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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

:CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1416 of 2020

1. Leelavathi
2. Palanivel

..Appellants/Petitioners

Vs.

1. Parvathi
2. The Oriental Insurance Company Limited  
Divisional Office  
Divya Towers  
Fort Main Road  
Salem 636001.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Award passed in M.C.O.P.No.327 of 2018 (on the file of Special District Judge, MCOP Tribunal, Salem) dated 06.01.2020.

For Appellants : Ms.J.Prithvi

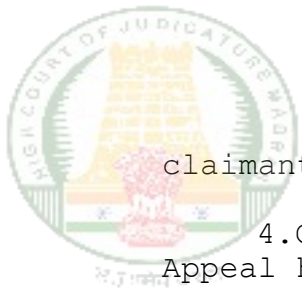
For Respondents : Mr.J.Chandran (R2)

#### J U D G M E N T

This Civil Miscellaneous Appeal has been filed questioning the award dated 06.01.2020 made in M.C.O.P.No.327 of 2018 on the file of Special District Judge, MCOP Tribunal, Salem, rejecting the claim.

2.The Appellants who are the father and mother of the deceased are the claimants in M.C.O.P.No.327 of 2018 on the file of Special District Judge, Motor Accident Claims Tribunal, Salem. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Praveenkumar, who died in an accident that took place on 07.01.2018.

3.The Tribunal after considering the pleadings, oral and documentary evidence dismissed the claim petition filed by the



claimants.

4. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Appellants/Claimants.

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5. The learned counsel appearing for the Appellants contended that the accident occurred due to rash and negligent driving of the driver of the bus bearing Registration No. TN 30 AA 6181, but the Claims Tribunal without considering the same dismissed the claim petition on the ground that the deceased is a minor, who himself is a tortfeasor. He further submitted that it is no doubt true that the claimants ought not to have allowed their son, who is a minor to ride the motor cycle, but unfortunately there was an accident which was witnessed by P.W.2 who deposed before the Tribunal regarding the same, but the Claims Tribunal without considering the same has dismissed the claim petition. He further submitted that though violation of rules as per Motor Vehicles Act, 1988 (in short 'the Act') attracts penalty and penal punishments, it cannot deprive compensation for the accident. She relied on the following Judgments of this Court as well as the Hon'ble Supreme Court in support of her contentions:

- (i) The General Manager Vs., J. James reported in 2017 (1) TANMAC 180
- (ii) Sudhir Kumar Rana Versus Surinder Singh and others reported in 2008 12 SCC 436.
- (iii) Mohammed Siddique and Another Versus National Insurance Company reported in 2020 3 SCC 57.
- (iv) V. Mekala Versus M. Malathi & anr reported in 2014 (2) TN MAC 6 (SC).

6. The learned counsel for the Appellants further submitted that at the most deduction towards contributory negligence may be permissible but it does not mean that entire compensation needs to be rejected as there is no provision under the Act to reject the claim petition made for seeking compensation under Section 166 of the Act.

7. Per contra, learned counsel appearing for the 2<sup>nd</sup> Respondent-Insurance Company contended that Sections 3 and 4 of the Motor Vehicles Act, 1988, clearly prohibit the riding of any vehicle by a minor and the compensation need not be granted, when the rider is a tort-feasor. He drew the attention of this Court to Sections 180 and 181 of the Act and Section 180 deals with persons, who allow unauthorised persons to drive vehicles and if the said unauthorized person does not satisfy the provisions of Sections 3 or 4 of the Act, while driving the vehicle, he / she shall be punishable with imprisonment for a term which may extend to three months or with fine of five thousand rupees, or with both and Section 181 of the Act deals



with persons driving the vehicle and whoever drives a motor vehicle in contravention to section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months or with fine of five thousand rupees, or with both. He submits that in this case since the minor who drove the vehicle has died, the appellants/parents of the deceased are liable to pay fine or undergo imprisonment.

8.The learned Counsel appearing for the Insurance Company further contended that father of the deceased knowing fully well that his son is a minor, who does not possess the valid licence, permitted the minor son to drive the two wheeler, which ultimately ended in loss of life and therefore compensation could not be granted. Even assuming that the compensation has to be granted, it should not be beyond three lakhs and relied upon the Judgment of the Hon'ble Supreme Court in the case of Rajendra Singh and Others Versus National Insurance Company Limited and others reported in 2020 7 SCC 256. He further submitted that in the said Judgment, the decision of the Hon'ble Supreme Court in New India Assurance Co. Ltd. Versus Satender reported in 2006 13 SCC 60 has been relied, in which it is observed that neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company and perused the entire materials on record.

