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C.M.A.Nos.612 and 613 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

AND

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.Nos.612 & 613 of 2022
and C.M.P.Nos.4371 & 4379 of 2022
and C.M.P.Nos.12162 & 12167 of 2022

1.Perumal

2.Gengamuthu

.. Appellants in
both the appeals

Vs.

1.Vimal Kumar

2.Cholamandalam Ms.General Insurance
Company Limited

No.1, Rashmi Towers, II floor
Village Road

Nungambakkam, Chennai-34.

.. Respondents in C.M.A.No.612/2022

1.Subramani

2.Krishnaveni

3.Suganya



C.M.A.Nos.612 and 613 of 2022

4.Cholamandalam Ms.General Insurance
Company Limited

No.1, Rashmi Towers, II floor
Village Road

Nungambakkam, Chennai-34. .. Respondents in C.M.A.No.613/2022

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 20.10.2021 made in M.C.O.P.Nos.35 of 2018 and 50 of 2014 on the file of Motor Accident Claims Tribunal, II Additional District Court, Villupuram @ Tindivanam.

In C.M.A.No.612 of 2022

For Appellants : Mr.S.Rajaraman

For R1 : Mr.N.Suresh

For R2 : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

In C.M.A.No.613 of 2022

For Appellants : Mr.S.Rajaraman

For R1 to R3 : Mr.N.Suresh

For R4 : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

These Civil Miscellaneous Appeals have been filed by the owner and driver of the vehicle against the common award dated 20.10.2021



made in M.C.O.P.Nos.35 of 2018 and 50 of 2014 on the file of Motor Accident Claims Tribunal, II Additional District Court, Villupuram @ Tindivanam.

2.Both the appeals are arising out of the common award and same accident and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their respective ranks in the claim petitions for the sake of convenience.

4.The appellants are the respondents 1 and 3 in M.C.O.P.Nos.35 of 2018 and 50 of 2014 (earlier M.C.O.P.Nos.27 of 2014 and 521 of 2013 on the file of the Sub Court, Tindivanam) on the file of Motor Accident Claims Tribunal, II Additional District Court, Villupuram @ Tindivanam. The claimant in M.C.O.P.No.35 of 2018 filed the said claim petition claiming a sum of Rs.75,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.02.2013. The claimants in M.C.O.P.No.50 of 2014 filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Sundar Raj @ Sundar Rajan, who died in the accident that took place on 23.02.2013.



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5. According to the claimants, on the date of accident i.e., on 23.02.2013 at about 15.50 hours, while the deceased Sundar Rajan was riding his motorcycle bearing Registration No.PY-01-AB-7351 along with his friend Vimal Kumar as a pillion rider (the claimant in M.C.O.P.No.35 of 2018), on the extreme left side of Vikkravandi to Pombur Road, near Aathikuppam Colony bus stop, the 3rd respondent, driver of the Tractor with tipper bearing Registration No.TN-49U-5568 drove the same in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the accident, the said Sundar Rajan, died on the spot and the pillion rider Vimal Kumar, sustained grievous injuries on his head and lost his vision in both eyes. Therefore, the claimants filed the above said claim petitions claiming compensation against the respondents, owner, insurer and driver of the Tractor respectively.

6. The respondents 1 and 3, owner and driver of the Tractor with tipper filed counter statement denying the averments made in the claim petitions and stated that the accident has occurred only due to rash and negligent riding of motorcycle by the deceased Sundar Rajan. On the



date of accident, the 3rd respondent was driving the Tractor along with trailer in a proper manner at Sinthamani – Pombur Road and was turning the above the vehicle to go to Aathikuppam Colony road with proper indication and signal. At that time, the rider of the motorcycle, the deceased Sundar Rajan, rode the motorcycle at high speed, dashed against the Tractor with tipper and invited the accident. The rider of the motorcycle alone was responsible for the accident and therefore, the respondents are not liable to pay any compensation to the claimants in both the M.C.O.Ps. and prayed for dismissal of the claim petitions.

