



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3090 of 2014

and

M.P.No.1 of 2014

National Insurance Company Limited,
Karthikeyan Complex,
Mettur Main Road,
Bhavani.

..Appellant

Vs.

1.Mohanadevi
2.Pavithra
3.Nandhakumar
4.Janaki
5.M.P.Mariappan
6.S.C.Senthilkumar

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.06.2011 made in M.C.O.P.No.119 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Bhavani.

For Appellant : Mr.S.Arunkumar

For RR 1, 3 & 4: Mr.D.Balachandran

For RR 5 & 6 : Mr.P.Chandrasekaran

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed against the award dated 13.06.2011 made in M.C.O.P.No.119 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Bhavani.

2.The appellant is the 3rd respondent in M.C.O.P.No.119 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Bhavani. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Panneerselvam, who died in the accident that took place on 06.12.2007.

3.According to respondents 1 to 4, on 06.12.2007, the



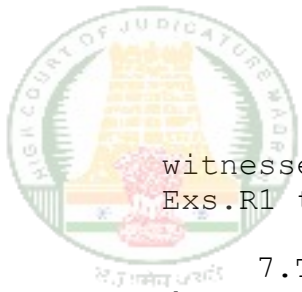
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deceased Panneerselvam was riding the motorcycle from North to South on the left side of the Salem - Coimbatore NH 47 Main Road. At about 05.30 P.M., while he was proceeding near Mahaliyamman Temple at Vavappatti, Sithode, the driver of the Mahindra Pickup van bearing Registration No.TN 33 Q 4395 who was driving the van from South to North, came in a rash, negligent manner, without following the road traffic rules and dashed against the motorcycle driven by the said Panneerselvam and caused the accident. In the accident, the said Panneerselvam, was thrown out of the motorcycle and sustained multiple injuries all over the body. Immediately after the accident, the said Panneerselvam was taken to C.K.Hospital, Erode and thereafter he was taken to Ganga Hospital, Coimbatore, where he has taken treatment as inpatient from 07.12.2007. In spite of medical treatment, the said Panneerselvam succumbed to injuries on 19.12.2007. Therefore, the respondents 1 to 4, filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation against the respondents 5, 6 and appellant-Insurance Company, being the driver, owner and insurer of the van respectively.

4.The 6th respondent-owner of the van filed counter statement and the same was adopted by the 5th respondent - driver of the van. According to respondents 5 & 6, the maximum negligence is on the part of the deceased and prayed for dismissal of claim petition as against the respondents 5 & 6.

5.The appellant-Insurance Company, being the insurer of the van belonging to 6th respondent filed separate counter statement and denied all the averments made by the respondents 1 to 4. The appellant denied the manner of accident as alleged by the respondents 1 to 4. At the time of accident, the van belonging to 6th respondent was carrying hazardous and explosive goods and the driver of the van did not possess valid driving license to drive the van carrying explosives and hazardous materials. The risk involved in this case is not covered by the Insurance Policy taken by the 6th respondent for the van. The 6th respondent - owner of the van has committed breach of terms and policy conditions by permitting the 5th respondent to drive the van who was not possessing valid driving license at the time of accident. In the Motor Vehicle Inspector's report, alterations were made in the van driver's name. Hence, the appellant is not liable to pay any compensation. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 4 are highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and twelve documents were marked as Exs.P1 to P12. The respondents 5, 6 and appellant-Insurance Company examined three



witnesses as R.W.1 to R.W.3 and five documents were marked as Exs.R1 to R5.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the van belonging to 6th respondent and directed the appellant-Insurance Company, being the insurer of the lorry to pay a sum of Rs.14,63,800/- as compensation to the respondents 1 to 4 at the first instance and recover the same from the 6th respondent - owner of the van.

8.Against the said award dated 13.06.2011 made in M.C.O.P.No.119 of 2008, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously directed the appellant-Insurance Company to pay the compensation to respondents 1 to 4, when the 6th respondent - owner of the van has violated the policy conditions by permitting the driver to drive the van without valid driving license. The deceased was aged more than 53 years and he was having only 5 years of unexpired period of service and hence, the multiplier '11' applied by the Tribunal is not correct. The total compensation awarded by the Tribunal at Rs.14,63,800/- is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.The learned counsel appearing for the respondents 1, 3 & 4 made his submissions in support of the award of the Tribunal and prayed for dismissal of the appeal.

11.The learned counsel appearing for the respondents 5 & 6 contended that the 6th respondent's van was insured with the appellant and there was valid Insurance Policy for the 6th respondent's van at the time of accident. The Tribunal having considered the same, erroneously ordered pay and recovery. The appellant-Insurance Company is only liable to pay the compensation to respondents 1 to 4. The quantum of compensation awarded by the Tribunal is excessive and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1, 3 & 4 and the learned counsel appearing for the respondents 5 & 6 and perused the entire materials on record.

13.From the award of the Tribunal, it is seen that the Tribunal considering the evidence let in by the appellant, accepted the case of the appellant that the driver of the



offending vehicle did not possess driving license to drive the vehicle carrying explosives and following the judgment of the Hon'ble Apex Court reported in 2009 (1) TNMAC 242 (SC), [Oriental Insurance Company Limited Vs. Angad Kol & Others], ordered pay and recovery for violation of policy condition by owner of the vehicle. There is no error in the said finding of the Tribunal ordering pay and recovery.

14.As far as quantum of compensation is concerned, the respondents 1 to 4 claimed that the deceased was aged 52 years, working as Sub-Inspector of Police at Perundurai Police Station and was earning a sum of Rs.14,835/- per month. The Tribunal accepting the salary certificate produced by the respondents 1 to 4, fixed monthly of the deceased at Rs.14,835/-, applied multiplier '11' and after deducting 1/3rd towards personal expenses, granted compensation towards loss of dependency. The contention of the learned counsel appearing for the appellant that the deceased was aged 53 years at the time of accident and he had only five years of service and Tribunal erroneously applied multiplier '11' instead of '5' inspite of the fact that salaried source of income would cease after five years is not acceptable. The deceased was aged 53 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects and the amounts awarded by the Tribunal under conventional heads are meagre. The deceased was a Sub-Inspector of Police and after superannuation, he will be getting pension. Further, being a retired Police Officer, it is possible for him to get employment in Security Organisations or in Private Companies as Security Officer. In view of the same, there is no error in the award of the Tribunal in applying multiplier '11'. The Tribunal considering the entire materials on record, has awarded a sum of Rs.14,63,800/- as compensation to the respondents 1 to 4, which is just and reasonable and the same is not excessive. In view of the same, there is no reason to interfere with the award passed by the Tribunal.

15.For the above reason, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.14,63,800/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.119 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Bhavani, at the first instance and recover the same from the 6th respondent - owner of the van. On such deposit, the respondents 1 to 4 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if



any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed No costs.

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Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

The learned Subordinate Judge,
Motor Accidents Claims Tribunal,
Bhavani.

+1cc to M/s.D.Balachandran, Advocate, S.R.No.69318

+1cc to M/s.S.Arunkumar, Advocate, S.R.No.69484

C.M.A.No.3090 of 2014

BP(CO)
RGA(30/05/2022)