



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2022

CORAM:

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.894 of 2019
and
C.M.P(MD).No.11835 of 2019

Iffco Tokio General Insurance Company Limited,
Though its Branch Manager,
19/1, Second Floor,
Kingston Park,
Ramalinga Nagar,
Trichirappalli.

: Appellant/Second respondent

.vs.

1.Sakkubai
2.Murugaboopathi
3.Dhanalashmi @ Dhanam
4.Chitra
5.Dhanadayuthapani
6.K.Packiyaraj

: Respondents 1 to 5/Petitioners
: Respondent No.6/Respondent No.1

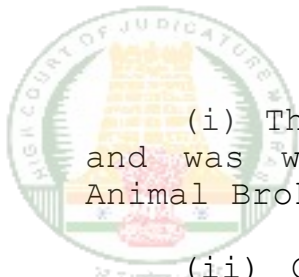
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 09.07.2019 passed in M.C.O.P.No.103 of 2015 on the file of Special District Judge, Motor Accident Claims Tribunal, at Thiruchirappalli by allowing this appeal.

For Appellant : Mr.V.Sakthivel
For Respondents : Mr.N.Sudhagar Nagaraj
for R1 to R5
No appearance for R6

JUDGMENT

This Civil Miscellaneous Appeal is filed by Iffco Tokio General Insurance Company, challenging, the judgment and decree passed in M.C.O.P.No.103 of 2015, on the file of the Motor Accidents Claims Tribunal, Special District Judge, Thiruchirappalli.

2. The brief case of the respondents 1 to 5/claimants, is as follows:



(i) The deceased was aged 68 years on the date of the accident and was working as Agriculturist, Real Estate Broker and Milch Animal Broker.

(ii) On 30.11.2014, at about 7.30 p.m, when the deceased was walking slowly and cautiously keeping to his left side East to West Road, at that time, a Motor Cycle bearing Registration No.TN-48-AY-1869 belonging to the first respondent/sixth respondent and insured with the second respondent/appellant came from same direction in a rash and negligent manner without obeying traffic rules and dashed against the deceased, as a result of which, the deceased sustained grievous and multiple injuries all over his body and thereafter, he was admitted in the Government Hospital and died on 01.12.2014.

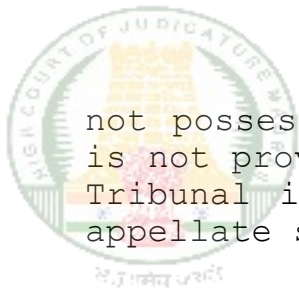
3. According to the respondents 1 to 5/claimants, the rash and negligent driving of the driver of the said Motor Cycle belonging to the sixth respondent herein, was the cause of the accident, and that since the Motorcycle was insured with the appellant/Insurance Company, both of them are jointly and severally liable to pay compensation of Rs.18,00,000/- (Rupees Eighteen Lakhs only) to the respondents 1 to 5/claimants.

4. The owner of the Motorcycle remained absent before the Tribunal and therefore, he was set ex-parte. The Insurance Company Limited contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.5,30,000/- (Rupees Five Lakhs and Thirty Thousand only) together with interest at the rate of 7.5% per annum to the respondents 1 to 5/claimants. Aggrieved over the quantum of compensation awarded by the Tribunal, the National Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellant contended that the appeal has been filed by Iffco Tokio General Insurance Company Limited, on the ground that the rider of the Motorcycle bearing Registration No.TN-48-AY-1876 involved in accident on 01.11.2015 had no valid driving licence and therefore, they are not liable to pay compensation to the respondents 1 to 5/claimants.

5. Heard both sides and perused the materials available on record.

6. Even though a specific plea in regard to the driving licence of the driver of the Motorcycle was taken by the Insurance Company, summons was issued with regard to the copy of the driving licence to the owner of the vehicle, but he has not sent any reply. Taking note of the fact that no oral or documentary evidence has been adduced, at the time of accident, the driver of the motorcycle has not possessed the valid licence. In the absence of any positive evidence much less any evidence, this Court is of the considered view that the fact that the driver of the offending motorcycle does



not possess any valid driving licence on the date of the accident, is not proved in the manner known to law. Hence, the finding of the Tribunal is correct and does not warrant any interference at this appellate stage.

7. As far as the quantum of compensation is concerned, the Tribunal based on the evidence available on record, has taken the income of the deceased as Rs.6,000/- (Rupees Six Thousand only) per month and the age of the deceased is 70 years and therefore, the Tribunal has adopted multiplier 5. Considering the age of the deceased, the Tribunal based on the judgment of **National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017(2) TN MAC 609 (SC)**, has not awarded Future Prospects and awarded a sum of Rs.3,60,000/- (Rupees Three Lakhs and Sixty Thousand only) towards 'future loss of income of the deceased'. The compensation awarded under other heads are also just and reasonable. Therefore, this Court feels that the award passed by the Tribunal needs no interference. Hence, the plea taken by the Insurance Company stands negatived.

8. In the result,

(i) This Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is upheld;

(ii) It is brought to the notice of this Court, that the appellant - Insurance Company has already deposited the entire amount awarded by the Tribunal to the credit of M.C.O.P.No.103 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Thiruchirapalli;

(iii) The respondents 1 to 5/claimants are permitted to withdraw the award balance amount as apportioned by the Tribunal together with proportionate interest; and

(iv) There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Thiruchirapalli.



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

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+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-16270[F] dated 04/04/2022)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-16273[F] dated
04/04/2022)

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MGJ(13.04.2022) 4P 6C