7.The 2nd respondent/Insurance Company being insurer of the Tractor with tipper filed counter statement denying the averments made in the claim petitions and stated that the driver of the Tractor drove the same at normal speed at the time of accident. The Tractor involved in the alleged accident is a Light Motor Vehicle as per Column No.1 of the Registration Certificate and at the time of accident, the Tractor was attached with unregistered tipper. Therefore, the driver of the Tractor should have a specific badge endorsement in driving license. The driver of the Tractor did not possess valid driving license at the time of accident. Further, the 2nd respondent also denied that the 3rd respondent,



driver of Tractor had valid Fitness Certificate and permit on the date of accident. Therefore, the 2nd respondent is not liable to pay any compensation to the claimants. In any event, the compensation claimed by the claimants are excessive and prayed for dismissal of the claim petitions.

8.Before the Tribunal, in M.C.O.P.No.35 of 2018, one Sumathi, mother of the claimant was examined as P.W.1, claimant Vimal Kumar examined himself as P.W.2 and Dr.Tharanivel was examined as P.W.3 and 20 documents were marked as Exs.P1 to P20. The disability certificate issued by the Medical Board was marked as Court document, Ex.C1. In M.C.O.P.No.50 of 2014, the 1st claimant, father of the deceased was examined as P.W.1, one Sathiyamoorthy, eye-witness to the accident was examined as P.W.2, one Ramanujam was examined as P.W.3 and 7 documents were marked as Exs.P1 to P7. On the side of the respondents, the respondents 1 and 3, owner and driver of the Tractor were examined as R.W.1 and R.W.2, copies of F.I.R. and driving license of 3rd respondent were marked as Exs.R1 and R2.



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9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 3rd respondent, driver of the Tractor with tipper belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Tractor to pay a sum of Rs.20,51,570/- and Rs.11,42,800/- as compensation to the claimants in both M.C.O.P.Nos.35 of 2018 and 50 of 2014 respectively, at the first instance and recover the same from the 1st respondent, owner of the Tractor.

10.Challenging the negligence and liability fastened on them in the said common award dated 20.10.2021 made in M.C.O.P.Nos.35 of 2018 and 50 of 2014, the respondents 1 and 3, owner and driver of the Tractor, have come out with the present appeals.

11.The learned counsel appearing for the respondents 1 and 3 contended that on the date of accident, while the 3rd respondent, driver of Tractor attached with tipper was driving the same very slowly, turning towards South in Aathikuppam Road to reach the land of the 1st respondent, showing his right hand as a signal, the deceased Sundar Rajan drove the motorcycle from East to West in a rash and negligent



manner, dashed against the tipper as the Tractor had already completed turning towards South in Aathikuppam Road and invited the accident.

The Tribunal failed to see the above facts found in F.I.R. also. Had the deceased Sundar Rajan driven the motorcycle with caution, the accident would not have occurred. The Tribunal ought to have fixed contributory negligence on the part of the deceased Sundar Rajan.

11(i).The learned counsel further contended that at the time of accident, the 3rd respondent, driver of the Tractor was having driving license to drive Light Motor Vehicle and badge to drive transport vehicle. Driving license was valid up to 14.11.2003 and on the date of accident i.e., on 23.02.2013, the driver possessed valid driving license. The driving license was marked as Ex.R2. The respondents 1 and 3/appellants herein filed C.M.P.Nos.12162 and 12167 of 2022 to permit them to produce the driving license of 3rd respondent, which was issued by Assistant Licensing Authority, Tindivanam [U.O.] and TN 16 Tindivanam R.T.O., on 16.10.2000, which are valid up to 15.10.2020 & 21.06.2032 and mark them as additional documents, Exs.R3 and R4. Therefore, prayed for allowing the C.M.Ps. and appeals by setting aside the award of the Tribunal ordering pay and recovery.



