IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2023

PRONOUNCED ON : 20.03.2023

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA Nos.2706 and 2650 of 2022
and
CMP No.21165 of 2022

CMA No.2706 of 2022

G.Magendran .. Appellant/1st respondent

Vs.

1. Nagarani
2. Kalaiyarasan .. Respondents 1 & 2 /petitioners

3. The Branch Manager,
HDFC Ergo General Insurance Co., Ltd.,
Branch Office: RR Tower-2,
2nd Floor, No.94/95, TVK Industries Estate,
Guindy, Chennai – 600 032. .. 3rd respondent / 2nd respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 25.01.2022 passed in MCOP No.934 of 2019 on the file of the Motor Accident Claims Tribunal [Special District Court], Krishnagiri.

For Appellant : Mr. S.R.Raghunathan
for Mr.G.Saibaba

For Respondents : Mr.S.P.Yuvaraj (for R1 & R2)
Mr.N.Somasundaar (for R3)

CMA No.2650 of 2022

1. Nagarani
2. Kalaiyarasan .. Appellants/claim petitioners

Vs.

1. G.Magendran

2. The Branch Manager,
HDFC Ergo General Insurance Co., Ltd.,
Branch Office: RR Tower-2,
2nd Floor, No.94/95, TVK Industries Estate,
Guindy, Chennai – 600 032. .. Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to enhance the compensation amount and fix the entire liability on the 2nd respondent in the judgment dated 25.01.2022 passed in MCOP No.934 of 2019 on the file of the Motor Accident Claims Tribunal [Special District Court], Krishnagiri.

For Appellants : Mr.S.P.Yuvaraj

For Respondents : Mr. S.R.Raghunathan
for Mr.G.Saibaba (for R1)
Mr.N.Somasundaar (for R2)

COMMON JUDGMENT

Challenging the award of the Motor Accident Claims Tribunal (Special District Judge), Krishnagiri, vide judgment and decree dated 25.01.2022 in MCOP No.934 of 2019, both on the point of quantum as well as on negligence, the 1st respondent-Owner of the offending vehicle has filed CMA No.2706 of 2022, while, the claim petitioners/legal representatives of the deceased Sadhasivam, who died in the road transport accident on 28.12.2018, have filed CMA No.2650 of 2022, seeking enhancement of the compensation awarded and also to fix the entire liability on the 2nd respondent-Insurance company.

2. By consent, both Civil Miscellaneous Appeals are taken up together and disposed of by the following common judgment.

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

4. Heard the learned counsel on either side and perused the documents.

5. Before the claims tribunal, the 1st claim petitioner has examined herself as PW1 and an eye witness has been examined as PW2. Ex.P1 to Ex.P6 were marked. On the side of the 1st respondent/owner of the offending vehicle, RW1 was examined and Ex.R1-copy of the driving licence of the driver of the 1st respondent, was marked. On the side of the 2nd respondent viz., the Insurance company, RW2- Junior Assistant from the RTO office, Krishnagiri; RW3-Superintendent from RTO Office, Vaniyampadi and RW4-Legal Officer of the 2nd respondent Insurance company, were examined and Ex.R2 to Ex.R7 were marked.

6. Ex.R2 is the true copy of the Check Report for the Auto; Ex.R4 is the xerox copy of the Motor Vehicles Inspector Report for the Auto; and Ex.R7 is the true copy of the Insurance Policy of the 1st respondent's vehicle.

7. It is the admitted case of both the parties that the vehicles involved in the accident are a car bearing Regn.No.TN03N1818/owned by the 1st respondent and an Auto bearing Regn.No.TN23-BK-2570. The manner of the accident were denied by the 1st respondent/owner of the vehicle.

8. It is the specific case of the claim petitioner as PW1 that the accident has taken place due to the rash and negligent driving of the driver of the car owned by the 1st respondent and insured with the 2nd respondent-Insurance Company.

9. The deceased is said to have travelled in the share-auto, which was driven by one driver Sudhagaran and in the said share-auto, the deceased was one among 12 persons i.e., more than the permitted capacity and hence, he is said to be treated as a 'gratuitous passenger', as found in the counter.

