



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.745 of 2017

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The Branch Manager,
M/s.Reliance General Insurance Company Limited,
No.10/4/4, 2nd Floor, Thaha Plaza,
South Bypass Road,
Vannarpettai, Tirunelveli. : Appellant/2nd Respondent

Vs.

1.Manimegalai
2.Subburaj
3.Gokiladevi
4.Minor Sankarkumar : R1 to R4/Petitioners
(The Minor 4th Respondent is represented
through his mother, guardian and
next friend the first respondent herein)
5.G.Deivindra Gani : R5/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 29.06.2016 made in MCOP No.120 of 2013 on the file of Motor Accident Claims Tribunal (Subordinate Court), Aruppukottai.

For Appellant : Mr.V.Sakthivel
For R1 to R4 : Mr.S.J.Chakkaravarthy
For 5th Respondent : No appearance

JUDGMENT

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (Sub Court), Aruppukkottai, in MCOP No.120 of 2013, dated 29.06.2016.

2.The short facts of the case is that on 16.03.2010 at about 6.30 pm, when the deceased Murugesan was riding his motor cycle TVS MAX-100 TN-69-Y-9477 on Pandalkudi-Velauthapuram Road near Pandalkudi Bypass road, the Tipper Lorry TN-69-E-4525 came in a rash and negligent manner and hit against the motor cycle. In that process, the deceased sustained grievous injuries all over the body and died on the spot. The legal heirs of the deceased Murugesan filed a claim petition seeking compensation of Rs.20,00,000/- on the ground that the driver of the Tipper Lorry was responsible for the accident.

3.The claimants have stated that at the time of accident, the deceased was 43 years and he was doing Agricultural work and
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Contractor in the Pudur Municipal Union and he was earning Rs.30,000/- per month. A criminal case in Crime No.52 of 2010 was registered against the driver of the Tipper Lorry by Pandalkudi Police.

4.The claim was opposed by the appellant Insurance Company disputing the manner of accident and their liability to pay compensation.

5.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Tipper Lorry was responsible for the accident and awarded compensation of Rs.15,12,000/- with interest @ 7.5% p.a. Challenging the award of the tribunal, the Insurance Company is before this court as appellant.

6.Heard both sides and perused the materials available on record.

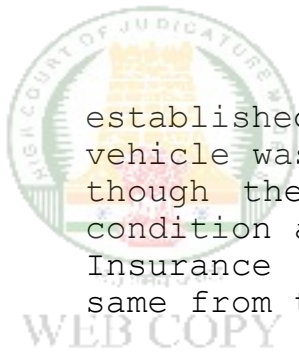
7.The dispute is with regard to liability. The learned counsel appearing for the appellant Insurance Company argued that the tribunal ought to have exonerated the appellant from the liability on the ground of contributory negligence on the part of the deceased and the terms and conditions of the insurance policy of the appellant is vitiated and the driver of the tipper lorry was not having driving licence to drive the vehicle at the time of accident and the owner of the vehicle has violated the terms and conditions of the insurance policy and prays that the Civil Miscellaneous Appeal has to be allowed.

8.On the other hand, the learned counsel for the respondents 1 to 4/claimant submitted that the award is reasonable, which does not warrant any interference of this court.

9.The specific case of the appellant Insurance Company is that the driver of the vehicle did not have a valid driving licence on the date of the accident. The oral evidence of RW2 and Ex.X8 would show that the driver of the vehicle was not possessing valid driving licence with badge endorsement. The tribunal, without accepting the case of the appellant Insurance Company held that the driver was having valid driving licence on the date of the accident, but there was no badge endorsement.

10.It is settled law that the transport vehicle should contain badge endorsement. On perusal of Ex.X8, it reveals that there was no badge endorsement to drive the vehicle. Hence, without badge endorsement, the driver should not drive the lorry and it amounts to violation of policy condition.

11.In the instant case, as rightly contended by the learned counsel appearing for the appellant, the Insurance company has



established before the Tribunal that the driver of the offending vehicle was not having valid driving licence. It is settled law that though the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance company has to first satisfy the award and recover the same from the owner the vehicle.

12.In view of that, the Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the entire award amount of the tribunal together with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the respondents 1 to 3/claimants 1 to 3 are permitted to withdraw the award amount as per the apportionment of the tribunal together with accrued interest and costs without filing any formal petition before the Tribunal. The share of the minor 4th respondent/minor 4th claimant is directed to deposit in any one of the Nationalized Bank, in a fixed deposit scheme initially for a period of three years renewable thereafter, till he attains majority. The 1st respondent/1st claimant being the mother and guardian of the minor claimant shall withdraw the accrued interest once in three months directly from the Bank for the welfare of the minor. The Appellant Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Hon'ble Supreme Court in **Nanjappan's case [(2004)13 SCC 224]**. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Motor Accidents Claims Tribunal/
Sub Court, Aruppukottai.

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The Record Keeper, V.R Section,
Madurai Bench of Madras High Court, Madurai(2 copies)

+1 CC to M/s.S.J.CHAKKARA VARTHY, Advocate (SR-3710[F] dated 08/02/2021)

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TR(05.07.2021) 3P 5C

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