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12.The learned counsel appearing for the 2nd respondent/Insurance Company contended that at the time of accident, the Tractor belonging to the 1st respondent was attached with unregistered tipper and the 3rd respondent, driver of Tractor did not possess valid driving license. As per Ex.R2, the driving license of the 3rd respondent was valid only up to 14.11.2003. The Tribunal considering the above facts, ordered pay and recovery and prayed for dismissal of the appeals.

13.Heard the learned counsel appearing for the claimants as well as the respondents and perused the entire materials on record.

14.It is the case of the claimants that on the date of accident i.e., on 23.02.2013 at about 15.50 hours, while the deceased Sundar Rajan was riding his motorcycle bearing Registration No.PY-01-AB-7351 along with his friend Vimal Kumar as a pillion rider (the claimant in M.C.O.P.No.35 of 2018), on the extreme left side of Vikkravandi to Pombur Road, near Aathikuppam Colony bus stop, the 3rd respondent, driver of the Tractor with tipper bearing Registration No.TN-49U-5568 drove the same in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the accident, the rider of the



motorcycle Sundar Rajan, died on the spot and the pillion rider Vimal Kumar, sustained grievous injuries on his head and lost his vision in both eyes. To substantiate their case, the claimants examined one Sathiyamoorthy, eye-witness to the accident as P.W.2, who deposed that the accident has occurred only due to rash and negligent driving by the 3rd respondent, driver of the Tractor belonging to the 1st respondent and marked the F.I.R. as Ex.P1. On the other hand, the respondents contended that the deceased Sundar Rajan alone was responsible for the accident. They have examined both the respondents 1 and 2, who are owner and driver of the Tractor as R.W.1 and R.W.2 and marked copies of F.I.R. and driving license of 3rd respondent as Exs.R1 and R2. Though the 2nd respondent examined both the owner and driver of the tractor as R.W.1 and R.W.2, who are interested witnesses, they have not examined any independent witness to prove their contention. The Tribunal considering the evidence of P.W.2, an independent eye-witness, contents of Ex.P1/F.I.R and failure on the part of the respondents to adduce any independent evidence, held that the accident has occurred only due to rash and negligent driving by the 3rd respondent, driver of the Tractor belonging to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.



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15.As far as fixing liability on the respondents 1 and 3 is concerned, the respondents have marked the driving license of the 3rd respondent as Ex.R2. The Tribunal considering Ex.R2 held that the driver of the Tractor was having driving license to drive Light Motor Vehicle and badge to drive transport vehicle, the same is valid only up to 14.11.2003 and the respondents 1 and 3 have not filed new driving license of the 3rd respondent. The Tribunal also considering Ex.P2/Motor Vehicle Inspector's Report, held that the trailer attached to Tractor is unregistered, the accident has occurred on 23.02.2013 and on that date, the driver of the Tractor did not possess driving license, which is in violation of policy condition and ordered pay and recovery.

16.When the appeals are taken up for hearing, the learned counsel appearing for the respondents 1 and 3 contended that the 3rd respondent, driver of the Tractor lost his original driving license issued to him by the Assistant Licensing Authority, Tindivanam [U.O.], dated 16.10.2000, which was valid upto 15.10.2020. The 3rd respondent has also applied



duplicate of the said license in the R.T.O., Tindivanam. The TN 16 Tindivanam, R.T.O., issued driving license, which is valid up to 21.06.2032. The date of issue is given as 16.10.2000. This original driving license was produced by the respondents 1 and 3 before this Court along with memo dated 24.06.2022. Xerox copy of the driving license dated 16.10.2000, was also filed in this Court. Therefore, the respondents 1 and 3 filed C.M.P.Nos.12162 and 12167 of 2022 to permit them to produce the driving license of 3rd respondent, which was issued by Assistant Licensing Authority, Tindivanam [U.O.] and TN 16 Tindivanam R.T.O., on 16.10.2000, which are valid up to 15.10.2020 & 21.06.2032 and mark them as additional documents, Exs.R3 and R4 respectively. Perusal of driving license reveals that its number is F/TN/32Y/002392/2000, issued by Assistant Licensing Authority, Tindivanam [U.O.] to A.Gangamuthu, date of Issue:16.10.2000, valid till 15.10.2020. D.L.No.TN32Y20000002392, issued by TN16 Tindivanam R.T.O. to A.Gangamuthu, date of Issue, 16.10.2000, valid till 21.06.2032. It is the case of the respondents 1 and 3 that the driving license issued to the 3rd respondent in the year 2010, valid up to 15.10.2020 was lost and therefore, they could not produce the same before the Tribunal. Now they have obtained duplicate copy and filed along with C.M.Ps. Being



