



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A.(MD)No.816 of 2021

and

C.M.P.(MD)No.7513 of 2021

The Branch Manager,
TATA AIG General Insurance Company
Limited,
Peninsula Business Park, Tower A,
15th Floor, G.K.Marg, Lower Parle,
Mumbai - 400 013.

...Appellant/2nd Respondent

Vs.

1.Ramesh
Represented by his mother and next
friend sulochana

...1st Respondent/Petitioner

2.The Headmaster,
Laurel High School,
Kurumbakadu,
Aranthangi Taluk,
Pudukkottai District.

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Petition is filed under Section 173 of M.V.Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.25 of 2016, dated 18.01.2021 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Pudukkottai.

For Appellant : Mr.J.S.Murali
For Respondents : No Appearance

JUDGMENT

The appellant / TATA AIG General Insurance Company Ltd., the second respondent in M.C.O.P.No.25 of 2016 on the file of the Motor Accidents Claims, Principal Subordinate Court, Pudukkottai has filed the present appeal. The first respondent/claimant has filed the claim petition seeking compensation of Rs.50,00,000/- for the death of one Ramesh, in a road accident, which occurred on 10.02.2016.

2. It is a case of accident, which took place on 10.02.2016, while the deceased Ramesh was riding in a two wheeler proceeding



towards south to north at Aranthangi to Pattukottai Road, at about 09.00 a.m. and when the two wheeler came opposite to Dharun Tiffin Centre, a school bus bearing Registration No.TN-55-Y-6001 came in a same direction with rash and negligent manner and dashed against the deceased motorcycle. Due to the impact of which, the deceased fell down from the motorcycle and sustained head injury. He took treatment in the Meenakshi Mission Hospital, Thanjavur and continuously he treated as out patient.

3.The claimant has filed a petition in M.C.O.P.No.25 of 2016 on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Court, Pudukkottai, seeking compensation of Rs.50,00,000/-.

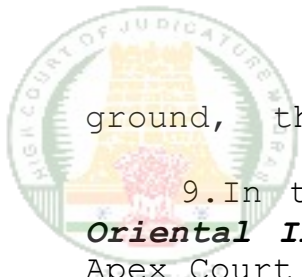
4.Before the Tribunal, on the side of the claimant one witness was examined as P.W.1 and marked eight documents as Ex.P1 to Ex.P8. On the side of the respondents, two witnesses were examined as R.Ws.1 and 2 and marked seven documents as Ex.R1 to Ex.R7.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsels for the appellant and claimant and also on appreciating the evidences on record, directed the appellant/insurance company to pay a sum of Rs.11,07,555/- as compensation. Against which, the appellant/Insurance Company alone has preferred this appeal.

6.Heard Mr.J.S.Murali, the learned counsel appearing for the appellant. Eventhough the respondents names were printed in the cause list, no one appeared on behalf of them and perused the materials available on record.

7.The learned counsel appearing for the appellant contended that at the time of accident the driver of the bus possess only HMV license, but the driver did not possess a valid and effective driving license to drive the vehicle. As per evidence of RWI (RTO official), the driver has obtained HMV license with Badge endorsement from the RTO office only after the accident on 20.06.2019. But the Tribunal fastened the liability on the appellant/ Insurance Company and therefore, he prayed this Court that 'pay and recovery' may be ordered by this Court.

8.On perusal of records, it shows that before the Tribunal, the appellant/ Insurance Company examined the staff of R.T.O., as R.W1. A copy of driving license issued from the R.T.O. Office, which was marked as Ex.R2. It is clearly proved that the driver of the school bus bearing Registration No.TN-55-Y-6001 drove the bus without proper HMW license. The owner of the school bus remained absent before the Tribunal and therefore he was set ex-parte. So the appellant/Insurance Company clearly proved that there was no valid license for the injured on the date of accident. Hence, the



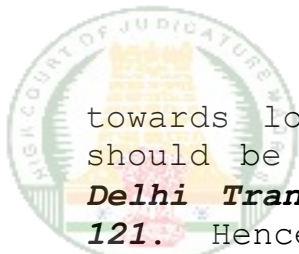
ground, the appellant filed this present appeal.

9. In the judgment reported in **(2004)13 SCC 224** in the case of **Oriental Insurance Co. Ltd., Vs. Nanjappan and others**, the Hon'ble Apex Court made the following observations:-

"8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur's* case (*supra*) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

10. In the facts and circumstances of the present case, the award passed by the Tribunal directing the Insurance Company to pay the award amount is liable to be set aside and accordingly set aside. Therefore, the appellant/ Insurance Company Limited, is directed to pay the award amount to the first respondent/ claimant in the first instance and then recover the same from the owner of the school bus.

11. As far as the quantum of compensation is concerned, the Tribunal has awarded Rs.6,000/- as monthly income of the injured and had wrongly adopted multiplier as '18' and awarded Rs.9,33,120/-



towards loss of income. Considering the age of the injured, it should be '17' as per the decision in **Sarlavarma and others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. Hence, loss of income comes to Rs.6,000/- x 12 x 17 x 72/100 = Rs.8,81,280/-.

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12. Accordingly, the claimant is entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For loss of Income	Rs.9,33,120/-	Rs.8,81,280/-	modified
2.	Medical Expenses	Rs.1,69,435/-	Rs.1,69,435/-	confirmed
3.	For pain and sufferings	Rs.5,000/-	Rs.5,000/-	confirmed
Total		Rs.11,07,555/-	Rs.10,55,715/-	

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

13. In view of the said modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is modified Rs.10,55,715/-. The appellant/Insurance Company Limited is directed to pay the award amount to the claimant in the first instance and then, recover the same from the owner of the school bus, bearing Registration No.TN-55-Y-6001 on the same cause of action. The first respondent/claimant is permitted to withdraw the amount now fixed by this Court by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

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/ /2022
Sub Assistant Registrar(CS)

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,
Principal Subordinate Court,
Pudukkottai.

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

+1 CC to M/s.J.S.MURALI, Advocate (SR-501[F] dated 05/01/2022)

Judgment made in
C.M.A. (MD) No.816 of 2021
and
C.M.P. (MD) No.7513 of 2021
05.01.2022

MK/28.02.2022/5P/5C