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C.M.A.No.3317 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3317 of 2019

1.Tamilarasi
2.Minor Dineshkumar
Rep.by his mother NG Mrs.Tamilarasi
3.Mrs.Pushpa ... Appellants

vs.

1.Mohamed Aslam
2.United India Insurance Co.Ltd.,
Divisional office No.011500,
Tarapore towers, 7th Floor,
No.826, Anna Salai, Chennai - 600 002.
3. R.Saravanan ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.2328 of 2011, dated 03.06.2016, on the file of the Motor Accidents Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For Appellants : Mr.K.Varatha Kamaraj
For Mr.A.C.Kumaragurubaran

For R1 : vacated
For R2 :Mrs.R.Rathna Thara



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For R3

:No appearance

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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree made in M.C.O.P.No.2328 of 2011, dated 03.06.2016, on the file of the Motor Accidents Claims Tribunal/learned III Judge, Court of Small Causes, Chennai.

2. The claim Petitioners are the appellants herein.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. The first claim Petitioner/wife of the deceased Saroja has filed M.C.O.P.No.2328 of 2011, seeking compensation for the death of her husband in a road accident occurred on 05.08.2009.

4. Before the tribunal, the 1st claim Petitioner was examined as P.W.1 and occurrence witness was examined as P.W.2 and Exs.P1 to P9 were marked on the side of the claim Petitioners and RW1 & RW2 were examined and Ex.R.1 to Ex.R.6 were marked on the side of the Respondents.

5. On consideration of both oral and documentary evidences, the tribunal has awarded a sum of Rs.14,00,000/- and also held that on the date of the accident, the driver of the offending vehicle did not possess any valid driving license, based upon the oral evidence of R.W.1 Junior Assistant



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attached to the R.T.O office and Ex.R2. Accordingly, the tribunal, exonerated the Insurance Company.

7. Aggrieved against such finding, the claim petitioners have preferred this appeal.

8. Heard the learned counsel for the claim petitioners/appellants and the learned counsel for the respondent-Insurance Company.

9. From the oral evidence of R.W.1 coupled with documentary evidence Ex.R2, I find that the driver of the offending vehicle did not possess valid driving license at the time of the accident. The vehicle was duly insured and hence following the judicial pronouncement, the pay and recovery is to be ordered. Accordingly, the exoneration of insurance company from its liability is modified into that of 'pay and recover'.

10. The learned Insurance Company had drawn my attention to the quantum of compensation awarded by the tribunal wherein 50% has been fixed as future prospects.

11. Following the decision of the constitution bench in the case of *National Insurance Company Limited V. Pranay Sethi and others*, reported in **2017 (2) TN MAC 609 (SC)**, and the fact that at the time of the accident, the deceased was aged 40 years, future prospects has to be fixed only at 40%.



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Therefore, the pecuniary loss sustained by the claim Petitioners is arrived as follows:

$$6500 + 40 \% \text{ of } 6500 = 9100$$

$$9100 \times \frac{2}{3} \times 12 \times 15 = 1092000$$

12. The 1st Petitioner as a wife of the deceased is entitled for Rs.40,000/- towards loss of consortium, Rs.15,000/- is awarded towards funeral expenses, Rs.15,000/- is awarded towards loss of estate, Rs.10,000/- is awarded towards transportation, Rs.40,000/- each is awarded to Petitioners 2 & 3 towards loss of love and affection.

<i>S.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Pecuniary loss	1092000
2	Loss of consortium	40000
3	Loss Love and affection	80000
4	Funeral expenses	15000
5	Loss of Estate	15000
6	Transportation	10000
	Total	1252000

In total, the claim Petitioners are entitled to a sum of Rs.12,52,000/- (Rupees twelve lakh and fifty two thousand only) with interest at the rate of 7.5% per annum from the date of Petition till date of realisation.

13. In fine,



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(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above. No Costs.

(ii) the 2nd Respondent/insurance company is directed to deposit the award amount of Rs.12,52,000/-, with interest and costs before the Tribunal, if not deposited earlier, within a period of eight weeks from the date of receipt of a copy of this order and recover the same from the 1st Respondent.

(iii) On such deposit being made, the claim Petitioners are entitled to receive the award amount as apportioned by the Tribunal, with proportionate accrued interest and costs, by filing necessary application before the Tribunal.

(iv) On satisfaction of the award, the Tribunal is directed to refund the excess amount deposited by the Insurance Company, if any and excess court fee paid by the claim Petitioners, if any.

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Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal, III Judge,
Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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RMT.TEEKAA RAMAN, J.,

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