



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 21.12.2020

DATE ON WHICH PRONOUNCED : 06 .01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

C.M.A. (MD) .No.486 of 2011

in

MP(MD)No. 2 of 2011

WEB COPY

The Branch Manager,
The United India Insurance Co.Ltd.,
Seethalakshmi Complex,
Tirunagar, Madurai.

:Appellant /4th Respondent

Vs.

1.Lakshmi

2.Minor Packialakshmi

3.Minor Lavanya

4.Minor Jeyanthi : Respondents 1 to 4/Claimants

(Minor respondents 2 to 4 are represented by their mother and natural guardian first respondent herein)

5.S.R.Pandi

6.The Branch Manager,
National Insurance Company Ltd.,
6, West Masi Street, Madurai-1.

7.R.Bose

8.K.Jeya Bharathi

9.The Manager,
New India Assurance Company Ltd.,
53/1, Nehruji Road,
Theni.

: Respondents 5 to 9/

Respondents 1,2,3,5 and 6

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 28.07.2010 passed in MACOP.No.2547 of 2002 on the file of the Motor Accidents Claims Tribunal (3rd Additional District and Sessions Judge), (PCR), Madurai.

For Appellant : Mr.G.Prabhu Rajadurai for
Mr.I.Robert Chandrakumar



For R1 to R4 : Mr.M.A.Sethuraman (**R1 Expired**)
For R5 : No Appearance
For R6 : Mr.S.Mathiyalagan
For R7 : No Appearance
For R8 : Ex-parte
For R9 : Mr.D.Sivaraman

JUDGMENT

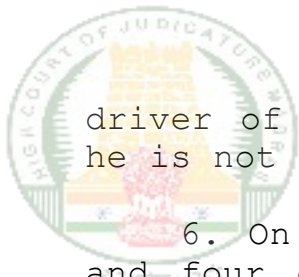
This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 28.07.2010 passed in MACOP.No.2547 of 2002 on the file of the Motor Accidents Claims Tribunal (3rd Additional District and Sessions Judge), (PCR), Madurai.

2.The case of the claimant before the Tribunal is that on 05.03.2002, at about 04.00 a.m, the deceased Ravi was travelling in the lorry bearing Registration No.TNL-6639 from Renganathapuram to Madurai, when the lorry was nearing the place of occurrence, the Tractor bearing Registration No.TN-58-B-0552 fitted with its Trailor bearing Registration No. TN-558-B-6983, came in the opposite direction, driven by its driver in a rash and negligent manner, the iron angles of the Trailor, pulled the deceased from the lorry and the deceased died on the spot. In respective of occurrence, a case in Crime No.53 of 2002 was registered on the file of the Usilampatti Taluk Police Station.

3. The deceased was aged about 35 at the time of occurrence and earning a sum of Rs.3,000/- by doing agriculture work. Since the accident took place due to the rash and negligent driving on the part of the respondent's vehicle, claiming a compensation amount of Rs.3 lakhs, they approached the Tribunal.

4. The case of the 2nd respondent before the Tribunal is that the accident took place due rash and negligent driving on the part of the lorry driver. So, the driver of the lorry, the insurer and the insured are necessary parties. The Trailor of the Tractor was not insured and the driver of the Tractor was not also having valid driving license. So, the respondent is not liable to pay compensation.

5. The case of the 4th respondent before the Tribunal is that the accident took place only due to the rash and negligent driving on the part of the lorry driver. The deceased and other persons were travelling as unauthorised passengers in the lorry. The



driver of the Tractor was not owning proper driving license. So, he is not liable to pay compensation.

6. On the side of the claimants, two witnesses were examined and four documents marked. On the side of the respondents, two witnesses were examined and two documents marked.

7. At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the driver of the Tractor and directed the Insurance Company to pay a sum of Rs.4,64,000/- with interest and cost and recover the same from the owner of the Tractor. Against which, the present appeal has been preferred.

8. The 4th respondent before the Tribunal, who is the appellant herein, mainly contended that since the Trailor was not insured on the date of occurrence, the Tribunal ought to have directed the respondents 5 and 6 to pay compensation and also the other grounds that pay and recovery ought not to have been ordered.

9. With regard to the contention of the appellant that pay and recovery ought not to have been ordered is not well placed, since when ever there is a policy violation, the insurer has to take the responsibility of paying the award amount to the claimants and recover the same from the owner. So, the first contention was not strongly argued at the time of appeal. So, that apart of the order of the Tribunal is liable to be confirmed.

10. Another point that was raised is that Trailor is also involved in the occurrence, only the Trailor's hook, pulled the person, who was travelling in the lorry. Since a Tractor is fitted with Trailor, the Trailor is not liable to be insured separately. In support of above said contention, the judgment in **Gunti Devaiah and others Vs Vaka Peddi Reddy and others 2004 ACJ 1881**, was also relied upon by the respondent before the Tribunal to the effect that the the Trailor is not necessarily to be insured separately as it is not a motor vehicle, but, only a vehicle. No contra opinion, has been placed before this Court by either of the parties.

11. The contention on the part of the contesting respondent before the Tribunal that since the Trailor is also involved in the occurrence, the owner of the Tractor is not responsible cannot be accepted. R.W.1 and R.W.2 were examined before the Tribunal had deposed that the driver of the Tractor was not having proper and valid driving license at the time of the occurrence.

12. R.W.2, who is attached to Regional Transport Office South, Madurai, would say that the driver of the Tractor was owning



driving license from 06.03.2002 to 05.03.2005 and whether he was owning any driving license before 06.03.2002, no document is available. He would also say that there was no possibility for the driver to obtain renewal from any other Regional Transport Office. A suggestion was made by him that since no penalty was paid for the renewal from 06.03.2002 to 05.03.2005, it was possible that the he was owning license on 05.03.2002 itself. But, it has been denied by R.W.2. So, from the evidence of R.W.2, it is seen that on the date of the accident, i.e., 05.03.2002, the driver was not owning proper license. When that being so, the order of the Tribunal, directing the Insurance Company to pay the compensation on behalf of the insured and recover the same from the owner cannot be interfered.

13. Regarding the quantum, the Tribunal fixed the same at Rs.4,64,000/- by taking into account the monthly income and age of the deceased. Regarding the quantum, no arguments was advanced at the time of the appeal. Perusal of the award also shows that the quantum fixed by the Tribunal by taking into account the monthly probable income and age, appears to be fair and reasonable. So, I find no reason to interfere in the quantum also.

14. In the result, the appeal fails. The order of the Motor Accidents Claims Tribunal (3rd Additional District and Sessions Judge), (PCR), Madurai in MACOP.No.2547 of 2002 dated 28.07.2010, is confirmed.

15. Accordingly this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16. It is submitted on behalf of the appellant that the entire award amount was already deposited by the appellant. If it is so, the Tribunal may permit the claimants to withdraw their respective share amount except the minors as per its ratio and if the minors have attain majority by this time, they can move proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



dss

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

The 3rd Additional District and Sessions Judge,
(PCR), Motor Accidents Claims Tribunal
Madurai.

Copy to

The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-481[F] dated 07/01/2021)

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-496[F] dated 07/01/2021)

Judgment made in
C.M.A. (MD) .No.486 of 2011
in
MP (MD) No. 2 of 2011
06 .01.2021

KM (04.02.2021) 5P 6C