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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.2440 and 2441 of 2017

1.Tavamani
2.Arun Pandiyan
3.Thenarasu
4.Thenpandi
5.Ramkumar

...Appellants in CMA 2440/2017

1.Sharmila
2.Minor Akash
3.Minor Guru
4.Amsa
5.Purusothaman

...Appellants in CMA 2441/2017

Vs

1.Deivanayagi
2.The Manager,
The Reliance General Insurance Company Ltd.,
Vellore.

...Respondents in CMA Nos.2440 and 2441/2017

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.08.2016 made in M.C.O.P.Nos.102 and 144 of 2013 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.M.Sivakumar
in both CMAs

For Respondents : R1-Notice not ready
in both CMAs Mr.S.Arunkumar for R2

C O M M O N J U D G M E N T

These two appeals are filed by the claimants who are the legal representatives of the deceased motor vehicle victims. Being aggrieved by the dismissal of the claim petitions, the present appeals are filed.



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2.The brief facts of the case is that on 23.04.2013, the deceased Dinesh in his motor cycle Yamaha along with his friend Raghu, while travelling on the Bangalore to Chennai Road, near Konavattam, opposite to Royal Palace Thirumanamandapam, a Mini Lorry bearing Registration No.TN 18-K-7516 hit against the two wheeler. The rider and the pillion rider both sustained severe injury and they were taken to CMC hospital by the Highways Ambulance. However, they succumbed in the hospital. The two wheeler rider Dinesh was working as Van Driver and Real Estate business man earning Rs.25,000/- per month. Hence, the claim petition in MCOP No.102 of 2013 was filed by his wife and children/appellants in CMA No.2440 of 2017, claiming compensation of Rs.45,00,000/- against the owner of the Mini Lorry and its insurer.

3. The deceased pillion rider, Raghu @ Ragavendiran was aged 36 years at the time of accident and working as Car Driver and Real Estate Business man earning Rs.25,000/- per month. Claim petition in MCOP No.144 of 2013 was filed by his wife, children and parents/appellants in CMA No.2441 of 2017, claiming compensation of Rs.45,00,000/- against the owner of the Mini Lorry and its insurer.

4.Before the Tribunal, the Insurance Company contested the claim on the ground that the rider of the two wheeler had no valid driving license. Similarly, the driver of the Mini Lorry, which was insured with them had no valid driving license. As far as the alleged two wheeler in which the deceased Dinesh and the deceased Raghu were travelling, the Registration number and its insurance particulars not disclosed by the claimants and the vehicle was not subjected to the motor vehicle inspection. Therefore, attributing total negligence on the part of the deceased and the non possession of the valid driving license by the Mini Lorry Driver, the Insurance Company pleaded absolving from liability.

5.Before the Tribunal, three witnesses were examined on behalf of the claimants. Ten exhibits were marked. On behalf of the Insurance Company, 2 witnesses were examined. The Insurance policy of the Mini Lorry marked as Ex.R1. Authorization letter was marked as Ex.X1. The driving license of the Mini Lorry Driver was marked as Ex.X2. However, after considering the evidence placed before, the Tribunal dismissed both the claim petitions.

6.The reasons for dismissal is stated in paragraph 6 of the Judgment, same is extracted below for better appreciation:

"6.The P.W.1 Thavamani is the wife of the deceased Dinesh. The PW2 Sharmila is the wife of the deceased



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Ragu @ Ragavendiran. The PW1 and PW2 are not seen the accident and not occurrence witnesses. They have heard about the accident through the third party and went to accident spot. Mr.Tamilarasan examined as P.W.3 as a occurrence witness. He deposed in the cross examination as follows:

“நான் பிரமாணவாக்குழுலத்தில் 23.04.2015ம் தேதி கையெழுத்து போட்டேன். பிரமாணவாக்குழுலத்தில் உள்ள கையொப்பம் சமீபத்தில் போட்ட கையொப்பம் அல்ல. பிரமாணவாக்குழுலத்தில் சொல்லப்பட்ட விவரங்கள் எனக்கு தெரியாது.”

The chief proof affidavit of PW3 filed on 29.02.2016. The proof affidavit was attested by Advocate without date. The cross examination of PW3 clearly proved that he has not given any information and details for preparation of the chief proof affidavit and so that only he fairly admitted that he did not know the contents of the affidavit. When the PW3 did not know the contents of the affidavit, his evidence cannot be believed. Therefore, it is very clear, the claimants not proved the rash and negligent driving of the 1st respondent's driver through the PW3's evidence. As per the above cited ruling without proving the rash and negligent driving of the offending vehicle, the claimants are not entitled for the compensation. As per the case of the claimants, the deceased Dinesh driving the Yamaha two wheeler. The registration number of the two wheeler not given in the claim application. The PW1 and PW2 also not deposed regarding the registration particulars of the Yamaha driven by the deceased Dinesh. The Ex.P3 is the motor vehicle inspection report of the first respondent vehicle and wherein some damages were noted by the Motor Vehicle Inspector. The claimants not produced the Yamaha two wheeler driven by deceased Dinesh for inspection of M.V.I. There was no reason from the claimants that why the Yamaha two wheeler was not produced for the motor vehicle inspection. There was no evidence to show whether actually the Yamaha two wheeler sustained any damages out of the accident. The nature of damages will be helpful to ascertain the manner of the accident to some extent. In this case, the claimants not taken any effective steps to produce the Yamaha two wheeler before the Motor Vehicle Inspector for inspection and produce the report before this Court. The Ex.P7 is the driving license of the deceased Dinesh. He has been licensed to drive light motor vehicle transport and non passenger vehicles. As per Ex.P7 driving license, he has not been licensed to