satisfied with the reasons given in the affidavits filed in support of the C.M.Ps., both the C.M.P.Nos.12162 and 12167 of 2022 are allowed and the said documents are marked as Exs.R3 and R4. As per Exs.R3 and R4, it is proved that on the date of accident, the 3rd respondent, driver of Tractor was having valid driving license to drive the vehicle. Considering the above materials, especially no evidence was let in on behalf of the 2nd respondent to prove that the driver of the vehicle did not possess driving license and now the respondents 1 and 3 filed xerox copies of the driving license along with the present C.M.Ps., the portion of the award passed by the Tribunal directing the 2nd respondent/Insurance Company to pay the compensation to the claimants at the first instance and recover the same from the 1st respondent is liable to be set aside and is hereby set aside. The 2nd respondent has not denied that the vehicle belonging to the 1st respondent was insured with them. In view of the same, the 2nd respondent/Insurance Company is liable to pay compensation to the claimants.

17. In the result, both the Civil Miscellaneous Appeals are allowed by setting aside the portion of the award directing the 2nd



respondent/Insurance Company to pay compensation to the claimants at the first instance and recover the same from the 1st respondent. The compensation of Rs.20,51,570/- and Rs.11,42,800/- awarded by the Tribunal along with interest and cost, to the claimants in both M.C.O.P.Nos.35 of 2018 and 50 of 2014 respectively, are confirmed. The 2nd respondent/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. The learned counsel appearing for the 2nd respondent submitted that they have already deposited the entire amount awarded by the Tribunal. The claimant in M.C.O.P.No.35 of 2018 is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. The claimants in M.C.O.P.No.50 of 2014 are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The learned counsel appearing for the respondents 1 and 3 submitted that they have deposited Rs.25,000/- each in both the appeals. The respondents 1 and 3 are permitted to withdraw the amount, if any, deposited by them, lying in the deposit to the credit of



C.M.A.Nos.612 and 613 of 2022

M.C.O.P.Nos.35 of 2018 and 50 of 2014 on the file of Motor Accident Claims Tribunal, II Additional District Court, Villupuram @ Tindivanam.

Consequently, connected C.M.P.Nos.4371 and 4379 of 2022 are closed.

No costs.

(V.M.V., J) (S.S., J)
29.07.2022
(½)

Exhibits marked in Appellants' side:

Exhibit R3 : Xerox copy of Driving License D.L.No.F/TN/32Y/002392/2000 issued by the Assistant Licensing Authority, Tindivanam [U.O.] to A.Gangamuthu, date of issue : 16.10.2000, Valid till 15.10.2020.

Exhibit R4 : Xerox copy of Driving License D.L.No.TN32Y20000002392 issued by TN 16 Tindivanam RTO to A.Gangamuthu, date of issue : 16.10.2000, Valid till 21.06.2032.

Index : Yes / No

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C.M.A.Nos.612 and 613 of 2022

V.M.VELUMANI, J.

and

S.SOUNTHAR, J.

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To

1.The II Additional District Judge
Motor Accident Claims Tribunal
Villupuram @ Tindivanam.

2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.Nos.612 and 613 of 2022
and C.M.P.Nos.4371 and 4379 of 2022

29.07.2022

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