10. According to the 1st respondent/owner of the offending vehicle, the driver of the share-auto viz., Sudhagaran, does not have any valid driving licence and hence, he is rash and negligent. In this regard, one of the occurrence witness PW2 was examined by him. On a close perusal of the Ex.R3 and Ex.R4, on the date of the accident, the driver of the Auto does not possess any valid driving licence. The owner of the auto and the insurer of the auto, were not added as a party. It is represented by both the counsel that the Auto does not have any insurance coverage and the driver does not possess valid driving licence.

11. Ex.P1 is the FIR and PW2 is the version of the occurrence witness. The claims tribunal taking note of the evidence of PW2, coupled with Ex.P1, has come to the conclusion that the driver of the car owned by the 1st respondent insured with the 2nd respondent is responsible for the accident and accordingly, held that the accident has taken place due to the rash and negligent driving of the driver of the car. It is also to be noted that the driver of the Auto does not own any valid driving licence and carried passengers numbering 12 i.e., beyond the permitted limit. Therefore, the claims tribunal has fixed the contributory negligence at the ratio of 85: 15 among the driver of the car and driver of the auto and directed the claim petitioners to bear the 15% award, as the Auto does not have any insurance coverage and the driver does not possess valid driving licence..

12. On re-appreciation of the oral evidence of PW2-occurrence witness and answer elicited in the cross examination of PW2, coupled with the evidence of RW1-owner of the car, Ex.R3-Check Report for the Auto and Ex.R4-Motor Vehicles Inspector Report of the Auto, I find that the contributory negligence fixed by the claims tribunal, is just and proper and

both the drivers were not having valid driving licence, at the time of the accident.

13. It remains to be stated that the driver of the Auto in which the deceased had travelled had no valid driving licence, whereas, the driver of the offending car, owned by the 1st respondent and insured with the 2nd respondent, had licence, however, it was expired on 01.05.2014 and the licence was renewed only on 15.02.2019. In other words, between 02.05.2014 and 15.02.2019, the driver of the car owned by the 1st respondent, does not possess a valid driving licence and Ex.R6, has been admitted during the cross examination of RW2, assumes significance.

14. Therefore, I find that the driver of the auto had driven the Auto without valid driving licence and also carried passengers more than the permitted limit. Besides the same, he has driven without valid permit and the driver of the offending car is also at negligence. Accordingly, the contributory negligence fixed at the ratio of 85:15, by the claims tribunal is just and fair and does not require any interference at the appellate stage and thus, the said finding is hereby confirmed.

15. On the point of quantum of compensation, I find that the compensation arrived at by the tribunal before the claims tribunal, appears to be just and fair. On the point of liability, the tribunal has exonerated the insurance company viz., 2nd respondent, on the ground that the driver of the car does not possess valid driving licence i.e., the driving licence has expired on the date of the accident.

16. Though, it is a violation of policy condition, following the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Swaran Singh & others,*** reported in **2004(1) TNMAC 104 (SC)**, 'pay and recover', has to be ordered. Therefore, it is ordered as follows:

> (i) The judgment and decree dated 25.01.2022, made in MCOP No.934 of 2019 on the file of the Motor Accident Claims Tribunal [Special District Court], Krishnagiri, stands modified.
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> (ii) The 2nd respondent-Insurance company is directed to deposit the 85% of the award amount i.e., Rs.8,34,020/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with proportionate costs to the credit of MCOP No.934

of 2019 on the file of the Motor Accident Claims Tribunal [Special District Court], Krishnagiri, within a period of eight weeks from the date of receipt of a copy of this order and thereafter, recover the same from the 1st respondent/owner of the car/appellant herein.

(iii) Except the above modification, the award of the tribunal is kept intact.

(iv) On such deposit, the claim petitioners, are permitted to withdraw the award, as apportioned by the tribunal, on making necessary applications.

17. In the result, the Civil Miscellaneous Appeal, filed by the owner of the car, in CMA No.2706 of 2022, stands partly allowed to the limited extent of ordering 'pay and recovery'. The Civil Miscellaneous Appeal filed by the claim petitioners, in CMA No.2650 of 2022, for enhancement of compensation, is hereby rejected and stands dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Index : Yes/No **20.03.2023**
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
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RMT.TEEKAA RAMAN,J.,

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To

The Special District Court,
Motor Accident Claims Tribunal,
Krishnagiri.

Pre-delivery common Judgment in CMA Nos.2706 and 2650 of 2022

20.03.2023