



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.10.2021

Delivered on : 14.12.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

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C.M.A(MD) No.688 of 2014

1.Naina Mohammed
2.Seyadu Buhari
3.Abdul Samath
4.Seyadue Ali Fathima

... Appellants / Petitioners

Vs.

1.Peer Mydeen
2.ICICI Lombard General Insurance Ltd.,
through its Branch Manager,
ICICI Bank Towers,
Bandra Kurla Complex,
Mumbai - 400 061.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the judgment and decree, dated 13.11.2009, in M.C.O.P.No.47 of 2008 on the file of the Motor Accidents Claims Tribunal, - 1st Additional District Judge, Tirunelveli.

For Appellants	: Mr.G.Venugopal
For R1	: Mr.D.Venkatesh
For R2	: Mr.K.K.Ramakrishnan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 13.11.2009, passed in M.C.O.P.No.47 of 2008 on the file of the Motor Accidents Claims Tribunal - 1st Additional District Judge, Tirunelveli.

2.The appellants herein are the claimants and the respondents herein are the respondents in the original claim petition.

3.Brief substance of the petition, in M.C.O.P.No.47 of 2008, is as follows:-

On 10.11.2007, at about 03.45 p.m., when the deceased - Mytheen Fathu was travelling in an Auto bearing Registration No.TN-72-AA-4521 that belonged to the first respondent insured with the second respondent, along the Palayamkottai - Ambai main road, the driver of the Auto drove the vehicle in a rash and negligent manner and the Auto capsized on the southern side of the road. The victim sustained injuries and she was taken to Galaxy Hospital and



succumbed to the injuries in the hospital on the same day. The deceased was doing Mat Knitting works and was earning Rs.3,000/- per month, she was aged about 42 years, at the time of accident and the petitioners are her dependents and they claimed a sum of Rs.5,00,000/- as compensation.

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4. Brief substance of the counter filed by the second respondent in M.C.O.P.No.47 of 2008 is as follows:-

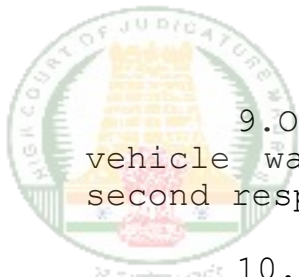
The Auto was driven by one Sikkanthar, who did not have a valid driving licence, to drive the vehicle. There was no endorsement in the driving licence of the driver of the vehicle. The first respondent has permitted the driver to drive the passenger vehicle. The amount claimed is too high.

5. The first respondent was set exparte. On the side of the petitioners, two witnesses were examined and six documents were marked. On the side of the respondents, two witnesses were examined and four documents were marked. After considering both sides, the Tribunal awarded a sum of Rs.2,27,000/- as compensation to be paid by the first respondent. Against the award, the claimants / appellants have approached this Court by way of Appeal, for enhancement.

6. On the side of the appellants, it is stated that the Tribunal ought to have fixed the liability on the Insurance Company. The first respondent driver had a valid driving licence to drive the light motor vehicle and hence, the second respondent is also liable to pay compensation. Technical breach of condition concerning driving licence will not be allowed to avoid the liability of the Insurance Company. The petitioners are third parties to the Insurance Company and the Insurance Company may pay the compensation and collect the same from the owner. Under Section 149 (2), the nonavailability of badge in the driving licence, cannot be a ground to deny the statutory liability of the Insurance Company to the third party claims.

7. On the side of the appellants, it is stated that now the law is well settled and that endorsement in the driving licence is not necessary. Judgments of the Hon'ble Supreme Court reported in **2017-2-TNMAC-145(SC) (Mukund Dewangan V. Oriental Insurance Company Ltd.,)** , 2004 (3) SCC-297 (**National Insurance Company Vs. Swarnam Singh and others**) and **2014-2-TNMAC-666** are cited.

8. On the side of the appellants, it is further stated that the Tribunal has applied multiplier '8' for assessing the loss of income. The appellants claimed that multiplier '15' is to be applied for assessing the loss of income. Judgments of the Hon'ble Supreme Court reported in **2017-2-TNMAC-609 (SC)** and **2020-2-TNMAC - 372 (SC)** are cited.



9. On the side of the first respondent, it is stated that the vehicle was properly insured with the second respondent and the second respondent alone is liable to pay compensation.

10. On the side of the second respondent, it is stated that there is no liability for the Insurance Company to indemnify the owner. The award is only against the first respondent and the claim of the appellant is only Rs.1,00,000/- in the Appeal.

11. Ex.P1/F.I.R and Ex.P4/charge sheet are against the driver of the Auto. Hence, it is decided that the accident is due to the rash and negligent driving of the Auto driver. Ex.R1 reveals that the Insurance policy was in force, at the time of accident. Only because there is no endorsement in the driving licence of the driver of the Auto, the Tribunal has fixed the liability only on the first respondent and exonerated the second respondent. Now, the law is well settled, endorsement in the driving licence is not necessary to drive weighing below 7,500 Kgs. Hence, it is decided that the **second respondent is also liable to pay compensation** to the appellants.

12. The claim of the appellants is that the deceased was doing Mat Knitting work and was earning Rs.3,000/- per month. The accident took place in the year 2007 and the notional income fixed by the Tribunal is reasonable. The Tribunal has deducted 1/3rd towards personal expenses. After deducting 1/3rd, the deceased might have contributed Rs.2,000/- per month for the family. Based on the age of the claimant, the Tribunal has come to the conclusion that multiplier '8' is applicable. But, Multiplier has to be applied only on the basis of the age of the deceased and not on the age of the claimants. The age of the deceased at the time of accident is 42 years, hence, multiplier '14' is applicable. Hence, a sum of Rs.3,36,000/- (Rs.2,000/- X 12 X 14 = Rs.3,36,000/-) is awarded towards loss of income. In addition, Rs.70,000/- is awarded towards conventional charges, as per **Pranay Sethi's** case. In total, the appellants / claimants are entitled to Rs.4,06,000/- as compensation. In the result, this Civil Miscellaneous Appeal is partly allowed and the award dated 13.11.2009, passed in M.C.O.P.No.47 of 2008 on the file of the Motor Accidents Claims Tribunal - 1st Additional District Judge, Tirunelveli, is hereby modified and the award is enhanced from **Rs.2,27,000/- to Rs.4,06,000/-**.

13. The second respondent herein is directed to deposit the entire compensation of **Rs.4,06,000/-** along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited. On such deposit being made, **the first appellant is entitled to a share of Rs.2,56,000/- and the appellants 2 to 4 are**



entitled to a share of Rs.50,000/- each with proportionate interest and cost. The appellants are permitted to withdraw their respective amount, after deducting the amount, if any, already received by them. The Claimants are not entitled for interest for the default period if there is any default. No costs.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

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 Accidents Claims Tribunal,
- 1st Additional District Judge,
Tirunelveli.

2.The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-38734[F] dated 15/12/2021)

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-38706[F] dated 14/12/2021)

C.M.A(MD) No.688 of 2014
14.12.2021

DJ(CO)

KB(11.02.2022) 4P 6C