

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.3104 of 2013

and

M.P.No.1 of 2013

The National Insurance Company Ltd.,
represented by its Branch Manager,
Branch Office, 3rd Floor,
Anuradha Complex, Bangalore Road,
Krishnagiri Town and District.

...Appellant/3rd Respondent

-vs-

1.Tmt.Jeeva

2.Selvi.Praveena

3.Selvi.Sathiyavathi

4.Minor.Arunkumaran ...Respondents 1 to 4/Petitioners
(Minor respondent represented by his next
friend mother and first respondent Tmt.Jeeva)

5.K.J.Manikandan

6.S.Boopalan ...Respondents 5&6/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, against the award and Decree dated
05.01.2012 made in M.C.O.P.No.608 of 2009 on the file of the
Motor Accidents Claims Tribunal (Principal District Judge),
Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For Respondents: Mr.M.Jayachandran for R1 to R4
R5 No Appearance
R5 Notice Dispensed with vide
order dated 02.03.2021

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the
Judgment and Decree dated 05.01.2012 made in O.P.No.608 of 2009
on the file of the Motor Accidents Claims Tribunal (Principal

District Judge), Krishnagiri.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that on 25.05.2007, when the deceased was riding the Motor Cycle belonging to the second respondent insured with the third respondent, the offending vehicle owned by the first respondent was driven in a rash and negligent manner and while trying to overtake the lorry, the driver lost his control and dashed against the deceased vehicle, due to which, the deceased sustained fatal injuries on his vital organs. Immediately, he was taken to the Government Head Quarters Hospital, Krishnagiri and thereafter, he was referred to an Hospital at Bangalore. Unfortunately, on the way to Bangalore, he died. At the time of accident, the deceased was only 42 years. He was a Contract Supervisor and was earning Rs.3,300/- per month. Hence, the claim petition.

4. Resisting the same, the third respondent filed the counter specifically stating that the deceased was not having valid license to drive the Motor Cycle, which belonged to the second respondent and insured with the third respondent. Further, only due to the rash and negligent driving of the vehicle belonging to the first respondent, the accident took place and in fact, the FIR was registered as against the rider of the vehicle owned by the first respondent. Thereafter, charge sheet was filed as against the rider of the Motor Cycle belonging to the first respondent. Therefore, the vehicle driven by the deceased which belonged to the second respondent and insured with the third respondent is no way connected for the accident. Therefore, the third respondent is not liable to pay any compensation.

5. On the side of the claimants, P.W.1 was examined and Ex.P1 to Ex.P9 were marked. On the side of the respondent, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R5 were marked. On perusal of the evidence available on record and also considering the submission made by the learned counsel appearing on either side, the Tribunal held that a sum of Rs.4,50,800/- (Rupees Four Lakhs Fifty Thousand Eight Hundred only) is payable as compensation, with the interest at the rate of 7.5% per annum, by the second and third respondents jointly and severally. Aggrieved by the same, the appellant / third respondent filed the present Civil Miscellaneous Appeal.

6. The learned counsel appearing for the appellant would submit that admittedly, the vehicle owned by the first respondent was driven in a rash and negligent manner when the accident took place. The said vehicle was not insured with any

of the Insurance Company. The charge sheet was also laid as against the rider of the Motor Cycle, which was owned by the first respondent. The Tribunal, unfortunately, wrongly construed that the vehicle belonged to the first respondent and insured with the third respondent and awarded compensation payable by the second and third respondents jointly and severally. All along, the Tribunal held that only because of the rash and negligent driving of the first respondent vehicle, the accident took place and that the Tribunal wrongly construed that the vehicle was insured with the third respondent and awarded compensation. Thus, the third respondent is not liable to pay any compensation, since, the third respondent is not the insurer of the vehicle belonged to the first respondent and as such, the first respondent is liable to pay the compensation awarded by the Tribunal.

7. Per contra, the learned counsel appearing for the claimants would submit that the claimants are the legal heirs of the deceased and that the accident took place only because of the rash and negligent driving of the rider of the vehicle belonged to the first respondent. Though the offending vehicle was not insured, the third respondent is liable to pay compensation with liberty to recover the same from the first respondent.

8. Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant and Mr.M.Jayachandran, learned counsel appearing for the respondents 1 to 4.

9. The claimants are the legal heirs of the deceased. When the deceased was riding the Motor Cycle belongs to the second respondent insured with the third respondent on 25.05.2007, another Motor Cycle which belonged to the first respondent was driven by the person in a rash and negligent manner and while he tried to overtake the lorry, he lost his control and dashed against the deceased vehicle, due to which the deceased sustained fatal injuries on his vital organs. Immediately, he was taken to Government Hospital, Krishnagiri and he was referred to higher Hospital at Bangalore, but on the way to Bangalore in the ambulance, he died.

10. The only point for consideration in the present appeal is that whether the third respondent is liable to pay compensation or not. Admittedly, the vehicle owned by the first respondent had caused the accident. The FIR was registered as against the rider of the Motor Cycle belonged to the first respondent and he was also charge sheeted by the Inspector of Police, Mathur Police Station, Krishnagiri District in Crime No.315 of 2007. The charge sheet is marked as Ex.R5. The Tribunal also rightly concluded that the accident took place only because of the rash

and negligent driving of the vehicle owned by the first respondent.

11. Unfortunately the said Motor Vehicle was not insured with the Insurance Company and the vehicle which was driven by the deceased belonged to the second respondent and insured with the third respondent. But, the Tribunal wrongly construed that the vehicle owned by the first respondent was insured with the third respondent and held that with the second and third respondents are jointly and severally liable to pay compensation to the claimants.

12. Though the first respondent's vehicle was not insured with the Insurance Company, the first respondent is liable to pay compensation as awarded by the Tribunal.

13. In the result the Civil Miscellaneous Appeal is allowed as follows:-

(i) The first respondent is liable to pay compensation as awarded by the Tribunal and directed to deposit the award amount with interest at the rate of 7.5% per annum within a period of six weeks from the date of the receipt of the order.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) On such deposit, the claimants are permitted to withdraw the amount awarded as above, by filing proper application before the Tribunal.

(iv) The amount deposited by the third respondent is permitted to withdraw the same by the third respondent.

(v) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

Copy To

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

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JPL(CO)
RGA(19/07/2022) (21/07/2022)