9.It is no doubt true that the Appellants lost their son in the accident that occurred on 07.01.2018 at 1.30 P.M.Though P.W.2 - who is an eye witness to the accident has rendered evidence before the Tribunal, the Claims Tribunal proceeded on the basis that the father of the deceased, knowing fully well that his son is a minor, has permitted him to drive the two wheeler which shows the indisciplined attitude and further since the minor himself is a tortfeasor, compensation could not be granted. Of course, the said reasoning cannot be found fault with, but unfortunately the Tribunal has not looked at from the correct angle, with regard to deciding the compensation. As rightly pointed out by the learned counsel for the Appellants, the provisions of Motor Vehicles Act attracts only penalty and not depriving of compensation. A reading of the Sections 3 and 4 of the Act makes it very clear that no person the Motor Vehicles Act,1988, without valid licence shall drive a motor vehicle in any public place and the motor cycle with engine capacity not exceeding 50 cubic centimetre(cc), may be driven in a public place by a person after attaining the age of sixteen years. But unfortunately , the Appellants under pressure allowed



him to ride the motor cycle, which resulted in the fatal accident causing mental agony.

10. As stated supra, the provisions of Act attracts only penalty and it no where deprives the compensation and taking note of the fact that the Appellants lost their only son in the accident which leads to mental agony to the parents of the deceased and apart from that the parents are emotionally attached to the child and loss will have a devastating effect on the family and for the sufferings of loss of happiness, the parents should be necessarily compensated.

11. By considering all these aspects, the learned Judge of this Court in C.M.A.Nos. 1625 of 2020 and 2623 of 2019 on 10.11.2019 and 04.12.2020 had granted reasonable compensation, on the death of the minor children on the lower side.

12. This Court taking note of the fact that in terms of various Labour enactments, as an Adolescent can be employed, monthly income of the deceased is fixed at Rs.6,000/- per month and by deducting 50% and by adopting multiplier 18, Loss of income can be arrived at Rs.6,48,000/- .

13. By considering Ex.P5-Medical Bills, a sum of Rs.7,010/- is awarded towards medical expenses and a sum of Rs.15,000/- is awarded towards Funeral Expenses.

14. Considering the fact that the claimants lost their son, a sum of Rs.60,000/- each is awarded towards Loss and Affection.

15. Thus, the compensation awarded by this Court is detailed below:

| S. No | Description                      | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|----------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Loss of Income                   | Nil                             | 6,48,000                          | Granted                                |
| 2.    | Medical Bills                    | Nil                             | 7,010                             | Granted                                |
| 3.    | Funeral Expenses                 | Nil                             | 15,000                            | Granted                                |
| 4.    | Loss of Love and Affection       | Nil                             | 80,000                            | Granted                                |
|       | Total                            | Nil                             | 1,20,000/-                        |                                        |
|       | Less:Contributory Negligence 10% |                                 | 79,001/-                          |                                        |
|       | Total compensation               |                                 | 7,11,009/-<br>7,11,000/-          | Granted                                |



16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation is hereby awarded to Rs.7,11,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Appellants 1 and 2 are entitled for equal apportionment. The Respondents 1 and 2 are directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.327 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellants/Claimants through RTGS, within a period of two weeks. The Appellants/Claimants shall pay necessary Court fee, on the compensation.

17. That apart, in the case on hand, since the parents of the deceased permitted the deceased who is a minor to ride a bike, which resulted in an accident, this Court by invoking Section 180 of the Motor Vehicles Act, imposes a fine of Rs.5,000/- (Rupees Five Thousand only) on the Appellants/parents of the deceased, payable to Sudaroli Social Service Trust, Mettur Dam, Salem District (Phone Nos.9443094917 and 9543306307), within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Motor Accident Claims Tribunal,  
Special District Judge, Salem.
2. The Section Officer,  
VR Section, High Court,  
Madras.
3. The Sudaroli Social Service Trust,  
Mettur Dam, Salem District.

C.M.A.No.1416 of 2020

SMI (CO)  
RGA(14/03/2022)