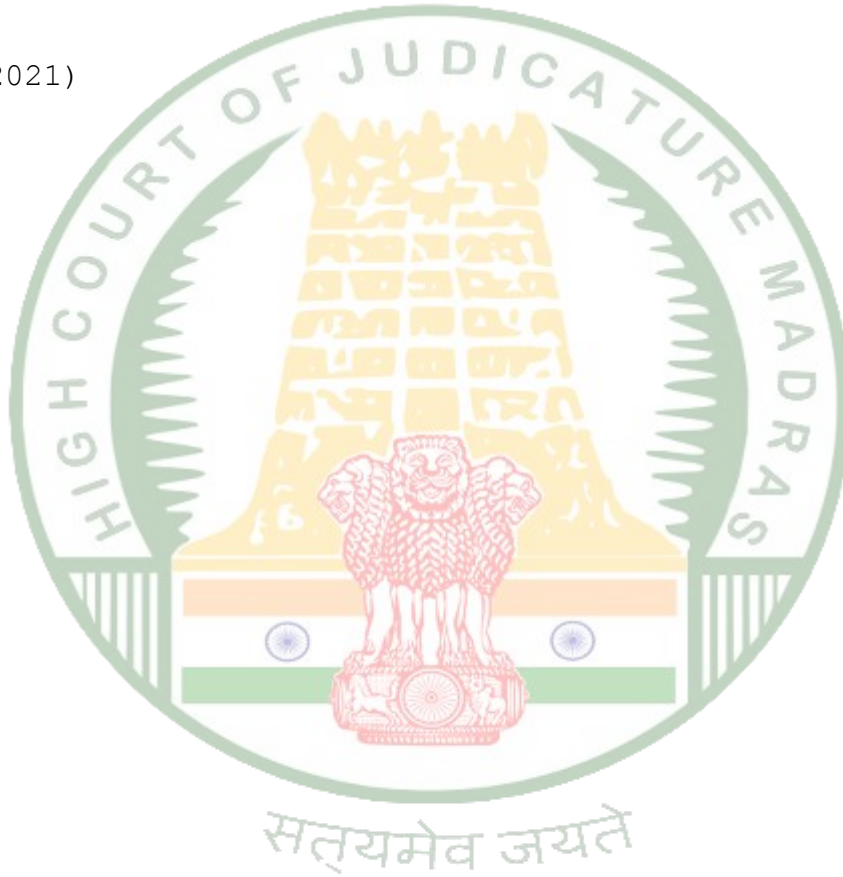
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2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.C.Anbu, Advocate SR.17088
+1cc to Mr.J.Pradeep, Advocate SR.17579
+1cc to Mr.S.Arun Kumar, Advocate SR.18412

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