



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.12.2020

CORAM:

THE HONOURABLE **MR. JUSTICE G. ILANGO VAN**

C.M.A. (MD) No. 672 of 2011

and

M.P. (MD) No. 1 of 2011

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The Manager,
The United India Insurance Co. Ltd.,
Divisional Office,
Jeevajothe Building,
Salai Road, Dindigul District. ... Appellant / 3rd Respondent

Vs.

1.R.Mahalakshmi
2.Minor Gokul
3.Minor.Mehatharani
4.Seerangammal ... Respondents 1 to 4/ Petitioners
5.R.Kumar
6.N.Samugasundaram ... Respondents 5 & 6/ Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and exorder, dated 01.03.2011 passed in M.A.C.O.P.No.1 of 2009, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge) (Fast Track Court), Dindigul.

For Appellant : Mr.Robert Chandrakumar
for Mr.G.Prabhu Rajadurai
For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 01.03.2011, passed in M.A.C.O.P.No.1 of 2009 by the Motor Accidents Claims Tribunal (Additional District and Sessions Judge) (Fast Track Court), Dindigul.

2. The case of the claimant before the Tribunal is that on 25.08.2006, the deceased along with his relative, viz., Kamatchi was riding a two wheeler bearing Registration No.TN 57-J-3173 from Sempatti to Dindigul and when they neared Athupatti Road, the vehicle bearing Registration No.TN-57-F-7122 was driven its driver in a rash and negligent manner from the opposite direction and dashed against the deceased, in an attempt to over take, a vehicle, as a result of which, he fell down and sustained injuries and died



on the spot. In respect of the occurrence, a case in Crime No.195 of 2006 was registered.

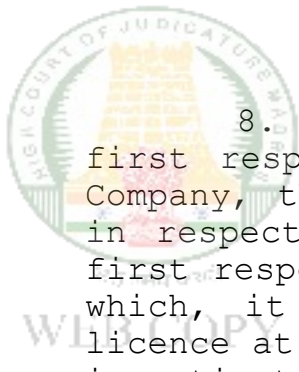
3. At the time of the death, the deceased was aged about 39 years and working as a Driver in Tamil Nadu Transport Corporation and earning Rs.7,000/- per month. The first petitioner is the wife, the second petitioner the son, third petitioner the daughter and the fourth petitioner the mother of the deceased. Since the accident took place due to the negligence on the part of the first respondent vehicle driver, a sum of Rs.20,00,000/- is claimed as compensation.

4. The respondents 1 and 2 remained ex-parte and the third respondent filed a counter stating that the R.C. book for the offending vehicle was standing in the name of the second respondent, but, the Insurance was taken in the name of the first respondent. After purchase, the second respondent did not change his name and is not having proper driving licence. Without proper licence, he drove the vehicle and caused the accident. So, the third respondent is not liable to pay compensation to any claimants. More over, the deceased was also not having any driving licence and the accident took place when he tried to over take a vehicle. So, the occurrence took place only due to negligence on the part of the first respondent.

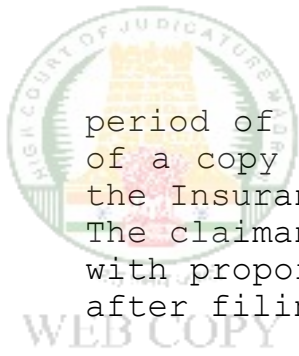
5. On the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and nine documents marked as Ex.P1 to P.9. On the side of the respondents, three witnesses were examined as R.W.1 to R.W.3 and five documents marked as Ex.R1 to R5.

6. On the conclusion of the enquiry, the Tribunal has come to the conclusion that the accident took place only due to the negligence on the part of the first respondent and so, the Insurance Company was directed to pay the compensation and the Compensation amount was fixed at Rs.11,10,700/- with 7.5% interest per annum with subsequent costs. Challenging the award, the Insurance Company preferred this Civil Miscellaneous Appeal.

7. At the time of hearing, the appellant counsel confined.. himself only with regard to the non-availability of the driving licence for the second respondent and with regard to the negligence aspect as well as the quantum of compensation awarded by the Tribunal he has submitted that he is not making any arguments. So, it is seen that after purchase of the vehicle, Registration Certificate was transferred to the name of the first respondent and the policy was not changed in his name. So, this point was not argued by the appellant counsel. So the short point, that arise for consideration is that whether the first respondent was owning the valid driving licence, at the time of accident?.



8. With regard to the non-owning of driving licence by the first respondent, before the Tribunal on behalf of the Insurance Company, the Investigator was examined as R.W.1, he would say that in respect of the occurrence, final report was filed against the first respondent before the Judicial Magistrate No.II, Dindigul, in which, it is stated that he has not possessed proper driving licence at the time of accident. He has also produced a copy of the investigation report. He would also say that at the time of accident, the offending vehicle is in the name of the first respondent, but, the policy was not transferred in his name. They also issued notice to the first respondent to inform whether he was owning any driving licence. He would further say that the first respondent had refused to give any statement when he enquired him. So it is seen that from the final report filed before the Jurisdictional Magistrate, the Police has stated that the first respondent was not owning proper driving licence at that time of accident. R.W.2, is the Administrative Officer of the Insurance Company, has stated that they issued a notice to the first respondent to produce the driving licence and the documents in respect of the vehicle. In spite of receipt of notice, the first respondent did not produce any document. Notice issued has been marked on the side of the respondents as Ex.R1 to R4. So from this evidence and from the documents produced, it is seen that in spite of receipt of notice, the first respondent has not responded properly. R.W.3 was examined with regard to the non availability of the licence and he is the Junior Assistant from Dindigul Transport Office and he would say that as per the records available with them the first respondent was not owning any driving licence. So from this and the records, it is seen that the first respondent failed to produce proper driving licence either before the Insurance Company or before the Investigating Officer. So adverse inference can be drawn against him. The evidence of R.W.3 is relied upon by the Tribunal and concluded that the possibility of obtaining licence from some other Transport office cannot ruled out is not acceptable, in the absence of any positive evidence on the side of the respondents, he conveniently remained ex-parte. So in the absence of such explanation by the first respondent no inference can be drawn, as has been drawn by the Tribunal. So the finding of the Tribunal that there was a possibility of getting driving licence from some other office is without any basis. Therefore, that part of the finding is not approved by this Court and from the evidence on records, I find that the first respondent was not having proper driving licence at the time of accident. Even though there is no proper licence on the side of the first respondent, the Insurance Company can be made to pay the amount and recover the same from the first respondent. To this extent, the award passed by the Tribunal is liable to be modified and accordingly, modified. In respect of the other things, the award passed by the Tribunal is confirmed. The award is modified to the effect that the appellant / Insurance Company shall pay the award amount with interests and costs within a



period of two months, if not paid already, from the date of receipt of a copy of the order. On such deposit being made, it is open to the Insurance Company to recover the same from the first respondent. The claimants, except minor, are permitted to withdraw their shares with proportionate interest apportioned by the Tribunal immediately, after filing proper petition before the Tribunal.

9. In view of the above, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The (Additional District and Sessions Judge)
Motor Accidents Claims Tribunal.
(Fast Track Court),
Dindigul.

2.The Section Officer,(2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.25784

C.M.A.(MD)No.672 of 2011
15.12.2020

VB (09.02.2021) 4P 5C