

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on	Judgment Pronounced on
01.04.2022	18.04.2022

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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A (MD) No.523 of 2015

and

M.P (MD) No.1 of 2015

M/s.Oriental Insurance Company Limited,
through its Branch Manager,
Door No.1, Abdul Rasak Street,
Saidapet, Chennai.

.. Appellant/2nd Respondent

Vs.

1.Radha
2.Stalin
3.Umanath
4.Kusila
5.Sarojini

.. Respondents 1 to 5/
Claim Petitioners 1 to 5

6.U.Mydeen Abdhulla

.. 6th Respondent/1st Respondent

[6th respondent remained exparte before the lower Court]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order, dated 23.12.2014 made in M.C.O.P.No.1994 of 2009, on the file of the Motor Accidents Claims Tribunal/I-Additional District Judge, Madurai.

For Appellant

: Mr.A.Ilango

JUDGMENT

The insurance company is the appellant herein.

2. The respondents 1 to 5 are the legal representatives of the deceased Pitchai filed M.C.O.P.No.1994 of 2009 claiming compensation on the ground that Pitchai died in the road transport accident due to the rash and negligent driving of the driver of the first respondent.

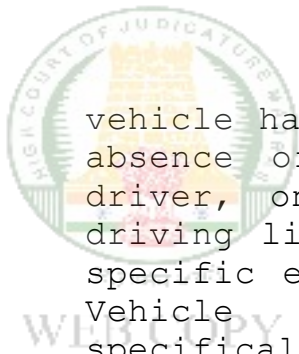


3. For the sake of convenience, the parties are referred to as per their ranking before the tribunal.

4. In the claim petition as well as the evidence of PW2, to the effect that on 05.02.2007 at about 5.45 p.m., the deceased Pitchai drove the two wheeler bearing Registration No.TN 72 W 3688 belonging to his son Umanath carrying Tomato and when he was travelling in Vasudeva Nallur Main Road, the driver of the 1st respondent drove a goods Lorry bearing Registration No.TTF 6998 in a rash and negligent manner and dashed against the two wheeler and the deceased fell down along with the two wheeler and the Lorry ran over the two wheeler and the deceased Pitchai died on the spot.

5. Before the Tribunal, to prove the above said pleadings PW2 was examined. He had deposed that in order to prove the accident, one Muthupandi was examined as PW1. He deposed that on 03.02.2007, he went to Vasuthevanallur and after finishing his work, he returned to his house at 5.45 p.m., in his bicycle on the northern side of the main road. At that time, one Pitchai belonging to his village went in TVS 50 bearing Registration No.TN 72 W 3688 with tomato in a basket and went near Arunthathiyar colony on the eastern side Vasuthevanallur main road. At that time, the 1st respondent drove the vehicle bearing Registration No.TTF 6998 from North to South with load in a rash and negligent manner and without sounding horn and dashed against the TVS 50 driven by Pitchai and the wheel of the Lorry ran over Pitchai and he died on the spot. The evidence of PW1 coupled with documentary evidence of Ex.P1 and E.P2. The plaintiff has clearly demonstrated that the driver of the lorry bearing Registration No.TTF 6998 has driven the vehicle in a rash and negligent manner thereby caused the accident. Hence, the owner of the lorry is liable to pay the compensation.

6. The insurance company in the counter statement has specifically stated a plea that on the date of accident, namely, 05.02.2007, the driver of the vehicle does not have any driving licence, namely, Heavy Motor Vehicle licence to drive the lorry on 05.02.2007. To substantiate the same, they have summoned the Assistant working in the RTO office-RW1 to depose that the licence copy of the RTO office issued to the driver is marked as Ex.R1 and through the RW2-Assistant Manager of the insurance company, Ex.R2-policy copy was marked. The lower Court has not discussed the evidence of RW1 and RW2. As per the evidence of the RW1, who gave witness on summon from the Court, he has produced the licence of the driver on the Light Motor Vehicle and the licence is valid from 04.01.2001 to 06.06.2006 and it is her specific evidence that on the date of accident, namely, 05.02.2007 there is no valid licence even the Light Motor Vehicle licence. The owner of the



vehicle has not produced the driving licence of the party. In the absence of any positive evidence regarding the fact that the driver, on the date of the accident, had possessed the valid driving licence to drive the Heavy Motor Vehicle. In view of the specific evidence of RW1 as discussed supra even the Light Motor Vehicle licence was not in force on 05.02.2017, it was specifically taken and hence, I find that the appellant/insurance company cannot be mulcted with the liability to pay the compensation amount to the claim in a road accident, which had occurred due to the rash and negligent driving of the Heavy Motor Vehicle. Admittedly, the driver has no valid and effective licence to drive the vehicle on the date of the accident.

7. The learned counsel for the Insurance Company has relied upon the judgment reported in **2020 (2) TNMAC 455** in the case of **Beli Ram Vs Rajinder Kumar and another**. In the case law of Hon'ble Apex Court, it is held that "when a tort-feasor failed to renew the driving license within 30 days of expiry of driving license, as per the provision of the Motor Vehicle Act, the Insurance Company is not liable to pay compensation", as owner of the vehicle has committed breach of terms of policy by entrusting the vehicle to a person not possessing a valid driving license.

8. I had an occasion to consider the above decision in C.M.A.No.1706 of 2016, wherein I followed the decision rendered by brother Justice Mr.G.Jayachandran in C.M.A.No.1746 of 2015 and held that in respect of the Workmen's Compensation Act alone, wherein, employer-employee relationship is vital part and precondition for maintaining claim petition under Workmen's Compensation Act and therein, for non-possession of the driving licence, the insurance company can be exonerated. However, when the claim petition is filed under Motor Vehicles Act, the Insurance Company may be directed to pay and recover the compensation amount from the owner of the vehicle. Accordingly, the order of the Tribunal exonerating the liability of the Insurance Company is hereby set aside and the Insurance Company is directed to pay the quantum of compensation fixed hereunder and recover the same from the owner of the vehicle.

9. Accordingly, this Court holds that the insurance company is not liable to pay the compensation. Hence, the insurance company is exonerated from the liability, however, judicial principle of pay and recovery is made applicable by judicial pronouncement. Accordingly, as stated supra, the insurance company is directed to pay the award and recover the same from the owner of the vehicle.

10. On the quantum of compensation, I find the award passed by the Tribunal in various heads appears to be just and reasonable. Accordingly, the compensation awarded by the Tribunal cannot be ~~termed as excessive~~ and does not warrant any interference.



11. In fine, this Civil Miscellaneous Appeal stands allowed in part to the limited extent that the insurance company shall pay and recover the award amount from the owner of the vehicle and except this modification, the award passed by the Tribunal is hereby confirmed. The appellant/insurance company is directed to deposit the compensation awarded by the Tribunal, ie., Rs. 3,00,000/- together with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation to the credit of M.C.O.P.No1994 of 2009, on the file of the Motor Accidents Claims Tribunal/I-Additional District Judge, Madurai, within a period of eight weeks from the date of receipt of a copy of this order and then recover the same from the owner of the vehicle in the manner known to law. On such deposit being made by the appellant/Insurance Company, the claimants are permitted to withdraw the same, as apportioned by the Tribunal, after following the due process of law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar (CS)

PJL

To

1. The I-Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.A. ILANGO, Advocate (SR-19256 dated 19/04/2022)

C.M.A (MD) No.523 of 2015

18.04.2022

USK/03.06.2022/4P/5C