



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.3 of 2011

and

M.P(MD)No.1 of 2011

I.Rajan ... Appellant/1st Respondent
vs.

1.Manikandan
2.Muthulakshmi

(Respondents 1 & 2 were declared
as major as per the order dated 08.03.2021)
... Respondents/Petitioners

3.The National Insurance Company,
Valliyoor,
Tirunelveli. ...2nd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award passed in M.C.O.P.No.156 of 2007, dated 21.07.2010 on the file of the Motor Accident Claims Tribunal (2nd Additional District Judge), Tirunelveli.

For Appellant : Mr.Jerin Mathew
for M.E.Ilango

For R1 & R2 : Dismissed vide order
dated 29.11.2017

For R3 : Mr.D.Rajkumar

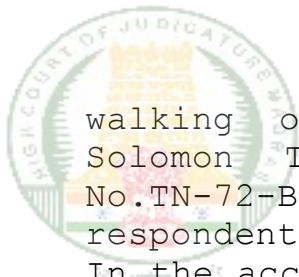
J U D G M E N T

This appeal by the owner of the vehicle challenging the award passed by the Motor Accident Claims Tribunal (II Additional District Judge (PCR), Tirunelveli in M.C.O.P.No.156 of 2007, dated 21.07.2010.

2. The facts in brief:-

The claimants are the minor children of the deceased Ramasamy. According to them, on 11.12.2005 at 4.30 p.m., the deceased was

<https://hcservices.ecourts.gov.in/hcservices/>



walking on the Parappadi-Pappankulam main road, near Doctor Solomon Thottam. At the time, a two-wheeler bearing registration No.TN-72-B-4897 owned by the appellant and insured with the second respondent came in a rash and negligent manner hit against him. In the accident, he sustained injury and immediately, he was taken to a nearby Dr.Solomon hospital and after providing first aid, he was shifted to Tirunelveli Medical College Hospital. Despite the effective treatment, he succumbed to the injuries on 14.12.2005. The claimants further stated that the deceased was 35 years on the date of accident and he was working as skilled labour and thereby he earned Rs.5,000/- per month and hence, they are entitled for compensation of Rs.5,00,000/-.

3. The claim petition was contested by the Insurance Company disputing the manner of accident and their liability. It is specifically stated that the vehicle was driven by a person, who was not having valid and effective driving licence and hence, no liability can be made on the Insurance Company.

4. Before the Tribunal on behalf of the claimants two witnesses were examined and 6 exhibits have been marked. The respondents examined 4 witnesses and marked 7 documents. After analysing the evidence adduced by the parties, the Tribunal came to the conclusion that the driving licence produced by the driver, who was examined as R.W.4 is a fake licence. Therefore, while awarding compensation of Rs.6,39,500/-, the Tribunal exonerated the insurance company and directed the owner of the vehicle to pay the compensation.

5. Heard Mr.Jerin Mathew, learned counsel for the appellant and Mr.D.Rajkumar, learned counsel appearing for the third respondent.

6. The learned counsel for the appellant would urge that the Tribunal erred in fastening the liability on the appellant on the ground that the driver of the vehicle did not have requisite licence since the vehicle had an insurance coverage on the date of accident. The Tribunal ought to have issued direction to the Insurance Company to pay and recover from the owner of the vehicle.

7. Per contra, learned counsel appearing for the third respondent placing the reliance on the decision of the Hon'ble Apex Court in **2020(2) TNMAC 445-SC (Beli Ram Vs. Rajinder Kumar)** would submit that if the vehicle is driven by a person, who was not having valid and effective licence, the owner of the offending vehicle has to pay the award amount and there is no illegality in the order of the Tribunal.



8. In the instant case, this appeal has been preferred by the owner of the offending vehicle challenging the award passed by the Tribunal. It is not in dispute that the claimants are the children of the deceased Ramasamy, who died in a motor vehicle accident that took place on 11.12.2005. The Tribunal taking note of the fact that the deceased died at the age of 35 years chose to award a compensation of Rs.6,39,500/-. The quantum is not seriously disputed by the appellant and the only grievance is that the Tribunal ought to have directed the Insurance Company to pay the award and thereafter, recover from the owner of the vehicle.

9. The issue involved in this appeal is no longer *res integra*, the Hon'ble Apex Court in the above cited case, has categorically held that when driving license is not renewed and accident has occurred after expiry of driving licence and the driver of the vehicle did not possess driving license, the Insurance Company is not liable to pay compensation.

10. The facts of this case reveal that the owner of the offending vehicle was guilty of negligence. In the sense that even though the driving licence got expired long back, he permitted the driver to drive the vehicle. So, in my view, the decision referred above would squarely apply to the case on hand. The contention of the learned counsel appearing for the appellant that the judgment of the Hon'ble Apex Court referred to above applies only to the claim made under the Workmen Compensation Act and not for the claim made under Motor Vehicles Act is without merits. The Hon'ble Apex Court in the said judgment has held that when the license is not renewed, it amounts to driver not possessing driving license and Insurance Company is not liable to pay compensation. The said principle applies not only for the claim made under the Workmen Compensation Act, but also for claim made under the Motor Vehicles Act. The same view was taken by this Court in C.M.A.Nos.3506 & 3507 of 2014, dated 18.11.2020. so I do not find any substance in the contention of the learned counsel for the appellant.

11. By this time, the claimants 2 & 3/Respondents 2 & 3 also should have become major and hence, the respondents 2 & 3 herein are *suo motu* declared as major.

12. In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. The appellant is directed to deposit the entire award amount, with accrued 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 order. On such deposit being made, the respondents 1 & 2/Claimants are permitted to withdraw the award amount as per the apportionment made by the



Tribunal by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Motor Accident Claims Tribunal
II Additional District Judge, Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

JUDGMENT MADE IN

C.M.A(MD) No.3 of 2011

08.03.2021

ac(CO)

TR(28.04.2021) 4P 4C