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drive the two wheeler with gear or without gear. The perusal of the Ex.P7 clearly shows the deceased contention of the 2nd respondent that the deceased Dinesh drove the vehicle in a rash and negligent manner and dashed against the 1st respondent's Mini Lorry is a believable one. Considering all the circumstances, this Court decided the claimants not proved the accident was caused by the rash and negligent driving of the 1st respondent's driver."

7.This Court, on considering the evidence and the reasoning given by the Tribunal substantially agree with the order of the Tribunal, except exonerating the Insurance Company in toto, for want of proof regarding the motor cycle involved in the accident and for want of proper driving license by the Mini Lorry Driver. From the evidence particularly, the F.I.R and the Post Mortem Report, it is evident the victims died in the motor accident. No doubt, there is no particular furnished by the claimants regarding the Yamaha Motor cycle in which the deceased Dinesh and the deceased Raghu travelled. No evidence to show that the two wheeler rider and the pillion rider were wearing helmet. The driving license of Dinesh, rider of the motor cycle is only LMV license but no license to drive motor cycle with gear or without gear. Similarly, Ex.X2, the driving license of the Mini Lorry Driver, Karthi indicates that he had valid driving license to drive LMV transport and not Mini Lorry, which falls under the category HMV. Being an accident, where two vehicles were involved, the dependents of the deceased cannot be deprived of compensation. Hence, the judgment of the Tribunal is set aside and the following compensation is awarded for the claimants in MCOP No.102 of 2013/ appellants in CMA 2440 of 2017:

Compensation under Various Heads	Award passed by this Court
Loss of income (4500+1800)X3/4X14X12	Rs.7,93,800/-
Loss of Consortium to the wife of the deceased	Rs. 40,000/-
Loss of love and affection to children (20,000X4)	Rs. 80,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.9,28,800/-



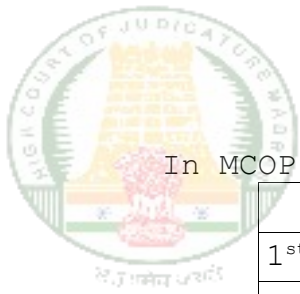
8. For the contributory negligence for not having a valid driving license and for not providing the particulars of the alleged Yamaha vehicle, 50% compensation has to be deducted. Thus, after deducting 50%, a sum of Rs.4,64,400/- with interest at 7.5% p.a. from the date of petition till the date of realisation is awarded as compensation payable by the Insurance Company. Thereafter, the Insurance Company shall recover the said amount from the Mini Lorry vehicle owner, since she has allowed a person to drive the Mini Lorry without proper and valid driving license.

9. The following compensation is awarded for the claimants in MCOP No.144 of 2013/appellants in CMA 2441 of 2017:

Compensation under Various Heads	Award passed by this Court
Loss of income (4500+1800)X3/4X15X12	Rs.8,50,500/-
Loss of Consortium to the wife of the deceased	Rs. 40,000/-
Loss of love and affection to children and parents (20,000X4)	Rs. 80,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.9,85,500/-

10. For the contributory negligence for not having a valid driving license and for not providing particulars of the alleged Yamaha vehicle, 50% of compensation has to be deducted. Thus, after deducting 50%, a sum of Rs.4,92,750/- with interest at 7.5% p.a. from the date of petition till the date of realisation is awarded as compensation payable by the Insurance Company. Thereafter, the Insurance Company shall recover the said amount from the Mini Lorry vehicle owner, since she has allowed a person to drive the Mini Lorry without proper and valid driving license.

11. The above compensation awarded in both cases shall be deposited by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to apportion the award as below:



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In MCOP No.102 of 2013/ CMA 2440 of 2017:

Claimants	Apportionment of compensation
1 st Claimant/Wife	Rs.2,64,400/-
Claimants 2 to 5/sons	Rs.50,000/- each

In MCOP No.144 of 2013/ CMA 2441 of 2017:

Claimants	Apportionment of compensation
1 st Claimant/Wife	Rs.1,92,750/-
Claimants 2, 3/sons	Rs.75,000/- each
Claimants 4 and 5/parents	Rs. 75,000/- each

The claimants in both the cases are permitted to withdraw their respective share on appropriate application.

12. Accordingly, both the Civil Miscellaneous Appeals are partly allowed. No order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

vri
To

The Motor Accidents Claims Tribunal,
I Additional District and Sessions Court,
Vellore.

Copy to

The Record Keeper,
VR Section,
High Court, Madras - 104.

+2ccs to Mr.C.Prabakaran, Advocate, S.R.No.18383,18384
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.18371

CMA Nos.2440 and 2441 of 2017

RGN[co]
NSK 01/12/2021