



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.3438 of 2021

1.Sottima
2.Nasar
3.Sathamusan

... Appellants

Vs

1.Vanitha

2.The Divisional Manager,
The National Insurance Company Ltd.,
Infantry Road, Near Adlabs Alankar Theatre,
Vellore - 632 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to allow the above Civil Miscellaneous Appeal and set aside the judgment and decree dated 08.04.2021 made in M.C.O.P.No.113 of 2016 on the file of the Motor Accident Claims Tribunal, Magalir Neethi Mandram, (Fast Track Mahila Court), Vellore.

For Appellants : Mr.M.Sivakumar

For Respondent : Mr.S.Arunkumar for R2

J U D G M E N T

In view of the limited scope of the appeal, the appeal is taken up for hearing at the admission stage with the consent of both the counsel.

2. The appellants sought for compensation for the death of one Jigaria in the motor accident that occurred on 01.12.2015. According to the claimants, when the said Jigaria was standing to cross the road at Chennai-Bangalore National Highways near Vellore Lakshmi Traders, a car bearing Reg.No.KA-51-N-2061 driven by its driver at a high speed and rash and negligent manner dashed against Jigaria. As a result of the accident, the deceased died on the spot. Claiming that the deceased was earning about Rs.50,000/- per month, the claimants, who are the wife and children sought for a compensation of Rs.50,00,000/-.



3. Claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested and it was the deceased who had crossed the National Highway at a place not meant for crossing. It was also claimed that the driver of the car did not possess a valid driving licence. Therefore, the Insurance Company is not liable to pay the compensation.

4. The Tribunal upon consideration of the evidence on record fixed the compensation payable at Rs.9,96,200/-. The Tribunal however exonerated the Insurance Company on the ground that the driver of the car did not possess a valid driving license.

5. Mr.M.Sivakumar, learned counsel appearing for the appellants would vehemently contend that the Tribunal was in error in exonerating the Insurance Company. He would point out that the deceased being third party to the contract of insurance, the Insurance Company is liable to pay the compensation and at best, it can recover the same from the owner of the car. In support of his submission he would also rely upon the judgment of the Hon'ble Supreme Court in Jawahar Singh vs. Bala Jain and others reported in 2011 Vol 6 SCC 425.

6. Mr.Arunkumar, learned counsel appearing for the Insurance Company would fairly submit that in case of a third party, the Tribunal ought to have ordered pay and recovery instead of exonerating the Insurance company.

7. In view of the submissions of the counsel for the Insurance Company and the judgment of the Hon'ble supreme Court cited supra, the award has to be modified and it is accordingly modified and the appeal is partly allowed. No costs.

8. The award is modified and the Insurance company will pay the compensation and it will be entitled to recover the same from the owner of the offending vehicle/ 1st respondent in execution. The Insurance Company is granted 6 weeks time to deposit the compensation awarded by the Tribunal with appropriate interest as granted by the Tribunal to the credit of MCOP No. 113 of 2016.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

dsa



To

1. The Motor Accident Claims Tribunal,
Magalir Neethi Mandram,
Fast Track Mahila Court, Vellore.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate SR.No.68822

+1cc to Mr.S.Arunkumar, Advocate SR.No.68972

CMA No.3438 of 2021

GSM(CO)
GN(23/02/2022)