IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.2.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3446 of 2011

M.P.No.1 of 2011 and
C.M.P.No.6624 of 2018 in Cross Obj.SR No.22247 of 2018

The National Insurance Company ltd.,
Divisional Office at LRN Complex,
Sarada College Road, Salem.

...Appellant / 2nd Respondent in
CMA.No.3446 of 2011 and 1st Respondent in
Cross Objection in SR.22247/2018

..Vs..

1. Banumathi
2 Minor K.Ramesh
3 Minor K.Priyanka
4 Sellammal

... Respondents 1 to 4 in CMA.No.3446/2011 &
Petitioners and Cross Objectors in
Cross Objection SR.No.22247/2018

5 Subramanian (died)
6 Pushpavalli

.. Respondent No.5 to 6
and R2 in Cross Objection SR.22247/2018/
Respondents 1 & 3

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 09.09.2011 made in M.C.O.P.No.925 of 2008 on the file of Additional District Court (Motor Accidents Claims Tribunal) Salem.

Cross Objection SR.22247 of 2018 Prayer:

The Memorandum of Grounds of Cross Objection filed under Order 41 Rule 22 of CPC praying this Court to enhance the compensation amount awarded and fix the full liability on the appellant in the Judgment and decree dated 09/09/2011 made in MCOP.No.925/2008 on the file of the Motor Accidents Claims Tribunal/Additional District Judge and Special Judge for EC Act Cases, Salem.

For Appellant	:	Mr.G.Udayasankar
For Respondent No.1 to 3	:	Mr.S.P.Yuaraj
For Respondent No.4 & 6	:	Notice unserved
Respondent No.5	:	Died

Cross Objection

Cross Objectors 1 to 3 : Mr.S.P.Yuaraj
1st Respondent : Mr.G.Udayasankar
2nd Respondent : Notice unserved

JUDGMENT

Brief facts of the case is as follows:

On 4.3.2008 at about 11.00 p.m. when the deceased Kannan was riding Hero Honda Dawn motorcycle bearing registration No.TN-30-F-1305 on the extreme left side of the 3 road to Lee bazaar main road and when he was coming near Lee Bazaar Petrol Bunk, a lorry bearing registration No.TML 4802 came from opposite direction was driven by its driver in a rash and negligent manner without blowing horn with great speed and hit against the motorcycle, thereby caused accident, resulting in Kannan sustained grievous injuries all over the body and immediately he was shifted to Government Mohan Kumaramangalam Medical College hospital where he died. A case has been registered in Cr.No.112 of 2008 under Section 279 and 304-A of I.P.C. Against the lorry driver by the Salem City Police. The legal heirs of the deceased have filed a claim petition before the tribunal claiming compensation of Rs.15,00,000/- against the appellant and the 5th respondent being the insurer of the vehicle and owner of the vehicle.

2. The owner of the vehicle viz. Subramanian died, his legal heir one Pushpavalli was impleaded as third respondent before the tribunal, Since the third respondent called absent, she was set exparte. On the side of the claimants, P.W.1 and 2 were examined and Ex.P1 to 8 were marked. On the side of the respondent, R.W.1 and 2 were examined and Ex.R1 and R2 were marked.

3 Tribunal, based on the oral and documentary evidence adduced by both sides, found that since the vehicle driven by the person without proper licence for driving such heavy motor vehicle, the Insurance Company cannot hold the full responsibility of paying the compensation and holds that the owner of the lorry is liable to pay 50% and Insurance company is liable to pay 50% of the award amount of Rs.6,57,500/- as compensation to the claimants along with interest at the rate of 7.5% per annum from the date of claim petition till realization.

4. Challenging the said award, the Insurance Company has filed the present appeal against the 50% liability fastened against the Insurance Company and also against the quantum of compensation.

5. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing

for the respondents/claimants and perused the materials available on record.

6. The learned counsel appearing for the appellant submitted that admittedly driver of the lorry was not possessed valid driving licence for heavy motor vehicle, he possessed driving licence for light motor vehicle. The tribunal rightly gave its finding that the driver of the insured vehicle did not possess driving licence to drive heavy motor vehicle. Despite such finding, the tribunal has fixed 50% liability as against the Insurance company/appellant. The liability as against the Insurance company is unsustainable in law and the same is liable to be set aside.

7. The learned counsel appearing for the claimants/respondents would submit that driver of the insured vehicle did not possess driving licence to drive heavy motor vehicle, but, considering contributory negligence on the part of the driver of the vehicle and Insurance Company, rightly fixed the liability equally both against the owner of the vehicle as well as Insurance Company.

8. There is no dispute that the driver of the insured vehicle did not possess proper driving licence to drive heavy motor vehicle. In short, they did not obtain driving licence to drive heavy motor vehicle. But the Court below has fixed 50% liability to pay compensation as against the owner of the insured vehicle for the reason that the driver of the insured vehicle did not possess driving licence to drive heavy motor vehicle. However, in the light of the decision of the Hon'ble Supreme Court, when there is violation of terms and conditions of the policy, the Insurance Company is liable to pay compensation to the claimants and recover the same from the owner of the vehicle.

9. The Hon'ble Supreme Court in Oriental Insurance Co. ltd. vs. Nanjappan and others [2018 (1) TN MAC 192] has held as follows:

> ''Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination

before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.''

10. In the present case in hand, the appellant Insurance company has not served notice to the owner of the vehicle , therefore, there is no modification in the judgment of the tribunal. In the light of the decision of the Hon'ble Supreme Court, it is open to the Insurance Company to recover the same in accordance with law.

11. In view of the facts and circumstances of the case, the appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

12. The respondents/claimants have filed Cross Objection along with condone delay petition to condone the delay of 1236 days. There is no satisfactory reason stated in the affidavit filed in support of the petition to condone the inordinate delay of 1236 days and also taking note of the fact that the Tribunal has elaborately considered the points and awarded just and fair compensation to the claimants and therefore, the petition filed for condoning the inordinate delay of 1236 days is dismissed. Consequently, Cross Objection filed by the respondents/ claimants in Cross Obj.SR No.22247 of 2018 is rejected.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
(Motor Accidents Claims Tribunal)
Salem.

2. The Section Officer,
V.R.Section, Madras High Court,
Chennai-104.

+1cc to Mr.SP.Yuaraj, Advocate, S.R.No. 9362
+1cc to Mr.G.Udayasankar, Advocate, S.R.No.8648

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PP(CO)
GN(21/09/2021)