



C.M.A.(MD)No.548 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 22.08.2022

Delivered On : 01.09.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.548 of 2013

and

M.P.(MD)No.1 of 2013

Iffco Tokyo General Insurance Company Ltd.,

Rep. through its Divisional Manager,

No.82, Preetham Plaza,

I-Floor, Chandrakanthi Nagar,

Ponmeni, Bye pass road,

Madurai – 10.

.. Appellant /2nd Respondent

Vs.

1.Manickam

2.M.Rajalakshmi

3.M.Selvaraj

4.M.Kaliraj

5.M.Suresh

6.M.Ragupathi

... Respondents 1 to 6/ Petitioners

7.P.Murugan

... 7th Respondent / 1st Respondent



C.M.A.(MD)No.548 of 2013

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 31.10.2011, made in M.C.O.P.No.77 of 2009, on the file of the Motor Accident Claims Tribunal (Fast Track Court-III)- Additional District and Sessions Judge, Madurai.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : Mr.J.Bharathan for R1 to R6
: No appearance for R7

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 31.10.2011, made in M.C.O.P.No.77 of 2009, on the file of the Motor Accident Claims Tribunal (Fast Track Court-III)- Additional District and Sessions Judge, Madurai. The appellant herein is the second respondent, the respondents 1 to 6 herein are the claimants and the seventh respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.77 of 2009, is as follows:

On 27.09.2007, at about 9.45 pm, when the deceased – Saravanan was standing near a shop on the left side of the T.Kallupatti main road, a



C.M.A.(MD)No.548 of 2013

minidoor auto, bearing Registration No.TN-58-Q-1374 came in a rash and negligent manner, dashed against the deceased. He was given first aid in T.Kallupatti Seva Hospital, then, he was referred to Government Rajaji Hospital, Madurai and he succumbed to injuries on 12.10.2007. He was working as a sales man in a Textile shop and was earning Rs.3,500/- per month. The claimants are his dependents and they claimed a sum of Rs.5,00,000/- as compensation.

3. Brief substance of the counter filed by the second respondent, in M.C.O.P.No.77 of 2009, is as follows:

The second respondent denied the age, dependents and income of the deceased. The driver of the first respondent did not possess valid driving licence. The driver was not rash or negligent. The accident took place only due to the negligent on the part of the deceased. The compensation claimed is excessive.

4. On the side of the claimants, 2 witnesses were examined and 6 documents were marked. On the side of the respondents, 2 witnesses were examined and 6 documents were marked. After considering both sides, the Tribunal awarded a sum of Rs.4,73,000/- as compensation.



C.M.A.(MD)No.548 of 2013

WEB COPY

5. Against the same, the appellant / Insurance Company has filed this appeal on the following grounds:-

The Tribunal failed to consider the absence of driving licence for the driver of the vehicle. The Insurance Company has issued a legal notice to the owner of the vehicle and the driver of the vehicle and also summoned the official from the Regional Transport Office and proved the absence of the driving licence. The Tribunal failed to appreciate the oral evidence of P.W.2 regarding the absence of driving licence. The deceased was a Bachelor and only parents were the dependents and the brothers cannot be the dependents. The average age of the parents has to be taken into consideration for applying multiplier. The Tribunal is wrong in selecting the multiplier in accordance with the age of the deceased. The appellant is not at all liable to pay compensation.

6. On the side of the appellant, it is stated that the driver of the vehicle was not holding effective driving licence. The Tribunal ought to have ordered to pay and recover. The Insurance Company has taken every steps to prove the non-availability of the driving licence. The Insurance Company addressed the owner of the vehicle and the driver of the vehicle. Ex.R3 was



C.M.A.(MD)No.548 of 2013

the copy of the notice sent to the owner of the vehicle. Ex.R4 was the 'unserved' return cover sent to the driver. Ex.R5 was the acknowledgement card signed by the owner of the vehicle. The Insurance Company examined R.W2, a junior assistant from the Regional Transport Office. Ex.R6 was the proceeding of the Regional Transport Office. As per Ex.R6, no driving licence was available for the driver of the vehicle. Only after taking steps for production of the original, the appellant has marked Ex.R6 as secondary evidence and prayed an order to pay and recover to be passed.

7. On the side of the respondents 1 to 6 / claimants, it is stated that Ex.R1 was the copy of the Insurance Policy and that in the cross examination of R.W.2, he has admitted that there is possibility of a driving licence to have been issued by some other Regional Transport Office and that the non-availability of driving licence was not sufficiently proved by the appellant and that the negligence was entirely on the part of the driver of the vehicle.

8. A judgment of this Court made in C.M.A.(MD)No.211 of 2018 (Thanikodi V. Parameswari), dated 12.04.2022, is cited, wherein, this Court has ordered the Insurance Company to pay compensation to the claimants and recover the same from the owner of the vehicle.



C.M.A.(MD)No.548 of 2013

WEB COPY

9. On the side of the respondents 1 to 6/ claimants, it is further stated that it is the duty of the Insurer to satisfy the award in case of a third party victim of a motor vehicle accident. A judgment of the Hon'ble Supreme Court reported in **2018-9-SCC-650 (Shamanna V.Divisional Manager, Oriental Insurance Company Limited)** is cited.

10. It is seen that the driver of the vehicle was not having a valid driving licence. The driving licence was not marked as a document on the side of the claimants. The appellant has taken steps and sent notice to the owner of the vehicle and the driver of the vehicle, to produce the driving licence. The notice was served on the owner of the vehicle and the notice sent to the driver was returned as “unserved”. The owner of the vehicle could not file a copy of the driving licence of the driver of the vehicle. Again, the appellant has approached the R.T.O office and an official from the R.T.O, was examined as R.W.2 and Ex.R6 was marked. R.W.2 has deposed that there is no driving licence for the driver of the vehicle. The owner of the vehicle has not taken any steps to produce the driving licence of the driver of the vehicle. Hence, it is decided that the driver of the vehicle was not having valid driving licence.



C.M.A.(MD)No.548 of 2013

11. In the above circumstances, it is clear that the policy conditions are violated by the owner of the vehicle. Hence, the Insurance company can pay the compensation to the claimants and the appellant is at liberty to recover the same from the owner of the vehicle

12. In the result, this Appeal is partly allowed and the order of the Tribunal is modified and the appellant is directed to pay a compensation of Rs.4,73,000/- with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order and the Insurance Company is permitted to recover the same from the owner of the vehicle.

11. On such deposit being made, the Tribunal may permit the major claimants to withdraw their shares as apportioned by the Tribunal with interest and costs immediately, after filing proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any. No Costs. Consequently, connected Miscellaneous Petition is closed.

01.09.2022

Index : Yes/No
Internet : Yes/No
Ls



WEB COPY



C.M.A.(MD)No.548 of 2013

R. THARANI, J.

Ls

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 Accident Claims Tribunal

(Fast Track Court-III)- Additional District and Sessions Judge,

Madurai.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.548 of 2013

01.09.2022