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C.M.A.No.2084 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2084 of 2014
and
Miscellaneous Petition No.1 of 2014

The Oriental Insurance Company Ltd.,
Branch Office, KAK Complex,
20, Gandhi Salai, Kallakurichi Post,
Kallakurichi Taluk,
Villupuram.

... Appellant / 3rd respondent

Vs.

1. G.Selvi
2. M.Rajamani (Died)
3. R.Elumalai
4. A.Sadasivam

... Respondents/Petitioners

5.M.Maheswaran (Died)

[R5 brought on record as Lrs of the deceased 2nd respondent
vide order dated 24.08.2016]

6.M.Chandralega

7.M.Saranya

8.M.Dhivya

... Respondents/Respondents

[R6 to R8 brought on record as Lrs of the
deceased 5th respondent vide order dated 08.06.2023]



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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 11.10.2012 made in M.C.O.P.No.160 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Dharapuram.

For Appellant	:	Mr.S.Arunkumar
For R1 & R6 to R8	:	Mr.Ma.P.Thangavel
For R2 & R5	:	Died
For R3	:	Not ready

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the liability fixed by the Insurance Company as per award passed in M.C.O.P.No.160 of 2011, dated 11.10.2012 by the Motor Accidents Claims Tribunal, III Additional District Judge, Dharapuram.

2. The appellant-Insurance Company is the third respondent in M.C.O.P.No.160 of 2011 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Dharapuram.



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3. The case of the claimants in brief is that on 27.11.2010 at about 4.45 hours, the deceased Govindasamy was riding his two-wheeler bearing Registration No.TN 45 M 5755 on Chennimalai-Perundurai Road, Near Thirumugamalaranthapuram Vinayagar Koil, at that time, a lorry bearing Registration No.TN 28 H 3609 belongs to the second respondent was moving in front of the two-wheeler and the first respondent- driver of the lorry, drove the same in a rash and negligent manner, on seeing a pit, suddenly turned right hand side of the road, while the deceased was attempting to cross the lorry, the accident has occurred. Due to which, the said Govindasamy sustained head injuries and died on the way to hospital. Hence, the appellants/claimants filed a Claim Petition claiming a sum of Rs.15,00,000/- as compensation for the death of the deceased.

4. The appellant-Insurance Company filed counter statement and denied all the averments made by the claimants and countered that the accident was occurred only due to rash and negligent driving of the deceased. At the time of accident, the driver of the lorry was not having valid driving license. In any event, the total compensation claimed by the claimants is highly excessive and prayed for dismissal of the appeal.



5. The driver and owner of the vehicle remained ex-parte before the Tribunal.

6. Before the Tribunal, the second claimant was examined as P.W.1 and two others were examined as P.W.2 and P.W.3 and Exs.P1 to P18 were marked and on the side of the third respondent, no witness was examined and no documents marked.

7. Based on the oral and documentary evidence placed on record, the Tribunal in point No.1, held that negligent driving of the driver of the lorry is responsible for the accident and in Point No.2 has awarded total compensation for a sum of Rs.12,45,912/- on the following heads: Loss of income at Rs.11,40,912/-; Transport Expenses at Rs.5,000/-; Funeral Expenses at Rs.10,000/-; Loss of Consortium at Rs.30,000/-; Loss of Love and Affection at Rs.60,000/-.

8. It is submitted by the counsel for the appellant that there is a violation of policy condition that the lorry driver was not having valid driving licence at the time of accident. To prove the same, he has relied on



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Ex.P5-Motor Vehicle Inspector's Report, wherein, expiry of the licence has been clearly mentioned and prays to order of recovery from the driver and owner of the vehicle.

9. I have perused the Motor Vehicle Inspector's Report-Ex.P5, wherein, it is recorded by the Motor Vehicle Inspector in Column No.7, that the driver of the motor vehicle i.e., lorry, bearing Registration No.TN 28 H 3609 was having a driving licence valid till 13.08.2010 and the Motor Vehicle Inspector has also recorded that this licence was expired.

10. The Tribunal has not considered the validity of the driving licence of the offending vehicle and the Tribunal has held that in point No.1 that, while the deceased was drove his two-wheeler, bearing Registration No.TN 45 M 5755 on Chennimalai-Perundurai Road, Near Thirumugamalarndha Vinayagar Koil, a lorry bearing Registration No.TN 28 H 3609 which was driven in front of the two-wheeler and suddenly turned right hand side, while the deceased was attempting to cross the lorry, the accident has occurred and this evidence was accepted and the lorry driver was held responsible for the accident. Accordingly, in this case, the



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Insurance Company by relying entry of the Motor Vehicle Inspector's Report to substantiate the case, that the driver of the lorry was not having valid driving licence at the time of accident. Both driver and owner of the vehicle remained ex-parte and the Insurance Company has not examined any witness on their side to prove that the lorry driver was not having valid driving licence. However, the entries made in the Motor Vehicle Inspector's Report, which is recorded by the Motor Vehicle Inspector in his regular course of official function, supports the contention of Insurance Company that, the licence of the driver of the lorry is expired prior to accident. In the absence of any contra evidence to show that, the licence was renewed prior to accident, entry made in the Motor Vehicle Inspector's Report is sufficient to prove the contention of the Insurance Company. Claimants have also not disputed the contention of the Insurance Company before this Court that, the driver of the lorry was having valid driving licence. However, considering the fact that the deceased is a third party, applying the principle laid down by the *National Insurance Co. Ltd. Vs. Swaransingh and others* reported in **2004 (3) SCC 297**, I am inclined to modify the award to the extent that the second respondent is liable to pay the compensation and entitled to recover the same from the owner of the vehicle.



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11. It is submitted by Mr.Ma.P.Thangavel, counsel for the claimant that the second claimant-M.Rajamani died during the pendency of this appeal and the award amount apportioned in her favour may be ordered to be apportioned among her legal representatives. Already the fifth respondent was impleaded as Legal heirs of the second claimant but subsequently, fifth respondent also died leaving behind the respondents 6 to 8 and they have also been impleaded as legal heirs of the fifth respondent as per order in C.M.P.No.19310 of 2022, dated 08.06.2023. Now the compensation awarded to the second claimant-M.Rajamani, may be apportioned equally among the first claimant and the respondents 6 to 8.

12. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is at Rs.12,45,912/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount at the first instance and recover the same from the owner of the lorry, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from



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the date of receipt of a copy of this judgment. The compensation awarded in favour of the second claimant-M.Rajamani shall be equally apportioned among the first claimant and respondents 6 to 8 herein. On such deposit, the claimants are permitted to withdraw the award amount, along with interest and costs, less the amount already withdrawn, if any, by making necessary applications before the Tribunal. The Tribunal shall disburse the amount by directly giving credit to the Savings Bank Account of the claimants on proper verification. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

06.07.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

1. The III Additional District Judge,
Motor Accidents Claims Tribunal,
Dharapuram.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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