IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.11.2023

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THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

C.M.A. NO. 995 of 2020
CROSS OBJECTION NO. 24 of 2021
and CMP.No.6262 of 2020

C.M.A. NO. 995 of 2020

The Manager,
M/s.Tata ATC General,
Insurance Company Ltd.,
Registered office,
Peninsula Corporate Park,
Piramal Tower, 9th Floor,
Ganapatrao Kadam Marq,
Lower Parel, Mumbai-400 013. .. Appellant

- Vs -

1. Bimsingh

2. Jayalakshmi Bai

3. Selva Munusamy .. Respondents

CROSS OBJECTION NO. 24 OF 2021

1. Bimsingh

2. Jayalakshmi Bai .. Cross Objectors

- Vs -

1. The Manager,
M/s.Tata ATC General,
Insurance Company Ltd.,
Registered office,
Peninsula Corporate Park,
Piramal Tower, 9th Floor,
Ganapatrao Kadam Marq,
Lower Parel, Mumbai-400 013.

2. Selva Munusamy ... Respondents

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act to set aside the judgment and decree dated 27.09.2019 passed by the Motor Accident Claims Tribunal (Special District Court), Krishnagiri, made in MCOP No.509 of 2017.

Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure to enhance the award amount in the judgment and decree dated 27.09.2019 passed by the Motor Accident Claims Tribunal (Special District Court), Krishnagiri, made in MCOP No.509 of 2017.

For Appellant : Mr. J.Micheal Visuvasam
in CMA. No.995 of 2020
Mr.S.P.yuvaraj in X. Obj. 32 of 2021

For Respondents : Mr.S.P.Yuvaraj RR1 & 2
Mr.M.P.Saravanan R3
in CMA.No. 995/2020

Mr. J.Micheal Visuvasam for R1
Mr. M.P.Saravanan in X. Obj. 32 of 2021

COMMON JUDGMENT

While the appeal has been filed by the insurance company challenging the quantum of compensation awarded by the Tribunal as excessive, the cross objection has been filed by the claimants challenging the inadequate compensation awarded by the Tribunal.

2. The deceased, aged 25 years, was doing self-employment, earning a sum of Rs.25,000/- per month, died in the accident that happened on 02.06.2015. The legal heirs of the deceased, viz., parents have filed claim petition claiming compensation for a sum of Rs.30,00,000/-.

3. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.14,25,800/- under various heads.

4. Questioning the liability and the quantum of compensation awarded by the Tribunal is under challenge by the Insurance company as well as by the claimants.

5. Learned counsel appearing for the appellant/insurance company submits that the third respondent, who is the owner cum driver, was authorised to drive only a light motor vehicle and as such, he had no valid driving license to drive the offending goods vehicle, which is violation as per the MV act. The Tribunal failed to consider the same, fastened the liability as against the appellant insurance company, which is not sustainable. Hence, the learned counsel prays that this Court may interfere with the award and allow this petition.

6. Per contra, learned counsel appearing for the claimants/cross objectors contends that the deceased was working as a Mason and earning a sum of Rs.25,000/- per month and this Court, without considering the same, fixed monthly income at Rs.9,000/- per month which is very meagre. The other heads awarded by the Tribunal are also very low. Hence, the learned counsel prays to enhancement of compensation.

7. The learned counsel for the owner of the vehicle submitted that the driver of the LMV goods carrier vehicle bearing Reg. No.TN 24 Z 2986 was having a valid driving license and the above said vehicle was insured with

the appellant insurance company at the time of accident. Hence, the insurance company is liable to pay the compensation.

8. This Court gave its anxious consideration to the arguments advanced by the learned counsel appearing on either side and also perused the oral and documentary evidence and the judgment passed by the Tribunal.

9. The facts of the case are not in dispute. When the deceased, aged about 25 years, at the time of accident, was walking on the left side of the road, Eicher vehicle bearing Reg. no. TN 24 Z 2986, driven by its driver, hit the debased, due to which, the deceased died on the spot. The claimants, who are the parents of the deceased, filed a claim petition claiming compensation. Both the claimants and insurance company have come up before this Court.

10. The primary contention raised by the learned counsel appearing for the insurance company is that the offending vehicle was driven by third respondent who was not having a valid license to drive the same. He would

therefore contend that the Tribunal erred in fastening the liability on the owner of the goods vehicle. At any rate, the principle of pay and recover ought to have been applied. However, the Tribunal failed to accept the arguments on behalf of the Insurance Company. The_driver of the goods vehicle had only LMV license at the time of the accident.

Section 2(21) in The Motor Vehicles Act, 1988 is defined as follows:

> *"(21)light motor vehicle means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7500] kilo grams;[(21-A) manufacturer means a person who is engaged in the manufacture of motor vehicles;*

11. On perusal of the above said section and judgment in the case of ***Mukund Devangan*** reveals that the Apex_Court therein has held that a person having driving license to drive light motor_vehicle cannot drive any goods vehicle having unladen weight of 7500 KG. In the_instant case, the third respondent is not entitled to drive the offending vehicle as he_has only

LMV license.

12. The reading of the above judgment would show that a transport vehicle may be a light motor vehicle but, for the purpose of driving the same, a distinct licence is required to be obtained. In the instant case, the vehicle involved is Eicher goods lorry, which is a commercial vehicle. For the purpose of driving the said vehicle, badge endorsement is necessary on the licence. Since no endorsement was obtained, the Tribunal had directed the Insurance Company to pay the compensation to the claimants is not sustainable. This Court do not find any infirmity in the said finding. Hence, in view of the same, this Court is inclined to set aside the liability on the insurance company and fastened the liability on the owner of the vehicle/3rd respondent. In respect of the quantum is concerned, the Tribunal has rightly awarded the compensation, which is just and reasonable and the same cannot be interfered with.

13. In the result, the civil miscellaneous appeal is allowed in the terms and the cross objection is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

14. The appellant/insurance company is directed to deposit the award amount along with interest at 7.5% p.a., from the date of claim petition till date of deposit, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order and thereafter, recover the said amount from the owner of the vehicle in the manner known to law. On such deposit being made, the Tribunal is directed to transfer the amount as per the permissible apportionment to the bank account of the claimants through RTGS within a period of two weeks thereafter.

28.11.2023

Index : Yes / No
Internet : Yes / No
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To
The Motor Accident Claims Tribunal (Special District Court), Krishnagiri,

M.DHANDAPANI, J.

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